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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2017–0580; Special Conditions No. 25–701–SC]

Special Conditions: ALOFT AeroArchitects, Boeing Model 737–800 Airplanes; Aircraft Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 737–800 airplane. These airplanes, as modified by ALOFT AeroArchitects (ALOFT), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is a Wireless Access Point (WAP), and connection of an improved Wireless Quick Access Recorder (WQAR) to the satellite communications (SATCOM) system, to provide in-flight access to information, in the WQAR, to ground personnel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on ALOFT on October 17, 2017. Send your comments by December 1, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0580 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flightcrew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable.

In addition, for the reasons stated above, the FAA finds it unnecessary to delay the effective date and finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On December 8, 2016, ALOFT applied for a supplemental type certificate for installing a Wireless Access Point (WAP), and connection of an improved Wireless Quick Access Recorder (WQAR) to the satellite communications (SATCOM) system, in a Boeing Model 737–800 airplane. The Boeing Model 737–800 airplane is a twin jet engine, short-to-medium-range passenger airplane with a maximum takeoff weight of 174,200 pounds and seating for 189 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, ALOFT must show that the Boeing Model 737–800, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A16WE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–800 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to

modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–800 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737–800 airplane will incorporate the following novel or unusual design features:

A Wireless Access Point (WAP), and connection of an improved Wireless Quick Access Recorder (WQAR) to the satellite communications (SATCOM) system, to provide in-flight access to information, in the WQAR, to ground personnel.

Discussion

The applicant supplemental type certificate (STC) for the Boeing Model 737–800 airplane design adds wired and wireless access points to the aircraft-control domain and airline-information-services domain networks, which do not exist on current airplanes. The aircraft-control domain consists of the airplane electronic systems, equipment, instruments, networks, servers, software and hardware components, databases, etc., which are part of the type design of the airplane and are installed in the airplane to enable the safe operation of the airplane. These can also be referred to as flight-safety-related systems, and include flight controls, communication, display, monitoring, navigation, and other systems.

The airline-information services domain generally consists of functions that are managed or controlled by the operator, such as administrative functions and cabin-support functions.

This design creates a potential for unauthorized access to aircraft-control and airline-information-services domains, as well as security vulnerabilities related to the introduction of viruses, worms, user mistakes, and intentional sabotage of airplane electronic assets such as networks, systems, and databases.

Historically, the operating systems for current airplanes are proprietary. Therefore, they are not as susceptible to corruption from worms, viruses and other malicious actions as are more widely used commercial operating systems, such as Microsoft Windows, because access to the design details of the proprietary operating system is limited to the system developer and airplane integrator. Some systems installed on the Boeing Model 737–800 airplane, as modified by ALOFT, will use operating systems that are widely used and commercially available from third-party software suppliers. The security vulnerabilities of these operating systems may be more widely known than are the vulnerabilities of proprietary operating systems currently used by avionics manufacturers. The increased networking of systems based on these popular operating systems increases the opportunity for attack by a larger community, especially those using scripted attacks.

While the FAA has developed policy and guidance on the use and protection of certain databases and software, these documents did not anticipate the potential for access to the airplane systems, networks, and software components by external systems, and the resulting potential security vulnerabilities from access by unauthorized users or from the potential corruption of airplane system software resources (applications, databases, configuration files, etc.) by worms, viruses or other malicious entities.

The major differences between the applicant's STC for the Boeing Model 737–800 airplane implementation and typical implementations include:

1. The electronic transmission of updates to airplane servers of databases and software applications using ground data networks rather than physically controlled media.

2. The connection of external data networks or devices to airplane data networks of the Aircraft Control Domain and the Airline Information Services Domain, which may use wired or wireless connections.

3. The connection of wireless devices operated by the flight crew or operator maintenance personnel to the airplane data networks of the Aircraft Control Domain, and connections between the Airline Information Services Domain (including unprotected electronic flight bags and maintenance computers) and the Aircraft Control Domain.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–800 airplane. Should ALOFT apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–800 airplanes modified by ALOFT.

1. The applicant must ensure airplane electronic system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post type-certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Renton, Washington, on September 28, 2017.

Suzanne Masterson,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2017–22415 Filed 10–16–17; 8:45 am]

BILLING CODE 4910–13–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; republication.

SUMMARY: On September 29, 2017, the Secretary published a document in the **Federal Register** announcing the 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). We are republishing this document to include the definitions of certain terms used in this document. We have made no changes to the waivers and modifications.

DATES: The waivers and modifications began 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: On September 29, 2017 (82 FR 45465), the Secretary published a document in the **Federal Register** announcing the updated waivers and modifications. We are republishing this document to include the definitions of certain terms used in this document. We have made no changes to the waivers and modifications.

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 Higher Education Act of 1965, as amended (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.

In 20 U.S.C. 1098ee, the HEROES Act provides definitions critical to determining whether a student is an ''affected individual'' under the act and, if so, to which waivers and modifications the affected individual is entitled. Because these definitions are located outside of the statutes and regulations administered by the Department and with which financial aid administrators are most familiar, whether a student qualifies as an ''affected individual'' is a frequent source of confusion. To help ensure that the terms are not misinterpreted and that affected individuals receive the waivers and modifications to which they are entitled under the HEROES Act, we provide these definitions below.

Active duty has the meaning given that term in 10 U.S.C. 101(d)(1), but does not include active duty for training or attendance at a service school (*e.g.,* the U.S. Military Academy or U.S. Naval Academy).

Military operation means a contingency operation as that term is defined in 10 U.S.C. 101(a)(13).

National emergency means a national emergency declared by the President of the United States.

Qualifying National Guard duty during a war or other military operation or national emergency means service as a member of the National Guard on full-time National Guard duty (as defined in 10 U.S.C. 101(d)(5)) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. 502(f), in connection with a war, another military operation, or a national emergency declared by the President and supported by Federal funds.

Serving on active duty during a war or other military operation or national emergency includes service by an individual who is—

(A) A Reserve member of an Armed Force ordered to active duty under 10 U.S.C. 12301(a), 12301(g), 12302, 12304, or 12306, or any retired member of an Armed Force ordered to active duty under 10 U.S.C. 688, for service in connection with a war or other military operation or national emergency, regardless of the location at which that active duty service is performed; and

(B) Any other member of an Armed Force on active duty in connection with any war, operation, or emergency or subsequent actions or conditions who has been assigned to a duty station at a location other than the location at which the member is normally assigned.

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

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(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.

Dated: October 12, 2017.

Kathleen A. Smith,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2017–22489 Filed 10–16–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–R01–OAR–2017–0514; FRL–9969–57–Region 1]

Notification of Partial Delegation of Authority; Vermont; New Source Performance Standards for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of partial delegation of authority.

SUMMARY: On September 19, 2017, the Environmental Protection Agency (EPA) sent the State of Vermont a letter approving Vermont's request for partial delegation of the New Source Performance Standards for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces (NSPS). To inform regulated facilities and the public of EPA's approval of Vermont's request for partial delegation of authority to implement and enforce the NSPS, the EPA is making available a copy of EPA's letter to Vermont through this document.

DATES: On September 19, 2017, EPA sent the State of Vermont a letter approving Vermont's request for partial delegation of the NSPS.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2017–0514. Copies of documents pertaining to this action are available for public inspection at our Region 1 office during normal business hours. All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Boston, MA. EPA requests that if at all possible, you contact the contact 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 a.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Eric Wortman, Air Permits, Toxics and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1624, fax number (617) 918–0624, email *wortman.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: In a letter dated May 19, 2017, the Vermont Agency of Natural Resources (VT ANR) notified the EPA that VT ANR had adopted an amended § 5–204 of the Vermont Air Pollution Control Regulation for Wood Stoves and Central Heaters and requested partial delegation to implement and enforce certain provisions of the NSPS. On September 19, 2017, the EPA sent VT ANR a letter approving the request for partial delegation to implement and enforce the NSPS as specified by VT ANR in its notification to the EPA. A copy of the EPA's September 19, 2017 letter to VT ANR follows:

Heidi Hales, Division Director
Department of Environmental Conservation
One National Life Drive
Montpelier, VT 05620–3802

Dear Ms. Hales:

On March 16, 2015, the EPA promulgated Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters, and Forced-Air Furnaces (NSPS) at 40 CFR part 60, subparts AAA and QQQQ. In your letter dated May 19, 2017, the Vermont Agency of Natural Resources (VT ANR) requested partial delegation to implement and enforce certain provisions of the NSPS.

Delegation Request

VT ANR requested partial delegation to implement and enforce the following provisions of the NSPS at 40 CFR 60.539a and 60.5482:

1. Enforcement of prohibitions on the installation and operation of affected wood heaters and central heaters in a manner inconsistent with the installation and owner's manual;
2. Enforcement of prohibitions on operation of catalytic wood heaters or central heaters where the catalyst has been deactivated or removed;
3. Enforcement of prohibitions on advertisement and/or sale of uncertified model lines;
4. Enforcement of prohibitions on advertisement and/or sale of affected wood heaters and central heaters that do not have the required permanent label;
5. Enforcement of proper labeling of affected wood heaters and central heaters; and
6. Enforcement of compliance with other labeling requirements for wood heaters and central heaters.

Delegation of Authority

On December 15, 2016, VT ANR adopted and amended the Vermont Air Pollution Control Regulations at § 5–204 for Wood Stoves and Central Heaters. In the May 19, 2017 letter, VT ANR provided copies of its revised regulations and its authority to accept delegation.

The EPA has reviewed the pertinent regulations of the State of Vermont, and has determined they provide an adequate and effective procedure for implementation of the requested NSPS provisions. Accordingly, the EPA hereby approves your request for partial delegation of authority to implement and enforce the identified provisions of the NSPS at 40 CFR 60.539a and 60.5482.

Please note that this partial delegation of authority is subject to the terms and conditions in the March 6, 1996 Memorandum of Understanding between the VT ANR and the EPA for delegation of Section 111 standards. In addition, the EPA is not delegating any authorities under 40 CFR 60.539a and 60.5482 that specifically indicate they cannot be delegated.

Since this delegation is effectively immediately, there is no need for VT ANR to notify the EPA of its acceptance. Unless we receive written notice of objections from VT ANR within ten (10) days from the date of this letter, VT ANR will be deemed to have accepted all of the terms as stated herein. We will publish a notice of delegation of authority in the **Federal Register** informing the public of this action.

The EPA appreciates Vermont's efforts to accept partial delegation and implement and enforce the Wood Heater and Central Heater NSPS delegated provisions. If you have any questions regarding this matter, please don't hesitate to contact Eric Wortman at (617) 918–1624.

Sincerely,

Deborah A. Szaro

Acting Regional Administrator

This document informs regulated facilities and the public of the EPA's approval of Vermont's request for partial delegation of authority to implement and enforce the NSPS. The partial delegation of authority was effective on September 19, 2017.

List of Subjects in 40 CFR Part 60

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

Authority: This action is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: October 2, 2017.

Deborah A. Szaro,

Acting Regional Administrator, EPA-New England.

[FR Doc. 2017–22364 Filed 10–16–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10–51 and 03–123; FCC 17–26]

Structure and Practices of the Video Relay Services Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with rules adopted in the Commission's document *Structure and Practices of the Video Relay Services Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order (*Report and Order*). This document is consistent with the *Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: 47 CFR 64.604(b)(8) and 64.611(a)(5) and (g)(1)(vii); and amendments to §§ 64.604(b)(4)(iii), 64.611(c)(2)(i), 64.615(a)(3)(i) introductory text and (a)(3)(i)(A), 64.630, 64.5101(b), and 64.5103(m), published at 82 FR 17754, April 13, 2017, are effective October 17, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or email: *Michael.Scott@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on October 2, 2017, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Report and Order,* FCC 17–26, published at 82 FR 17754, April 13, 2017. The OMB Control Number is 3060–1201. The Commission publishes this document as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1201, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (844) 432–2275 (videophone), or (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on October 2, 2017, for the information collection requirements contained in the Commission's rules at §§ 64.604(b)(4)(iii) and (b)(8); 64.611(a)(5), (c)(2)(i), and (g)(1)(vii); 64.615(a)(3)(i) introductory text and (a)(3)(i)(A); 64.630; 64.5101(b); and 64.5103(m).

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1201.

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

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

OMB Control Number: 3060–1201.

OMB Approval Date: October 2, 2017.

OMB Expiration Date: October 31, 2020.

Title: Video Relay Services, CG Docket Nos. 10–51 & 03–123.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

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

Number of Respondents and Responses: 135,350 respondents; 2,395,180 responses.

Estimated Time per Response: 0.5 hours (30 minutes) to 300 hours.

Frequency of Response: Annual, monthly, on-going, one-time, and quarterly reporting requirements; Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collections is contained in section 225 of the Communications Act. The law was enacted on July 26, 1990, as Title IV of the Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69.

Total Annual Burden: 473,809 hours.

Total Annual Cost: $41,000.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–4, ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS-URD).'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–4 ''Internet-based Telecommunications Relay Service-User Registration Database (ITRS-URD),'' in the **Federal Register** on February 9, 2015 (80 FR 6963) which became effective on March 23, 2015.

Privacy Impact Assessment: This information collection affects individuals or households. As required by the Office of Management and Budget Memorandum M–03–22 (September 26, 2003), the FCC is in the process of completing the Privacy Impact Assessment.

Needs and Uses: On March 23, 2017, the Commission released *Structure and Practices of the Video Relay Services Program et al.,* FCC 17–26, published at 82 FR 17754, April 13, 2017, (*2017 VRS Improvements Order*), which among other things, (1) allows VRS providers to assign TRS Numbering Directory 10-

digit telephone numbers to hearing individuals for the limited purpose of making point-to-pint video calls, and (2) gives VRS providers the option to participate in an at-home call handling pilot program, subject to certain limitations, as well as recordkeeping and reporting requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2017–22468 Filed 10–16–17; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 160920866–7167–02]

RIN 0648–XF756

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2017 total allowable catch of sablefish allocated to vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA has been reached.

DATES: Effective 1200 hours, Alaska local time (ALT), October 12, 2017, through 2400 hours, ALT, December 31, 2017.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2017 total allowable catch (TAC) of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA is 439 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish of the GOA (82 FR 12032, February 27, 2017).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2017 TAC of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This closure does not apply to fishing by vessels participating in the cooperative fishery of the Rockfish Program for the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of sablefish by vessels using trawl gear and not participating in the cooperative fishery of the Rockfish Program in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 6, 2017.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 12, 2017.

Alan D. Risenhoover,

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

[FR Doc. 2017–22454 Filed 10–12–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 82, No. 199
Tuesday, October 17, 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.

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 517

RIN 3141–AA21

Freedom of Information Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this document is to propose amendments to the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Freedom of Information Act, as amended. These changes will serve to update certain Commission information, conform to changes made in the FOIA Improvements Act of 2016, and streamline how the Commission processes its Freedom of Information Act requests.

DATES: Written comments on this proposed rule must be received on or before November 16, 2017.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FOIAComments@nigc.gov.*
- *Fax:* 202–632–7066.
- *Mail:* National Indian Gaming Commission, 1849 C Street NW., MS 1621, Washington, DC 20240.
- *Hand Delivery:* National Indian Gaming Commission, 90 K Street NE., Suite 200, Washington, DC 20002, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Lawson at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission. Congress enacted the Freedom of Information Act (FOIA) in 1966. The Commission originally adopted Freedom of Information Act procedures on August 23, 1993. These procedures were subsequently amended once on April 19, 2006. Since that time, the United States Congress has amended the FOIA twice, the Commission has changed the location of its headquarters office and streamlined the way it processes its FOIA requests. These proposed amendments serve to incorporate the aforementioned changes into the Commission's regulations.

III. Regulatory Matters

Regulatory Flexibility Act

The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that would be considered impacts within the scope of the Act.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is exempt from the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; 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 U.S. based enterprises.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements for which the Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to

Indian tribes. The Changes proposed in this NPRM do not fall into any of those categories. Many of the changes are required by law, and those that are not are being done to improve our FOIA process, which affects the public in general. Accordingly, the Commission did not consult on these changes. The Commission, though, requests and welcomes any and all tribal comments to this NPRM.

List of Subjects in 25 CFR Part 517

Administrative practice and procedure, Freedom of information.

■ For the reasons set forth in the preamble, the Commission proposes to revise 25 CFR part 517 to read as follows:

PART 517—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

Authority: 5 U.S.C. 552.

§ 517.1 General provisions.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations provide procedures by which you may obtain access to records compiled, created, and maintained by the Commission, along with procedures the Commission must follow in response to such requests for records. These regulations should be read together with the FOIA, which provides additional information about access to records maintained by the Commission. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552(a), are processed in accordance with the Commission's Privacy Act regulations, 25 CFR part 515, as well as under this part.

§ 517.2 Public reading room.

Records that are required to be maintained by the Commission shall be available for public inspection and copying at 90 K Street NE., Suite 200, Washington, DC 20002. Reading room records created on or after November 1, 1996, shall be made available electronically via the Commission's Web site.

§ 517.3 Definitions.

(a) *Commercial use requester* means a requester seeking information for a use or purpose that furthers the commercial, trade, or profit interests of himself or the person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a request properly belongs in this category, the FOIA Officer shall determine the use to which the requester will put the documents requested. Where the FOIA Officer has reasonable cause to doubt the use to which the requester will put the records sought, or where that use is not clear from the request itself, the FOIA Officer shall contact the requester for additional clarification before assigning the request to a specific category.

(b) *Confidential commercial information* means records or information provided to the government by a submitter that arguably contains material exempt from disclosure under Exemption 4 of the FOIA.

(c) *Direct costs* mean those expenditures by the Commission actually incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in response to the FOIA request. Direct costs include the salary of the employee or employees performing the work (*i.e.,* the basic rate of pay for the employee plus 16 percent 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 cost of space, heating, or lighting of the facility in which the records are stored.

(d) *Duplication* refers to the process of making a copy of a record, or the information contained in it, necessary to respond to a FOIA request. Such copies can take the form of, among other things, paper copy, microfilm, audio-visual materials, or electronic records (*e.g.,* compact discs or USB flash drives). The copies provided shall be in a form that is reasonably usable by the requester.

(e) *Educational institution* refers to a preschool, a public or private elementary school, an institute of undergraduate higher education, an institute of graduate higher education, an institute of professional education, or an institute of vocational education which operates a program of scholarly research. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(f) *Freedom of Information Act Officer* means the person designated by the Chairman to administer the FOIA.

(g) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is used in paragraph (a) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To qualify for this category, the requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(h) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. 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 for purchase by or free distribution to the general public, including news organizations that disseminate solely on the Internet. For a ''freelance journalist'' to be regarded as working for a news organization, the requester must demonstrate a solid basis for expecting publication through that organization, such as a publication contract. Absent such showing, the requester may provide documentation establishing the requester's past publication record. To qualify for this category, the requester must not be seeking the requested records for a commercial use. However, a request for records supporting a news-dissemination function shall not be considered to be for a commercial use.

(i) *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 Commission.

(j) *Review* means the process of examining a record in response to a FOIA request to determine if any portion of that record may be withheld under one or more of the FOIA Exemptions. It also includes processing any record for disclosure, for example, redacting information that is exempt from disclosure under the FOIA. Review time includes time spent considering any formal objection to disclosure made

by a business submitter under § 517.7(c). Review time does not include time spent resolving general legal or policy issues regarding the use of FOIA Exemptions.

(k) *Search* refers to the time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within a document and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Officer shall ensure that searches are conducted in the most efficient and least expensive manner reasonably possible.

(l) *Submitter* means any person or entity who provides information directly or indirectly to the Commission. The term includes, but is not limited to, corporations, Indian tribal governments, state governments and foreign governments.

(m) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 517.4 Requirements for making requests.

(a) *How to make a FOIA request.* Requests for records made pursuant to the FOIA must be in writing. Requests may be mailed, dropped off in person, or faxed to (202) 632–7066 (not a toll free number). Requests that are dropped off in person should be made at 90 K Street NE., Suite 200, Washington, DC 20002 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Requests that are mailed should be sent to NIGC Attn: FOIA Officer, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240. Requests may also be sent via electronic mail addressed to *FOIARequests@nigc.gov* or submitted through the Commission's Web site.

(b) *First person requests for records.* If the requester is making a request for records about himself/herself, the requester must provide verification of identity. Verification requirements are described in 25 CFR 515.3.

(c) *Requests for records about another individual.* If the requester is making a request for records about another individual, the requester may receive greater access by submitting either a notarized authorization signed by that individual, a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester or by submitting proof that the individual is deceased (for example, a copy of the death certificate or a copy of the obituary).

(d) *Description of records sought.* Requests for records shall describe the records requested with as much specificity as possible to enable Commission employees to locate the information requested with a reasonable amount of effort. Whenever possible, the request should describe the subject matter of the records sought, the time periods in which the records were generated, and any tribe or tribal gaming facility with which they were associated. Before submitting a request, requesters may contact the Commission's FOIA contact or FOIA Public Liaison to discuss the records being sought and receive assistance describing the records. If after receiving a request the FOIA Officer determines that it does not reasonably describe the records sought, the FOIA Officer must inform the requester of what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the Commission's FOIA contact or FOIA Public Liaison. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(e) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information, or a request for a waiver or reduction of fees. If the requester is requesting a waiver or reduction of fees the requester must include justification for such waiver or reduction (see § 517.9(c) for more information). If the request for a fee waiver is denied, the requester will be notified of this decision and advised that fees associated with the processing of the request will be assessed. The requester must send an acknowledgment to the FOIA Officer indicating his/her willingness to pay the fees. Absent such acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(f) *Form or format of records requested.* Requesters may specify their preferred form or format (including electronic formats) for the records sought. The Commission will accommodate such requests where the record is readily reproducible in that form or format.

(g) *Types of records not available.* The FOIA does not require the Commission 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 disposed.

§ 517.5 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The FOIA Officer shall make initial determinations either to grant or deny in whole or in part a request for records.

(c) *Granting of requests.* When the FOIA Officer determines that the requested records shall be made available, the FOIA Officer shall notify the requester in writing and provide copies of the requested records in whole or in part. Records disclosed in part shall be marked or annotated to show the exemption applied to the withheld information and the amount of information withheld unless to do so would harm the interest protected by an applicable exemption. If a requested record contains exempted material along with nonexempt material, all reasonable segregable material shall be disclosed.

(d) *Adverse Determinations.* If the FOIA Officer makes an adverse determination denying a request in any respect, it must notify the requester of that adverse determination in writing. Adverse determinations include decisions that: The requested record is exempt from release, 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; denials involving fees or fee waiver matters; and denials of requests for expedited processing.

(e) *Content of adverse determination.* Any adverse determination issued by the FOIA Officer must include:

(1) A brief statement of the reasons for the adverse determination, including any FOIA exemption applied by the agency in denying access to a record unless to do so would harm the interest protected by an applicable exemption;

(2) An estimate of the volume of any records or information withheld, such

as the number of pages or 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;

(3) A statement that the adverse determination may be appealed under § 517.8 of this part and a description of the appeal requirements; and

(4) A statement notifying the requester of the assistance available from the Commission's FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services.

(f) *Consultation, referral, and coordination.* When reviewing records located in response to a request, the FOIA Officer will 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 record determined to be better suited for review by another Federal Government agency, the FOIA Officer must proceed in one of the following ways.

(1) *Consultation.* When records originating with the Commission contain information of interest to another Federal Government agency, the FOIA Officer should typically consult with that other entity prior to making a release determination.

(2) *Referral.*

(i) When the FOIA Officer believes that a different Federal Government agency is best able to determine whether to disclose the record, the FOIA Officer should typically refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. If the Commission and another Federal Government agency jointly agree that the agency processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the FOIA Officer refers any part of the responsibility for responding to a request to another agency, he or she must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral.

(iii) After the FOIA Officer refers a record to another Federal Government agency, the agency receiving the referral shall make a disclosure determination and respond directly to the requester. The referral of a record is not an adverse determination and no appeal rights accrue to the requester by this act.

(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 interests. For example, if the FOIA Officer in responding to a request for records on a living third party locates records originating with a criminal 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. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the FOIA Officer should coordinate with the originating agency to obtain its views on whether the record may be disclosed. The FOIA Officer should then convey the determination as to whether the record will be released to the requester.

§ 517.6 Timing of responses to requests.

(a) *In general.* The FOIA Officer ordinarily shall respond to requests according to their order of receipt. All statutory and regulatory timelines will commence on the date that the request is received by the Commission's Headquarters FOIA Office that is designated to receive requests in § 517.4(a). In instances of requests misdirected to Commission field offices, the response time will commence on the date that the request is received by the Commission's Headquarters FOIA Office, but in any event no later than 10 working days after the request is first received by any Commission office.

(b) *Multitrack processing.* (1) The FOIA Officer may use multi-track processing in responding to requests. Multi-track processing means placing simple requests requiring rather limited review in one processing track and placing more voluminous and complex requests in one or more other tracks. Requests in either track are processed on a first-in/first-out basis.

(2) The FOIA Officer may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of faster track(s). The FOIA Officer will do so either by contacting the requester by letter, telephone, electronic mail, or facsimile whichever is more efficient in each case. When providing a requester with the opportunity to limit the scope of their request, the FOIA Officer shall also advise the requester of the availability of the Commission's FOIA Public Liaison to aid in the resolution of any dispute arising between the requester and the Commission as well as the requester's right to seek dispute resolution services from the Office of Government Information Services.

(c) *Initial determinations.* (1) The FOIA Officer shall make an initial determination regarding access to the requested information and notify the requester within twenty (20) working days after receipt of the request. This 20 day period may be extended if unusual circumstances arise. If an extension is necessary, the FOIA Officer shall promptly notify the requester of the extension, briefly stating the reasons for the extension, and estimating when the FOIA Officer will respond. Unusual circumstances warranting extension are:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of records which are demanded in a single request; or

(iii) The need for consultation with another agency having a substantial interest in the determination of the request, which consultation shall be conducted with all practicable speed.

(2) If the FOIA Officer decides that an initial determination cannot be reached within the time limits specified in paragraph (c)(1) of this section, the FOIA Officer shall notify the requester of the reasons for the delay and include an estimate of when a determination will be made. The requester will then have the opportunity to modify the request or arrange for an alternative time frame for completion of the request. To assist in this process, the FOIA Officer shall advise the requester of the availability of the Commission's FOIA Public Liaison to aid in the resolution of any disputes between the requester and the Commission, and notify the requester of his or her right to seek dispute resolution services from the Office of Government Information Services.

(3) If no initial determination has been made at the end of the 20 day period provided for in paragraph (c)(1) of this section, including any extension, the requester may appeal the action to the FOIA Appeals Officer.

(d) *Expedited processing of request.* (1) A requester may make a request for expedited processing at any time.

(2) When a request for expedited processing is received, the FOIA Officer must determine whether to grant the request for expedited processing within ten (10) calendar days of its receipt.

Requests will receive expedited processing if one of the following compelling needs is met:

(i) The requester can establish that failure to receive the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is primarily engaged in disseminating information and can demonstrate that an urgency to inform the public concerning actual or alleged Federal Government activity exists.

(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. As a matter of administrative discretion, the FOIA Officer may waive the formal certification requirement.

(4) Administrative appeals of denials of expedited processing will be given expeditious consideration. If the denial of expedited processing is upheld by the FOIA Appeals Officer, that decision is immediately subject to judicial review in the appropriate Federal district court.

§ 517.7 Confidential commercial information.

(a) *Notice to submitters.* The FOIA Officer shall, to the extent permitted by law, provide a submitter who provides confidential commercial information to the Commission, with prompt notice of a FOIA request or administrative appeal encompassing the confidential commercial information if the Commission may be required to disclose the information under the FOIA. Such notice shall either describe the exact nature of the information requested or provide copies of the records or portions thereof containing the confidential commercial information. The FOIA Officer shall also notify the requester that notice and opportunity to object has been given to the submitter.

(b) *Where notice is required.* Notice shall be given to a submitter when:

(1) The information has been designated by the submitter as confidential commercial information protected from disclosure. Submitters of confidential commercial information shall use good faith efforts to designate, either at the time of submission or a reasonable time thereafter, those portions of their submissions they deem protected from disclosure under Exemption 4 of the FOIA. Such designation shall be deemed to have expired ten years after the date of submission, unless the requester provides reasonable justification for a designation period of greater duration; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA.

(c) *Where notice is discretionary.* If the FOIA Officer has reason to believe that information submitted to the Commission may be protected from disclosure under any other exemption of the FOIA, the FOIA Officer may, in his or her discretion, provide the submitter with notice and an opportunity to object to the release of that information.

(d) *Opportunity to object to disclosure.* The FOIA Officer shall afford a submitter a reasonable period of time to provide the FOIA Officer with a detailed written statement of any objection to disclosure. The statement shall specify all grounds for withholding any of the information under any exemption of the FOIA, and if Exemption 4 applies, shall demonstrate the reasons the submitter believes the information to be confidential commercial information that is exempt from disclosure. Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the submitter. In the event a submitter fails to respond to the notice in the time specified, the submitter will be considered to have no objection to the disclosure of the information. Information provided by the submitter that is received after the disclosure decision has been made will not be considered. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The FOIA Officer shall carefully consider a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information requested. Whenever the FOIA Officer determines that disclosure is appropriate, the FOIA Officer shall, within a reasonable number of days prior to disclosure, provide the submitter with written notice of the intent to disclose which shall include a statement of the reasons for which the submitter's objections were overruled, a description of the information to be disclosed, and a specific disclosure date. The FOIA Officer shall also notify the requester that the requested records will be made available.

(f) *Notice of lawsuit.* If the requester files a lawsuit seeking to compel disclosure of confidential commercial information, the FOIA Officer shall promptly notify the submitter of this action. If a submitter files a lawsuit seeking to prevent disclosure of confidential commercial information, the FOIA Officer shall notify the requester.

(g) *Exceptions to the notice requirements under this section.* The notice requirements under paragraphs (a) and (b) of this section shall not apply if:

(1) The FOIA Officer determines that the information should not be disclosed pursuant to Exemption 4 and/or any other exemption of the FOIA;

(2) The information lawfully has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than the FOIA);

(4) The information requested is not designated by the submitter as exempt from disclosure in accordance with this part, when the submitter had the opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the agency has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with this part appears obviously frivolous. When the FOIA Officer determines that a submitter was frivolous in designating information as confidential, the FOIA Officer must provide the submitter with written notice of any final administrative disclosure determination within a reasonable number of days prior to the specified disclosure date, but no opportunity to object to disclosure will be offered.

§ 517.8 Appeals.

(a) *Right of appeal.* The requester has the right to appeal to the FOIA Appeals Officer any adverse determination.

(b) *Notice of Appeal.* (1) *Time for appeal.* To be considered timely, an appeal must be postmarked, or in the case of electronic submissions, transmitted, no later than ninety (90) calendar days after the date of the response or after the time limit for response by the FOIA Officer has expired. Prior to submitting an appeal any outstanding fees associated with FOIA requests must be paid in full.

(2) *Form of appeal.* An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and adverse determination. To expedite the appellate process and give the requester an opportunity to present his/her arguments, the notice should contain a brief statement of the reasons why the requester believes the adverse determination to have been in error. Requesters may submit appeals by mail, facsimile, or electronically. Appeals

sent by mail shall be addressed to the National Indian Gaming Commission, Attn: FOIA Appeals Officer, 1849 C Street NW., Mailstop #1621, Washington, DC 20240. Appeals may also be submitted via electronic mail at *FOIARequests@nigc.gov* or through the NIGC'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.''

(c) *Final agency determinations.* The FOIA Appeals Officer shall issue a final written determination, stating the basis for its decision, within twenty (20) working days after receipt of a notice of appeal. If the determination is to provide access to the requested records, the FOIA Officer shall make those records immediately available to the requester. If the determination upholds the adverse determination, the FOIA Appeals Officer shall notify the requester of the determination, the ability to obtain mediation services offered by the Office of Government Information Services as a non-exclusive alternative to litigation, and the right to obtain judicial review in the appropriate Federal district court.

(d) *When appeal is required.* Before seeking review by a court of the FOIA Officer's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 517.9 Fees.

(a) *In general.* Fees pursuant to the FOIA shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by the Commission in response to requests for records under this part. All fees shall be charged to the requester, except where the charging of fees is limited under paragraph (d) or (e) of this section or where a waiver or reduction of fees is granted under paragraph (c) of this section. Payment of fees should be by check or money order made payable to the Treasury of the United States..

(b) *Charges for responding to FOIA requests.* The following fees shall be assessed in responding to requests for records submitted under this part, unless a waiver or reduction of fees has been granted pursuant to paragraph (c) of this section:

(1) *Duplication.* The FOIA Officer will honor a requester's preference for receiving a record in a particular form or format where he or she can readily reproduce the record in the form or format requested. When photocopies are supplied, the FOIA Officer shall charge $0.15 per page for copies of documents up to 8½ x 14. For copies of records produced on tapes, compact discs, or other media, the FOIA Officer shall 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 electronic format, the requester must also pay the direct costs associated with scanning those materials. For other methods of reproduction, the FOIA Officer shall charge the actual direct costs of producing the documents.

(2) *Searches.* (i) *Manual searches.* Whenever feasible, the FOIA Officer will charge at the salary rate (basic pay plus 16% percent for benefits) of the employee or employees performing the search. However, where a homogenous class of personnel is used exclusively in a search (*e.g.,* all administrative/clerical or all professional/executive), the FOIA Officer shall charge $4.45 per quarter hour for clerical time and $7.75 per quarter hour for professional time. Charges for search time less than a full hour will be in increments of quarter hours.

(ii) *Computer searches.* The FOIA Officer will charge the actual direct costs of conducting computer searches. These direct costs shall include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for requested records, as well as the costs of operator/programmer salary apportionable to the search. For requests that require the creation of a new computer program to locate requested records, the Commission will charge the direct costs associated with such program's creation. The FOIA Officer 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.

(3) *Review fees.* Review fees shall be assessed only with respect to those requesters who seek records for a commercial use under paragraph (d)(1) of this section. Review fees shall be assessed at the same rates as those listed under paragraph (b)(2)(i) of this section. Review fees shall be assessed only for the initial record review, for example, review undertaken when the FOIA Officer analyzes the applicability of a particular exemption to a particular record or portion thereof at the initial request level. No charge shall be assessed at the administrative appeal level of an exemption already applied.

(c) *Statutory waiver.* Documents shall be furnished without charge or at a charge below that listed in paragraph (b) of this section where it is determined, based upon information provided by a requester or otherwise made known to the FOIA Officer, that disclosure of the requested information is in the public interest. Disclosure is in the public interest if it is likely to contribute significantly to public understanding of government operations and is not primarily for commercial purposes. Requests for a waiver or reduction of fees shall be considered on a case by case basis. In order to determine whether the fee waiver requirement is met, the FOIA Officer shall consider the following six factors:

(1) *The subject of the request.* Whether the subject of the requested records concerns the operations or activities of the government;

(2) *The informative value of the information to be disclosed.* Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to public understanding;

(4) *The significance of the contribution to public understanding.* Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(5) *The existence and magnitude of commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(d) *Types of requesters.* There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters; representative of the news media; and all other requesters. These terms are defined in § 517.3. The following specific levels of fees are prescribed for each of these categories:

(1) *Commercial use requesters.* The FOIA Officer shall charge commercial use requesters the full direct costs of searching for, reviewing, and duplicating requested records.

(2) *Educational and non-commercial scientific institutions requesters.* The FOIA Officer shall charge educational and non-commercial scientific institution requesters for document duplication only, except that the first 100 pages of copies shall be provided without charge.

(3) *News media requesters.* The FOIA Officer shall charge news media requesters for document duplication costs only, except that the first 100 pages of paper copies shall be provided without charge.

(4) *All other requesters.* The FOIA Officer shall charge requesters who do not fall into any of the categories in paragraphs (d)(1) through (3) of this section fees which cover the full reasonable direct costs incurred for searching for and reproducing records if that total costs exceeds $15.00, except that the first 100 pages and the first two hours of manual search time shall not be charged. To apply this term to computer searches, the FOIA Officer shall determine the total hourly cost of operating the central processing unit and the operator's salary (plus 16 percent for benefits). When the cost of the search equals the equivalent dollar amount of two hours of the salary of the person performing the search, the FOIA Officer will begin assessing charges for the computer search.

(e) *Restrictions on charging fees.* (1) Ordinarily, no charges will be assessed when requested records are not found or when records located are withheld as exempt. However, if the requester has been notified of the estimated cost of the search time and has been advised specifically that the requested records may not exist or may be withheld as exempt, fees may be charged.

(2) If the Commission fails to comply with the FOIA's time limits for responding to a request, it may not charge search fees or, in cases where records are not sought for commercial use and the request is made by an educational institution, non-commercial scientific institution, or representative of the news media, duplication fees, except as described in paragraphs (e)(2)(i)–(iii) of this section.

(i) If the FOIA Officer determines that unusual circumstances, as defined by the FOIA, apply and provides timely written notice to the requester in accordance with the FOIA, then a failure to comply with the statutory time limit shall be excused for an additional 10 days.

(ii) If the FOIA Officer determines that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, then the Commission may charge search fees and duplication fees, where applicable, if the following steps are taken. The FOIA Officer must:

(A) Provide timely written notice of unusual circumstances to the requester in accordance with the FOIA and

(B) Discuss 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).

(iii) If a court determines that exceptional circumstances exist, as defined by the FOIA, then a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(f) *Charges for interest.* The FOIA Officer may assess interest charges on an unpaid bill, accrued under previous FOIA request(s), starting the 31st day following the day on which the bill was sent to you. A fee received by the FOIA Officer, even if not processed will result in a stay of the accrual of interest. The Commission shall follow the provisions of the Debt Collection Act of 1982, as amended, its implementing procedures, and the Commission's debt collection regulations located in 25 CFR part 513 to recover any indebtedness owed to the Commission.

(g) *Aggregating requests.* The requester or a group of requesters may not submit multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. When the FOIA Officer reasonably believes that a requester is attempting to divide a request into a series of requests to evade an assessment of fees, the FOIA Officer may aggregate such request and charge accordingly.

(h) *Advance payment of fees.* Fees may be paid upon provision of the requested records, except that payment may be required prior to that time if the requester has previously failed to pay fees or if the FOIA Officer determines that total fee will exceed $250.00. When payment is required in advance of the processing of a request, the time limits prescribed in § 517.6 shall not be deemed to begin until the FOIA Officer has received payment of the assessed fee.

(i) *Payment of fees.* Where it is anticipated that the cost of providing the requested record will exceed $25.00 after the free duplication and search time has been calculated, and the requester has not indicated in advance a willingness to pay a fee greater than $25.00, the FOIA Officer shall promptly notify the requester of the amount of the anticipated fee or a portion thereof, which can readily be estimated. The notification shall offer the requester an opportunity to confer with agency representatives for the purpose of reformulating the request so as to meet the requester's needs at a reduced cost.

Dated: October 10, 2017.

Jonodev O. Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2017–22393 Filed 10–16–17; 8:45 am]

BILLING CODE 7565–01–P

Notices

Federal Register
Vol. 82, No. 199
Tuesday, October 17, 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 Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to the CALIFORNIA TABLE GRAPE COMMISSION of FRESNO, CALIFORNIA, an exclusive license to the variety of table grape described in U.S. Plant Patent Application Serial No. 15/731,420, ''GRAPEVINE NAMED 'SOLBRIO,' '' filed on JUNE 6, 2017.

DATES: Comments must be received on or before November 16, 2017.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: Brian T. Nakanishi of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in THIS PLANT VARIETY are assigned to the United States of America, as represented by the Secretary of Agriculture. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Mojdeh Bahar,

Assistant Administrator.

[FR Doc. 2017–22490 Filed 10–16–17; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

DATES: The Committee meeting will be held from 8:00 a.m. to 5:30 p.m. on Thursday, November 2, 2017, and from 8:00 a.m. to 12:30 p.m. on Friday, November 3, 2017. There will be an opportunity for public questions and comments at 8:15 a.m. on Friday, November 3, 2017. All times mentioned herein refer to Eastern Standard Time.

ADDRESSES: The Committee meeting will take place at The Brown Hotel, 335 W Broadway, Louisville, KY 40202. Written comments may be filed before or up to two weeks after the meeting with the contact person identified herein at: U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW., Room 5041–A, South Building, Washington, DC 20250–2000.

FOR FURTHER INFORMATION CONTACT: Renee Picanso, Associate Administrator, National Agricultural Statistics Service, telephone: 202–720–4333, eFax: 855–493–0445, or email: *HQOA@nass.usda.gov.* General information about the committee can also be found at *https://www.nass.usda.gov/About_NASS/index.php.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 20 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled a meeting on November 2–3, 2017. During this time the Advisory Committee will discuss topics including the status of NASS programs, Census of Agriculture Updates, Census of Agriculture Program Plans, Big Data, and the NASS Strategic Plan.

The Committee meeting is open to the public. The public is asked to pre-register for the meeting at least 10 business days prior to the meeting. Your pre-registration must state the names of each person in your group, organization, or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Submit registrations to Executive Secretary, Advisory Committee on Agriculture Statistics, via eFax: 855–493–0445, or email: *HQOA@nass.usda.gov.* Members of the public who request to give oral comments to the Committee must arrive at the meeting site by 8:00 a.m. on Friday, November 3, 2017. Written comments by attendees or other interested stakeholders will be welcomed for the public record before and up to two weeks following the meeting. The public may file written comments by mail to the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW., Room 5041–A South Building, Washington, DC 20250–2000. Written comments can also be sent via eFax: 855–493–0445, or email: *HQOA@nass.usda.gov.* All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Signed at Washington, DC, September 28, 2017.

R. Renee Picanso,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 2017–22491 Filed 10–16–17; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–862]

Certain Polyethylene Terephthalate Resin From India: Notice of Rescission of Countervailing Duty Administrative Review, 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty (CVD) order on certain polyethylene terephthalate resin (PET resin) from India for the period August 14, 2015, to December 31, 2016, based on a timely withdrawal of the request for review.

DATES: Applicable October 17, 2017.

FOR FURTHER INFORMATION CONTACT: John Corrigan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7438.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2017, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the CVD order on PET resin from India for the period August 14, 2015, to December 31, 2016.[1] On May 31, 2017, the Department received a timely request, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), from Ester Industries Ltd. (Ester), an exporter of subject merchandise, to conduct an administrative review of this CVD order.[2] Based upon this request, on July 6, 2017, in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of administrative review for this CVD order, with respect to Ester.[3] On July 17, 2017, Ester timely withdrew its request for an administrative review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. As noted above, Ester withdrew its request for review by the 90-day deadline. No other party requested an administrative review of Ester. Accordingly, we are rescinding the administrative review of the CVD order on PET resin from India covering the period August 14, 2015, to December 31, 2016.

Assessment

The Department will instruct Customs and Border Protection (CBP) to assess CVDs on all appropriate entries at a rate equal to the cash deposit of estimated CVDs required at the time of entry, or withdrawal from warehouse, for consumption, during the period August 14, 2015, to December 31, 2016, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This notice is issued and published in accordance with sections 751 of the Act and 19 CFR 351.213(d)(4).

Dated: October 10, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–22458 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 20315 (May 1, 2017).

[2] *See* Ester's May 31, 2017, Request for CVD Administrative Review.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 31292 (July 6, 2017) (*Initiation Notice*).

[4] *See* Ester's July 17, 2017, Withdrawal of Administrative Review Request.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–819]

Certain Steel Nails From the Socialist Republic of Vietnam: Final Results of Countervailing Duty Administrative Review, and Partial Rescission of Countervailing Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has completed its administrative review of the countervailing duty (CVD) order on certain steel nails (steel nails) from the Socialist Republic of Vietnam (Vietnam) covering the period November 3, 2014, through December 31, 2015. We have determined, based on adverse facts available, that the mandatory respondents Truong Vinh Ltd. (Truong Vinh) and Rich State Inc. (Rich State) received countervailable subsidies during the period of review (POR). The final net subsidy rates are listed below in the section, ''Final Results of Administrative Review.'' We are also rescinding the review for Dicha Sombrilla Co., Ltd. (Dicha Sombrilla) as we have concluded that Dicha Sombrilla did not have reviewable entries during the POR.

DATES: Applicable October 17, 2017.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

On June 27, 2017, the Department published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results,*[2] but received none. Accordingly, no decision memorandum accompanies this **Federal Register** notice, and the final results are unchanged from the *Preliminary Results.*

Scope of the Order

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12

[1] *See Certain Steel Nails from the Socialist Republic of Vietnam: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind, in Part,* 82 FR 29022 (June 27, 2017) (*Steel Nails Vietnam Prelim*).

[2] *Id.* at 29023.

inches.[3] Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may consist of a one piece construction or be constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of this order are certain steel nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, certain steel nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are certain steel nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: (1) Builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; (2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; (3) swivel seats with variable height adjustment; (4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); (5) seats of cane, osier, bamboo or similar materials; (6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); (7) furniture (other than seats) of wood (with the exception of (i) medical, surgical, dental or veterinary furniture; and (ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or (8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.,* furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of this order are steel nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision).

Also excluded from the scope of this order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of this order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of this order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of this order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Certain steel nails subject to this order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00, 7318.29.0000, and 7806.00.8000. Certain steel nails subject to this order also may be classified under HTSUS subheading 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Partial Rescission of Administrative Review

We are rescinding this administrative review for Dicha Sombrilla. In the *Preliminary Results,* we made a preliminary determination to rescind the review for Dicha Sombrilla as it did not have reviewable entries during the POR.[4] We received no comments with regard to these preliminary results, and are accordingly rescinding the review for Dicha Sombrilla in accordance with 19 CFR 351.213(d)(3).

Methodology

The Department conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying our conclusions, including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.[6]

Final Results of Administrative Review

In accordance with 19 CFR 351.221(b)(5), we find the countervailable subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate (percent)
Truong Vinh Ltd	313.97
Rich State Inc	313.97

Assessment Rates and Cash Deposit Requirement

Consistent with 19 CFR 351.221(b)(2), we intend to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of these final results of review, to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after November 3, 2014, through December 31, 2015, at the *ad valorem* rates listed above.

[3] The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

[4] *See Steel Nails Vietnam Prelim,* at 29023.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and, section 771(5A) of the Act regarding specificity.

[6] *See Steel Nails Vietnam Prelim,* and accompanying Issues and Decision Memorandum.

In accordance with section 751(a)(1) of the Act, we intend to instruct CBP to collect cash deposits of estimated CVDs in the amounts shown for each of the respective companies listed above. For all non-reviewed firms, including Dicha Sombrilla, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 11, 2017.

Gary Taverman,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017–22457 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports.

OMB Control Number: 0648–0371.

Form Number(s): NOAA Form 88–191.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 7,213.

Average Hours per Response: 10 minutes for cost/earnings summaries attached to logbook reports, 30 minutes for annual expenditure forms, 12 minutes for logbook catch trip and set reports, 2 minutes for negative logbook catch reports; cost-earning trip reports and annual expenditure reports, 30 minute each.

Burden Hours: 31,033.

Needs and Uses: This request is for revision and extension of a current information collection.

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. In addition, NMFS must comply with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), under which the agency implements recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT), as necessary and appropriate.

This information collection is being revised to include modified trip summary and cost-earnings logbook forms for the Atlantic Tunas General Category, Swordfish General Commercial, and Atlantic Highly Migratory Species (HMS) Charter/Headboat fisheries. Reporting burden associated with logbooks for the Atlantic Tunas General Category and HMS Charter/Headboat fisheries has been authorized under previous versions of this information collection, but the reporting burden associated with the Swordfish General Commercial permit is new as it was implemented only in 2014, and the category has not previously been selected for logbook reporting.

NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. The HMS logbook program, OMB Control No. 0648–0371, was specifically designed to collect the vessel level information needed for the management of Atlantic HMS, and includes set forms, trip forms, negative reports, and cost-earning requirements for both commercial and recreational vessels. The information supplied through the HMS logbook program provides the catch and effort data on a per-set or per-trip level of resolution for both directed and incidental species. In addition to HMS fisheries, the HMS logbook program is also used to report catches of dolphin and wahoo by commercial and charter/headboat fisheries by vessels that do not possess other federal permits. Additionally, the HMS logbook collects data on incidental species, including sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. While most HMS fishermen use the HMS logbook program, HMS can also be reported as part of several other logbook collections including the Northeast Region Fishing Vessel Trip Reports (0648–0212) and Southeast Region Coastal Logbook (0648–0016).

These data are necessary to assess the status of HMS, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted through ICCAT's Standing Committee on Research and Statistics periodically and provide, in part, the basis for ICCAT management recommendations which become binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via the HMS logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

Affected Public: Business and other for-profit organizations; individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 12, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–22483 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF737

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2018 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2018 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota (ITQ) allocation holders that they will be required to purchase their fishing year 2018 (January 1, 2018–December 31, 2018) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, (978) 281–9165; fax (978) 281–9161.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2018 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to ITQ allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: October 11, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–22401 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Groundfish Trawl Catcher Processor Economic Data Report.

OMB Control Number: 0648–0564.

Form Number(s): None.

Type of Request: Regular (extension of a currently approved information collection).

Number of Respondents: 30.

Average Hours per Response: 22 hours per report.

Burden Hours: 660.

Needs and Uses: This request is for extension of a current information collection.

The Groundfish Trawl Catcher Processor Economic Data Report (the EDR) collects information for the Gulf of Alaska Trawl Groundfish Economic Data Report Program (GOA Trawl EDR Program) and for Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

The GOA Trawl EDR Program evaluates the economic effects of current and future groundfish and prohibited species catch (PSC) management measures for GOA trawl fisheries. This program provides the National Marine Fisheries Service (NMFS) and the North Pacific Fishery Management Council with baseline information on affected harvesters, crew, processors, and communities in the GOA.

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area primarily allocates several BSAI non-pollock trawl groundfish fisheries among fishing sectors, and facilitates the formation of harvesting cooperatives among vessels in the Non-American Fisheries Act (non-AFA) Trawl Catcher/Processor Cooperative Program. This program established a limited access privilege program for the non-AFA trawl catcher/processor sector.

Data collected through the EDR includes labor information, revenues received, capital and operational expenses, and other operational or financial data. This information is used to assess the economic effects of Amendment 80 on vessels or entities regulated by the non-AFA Trawl Catcher/Processor Cooperative Program, and impacts of major changes in the groundfish management regime, including allocation of PSC species and target species to harvesting cooperatives.

The EDR is submitted annually by vessel owners and leaseholders of GOA trawl vessels, processors receiving deliveries from those trawl vessels, and Amendment 80 catcher/processors harvesting in the GOA and BSAI. Submission of the EDR is mandatory.

Affected Public: Business or other for-profit organizations; individuals or households.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: October 12, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–22482 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF417

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops; Correction

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

ACTION: Notice of public workshops; correction.

SUMMARY: NMFS cancelled the Atlantic Shark Identification workshop originally scheduled for September 7, 2017, in Panama City, FL, and the Protected Species Safe Handling, Release, and Identification workshop originally scheduled for September 13,

2017, also in Panama City, FL. The workshops were cancelled due to severe weather and damage resulting from Hurricane Irma. The workshops were announced in the **Federal Register** on June 8, 2017. NMFS has rescheduled the Atlantic Shark Identification workshop for November 30, 2017. NMFS has also rescheduled the Protected Species Safe Handling, Release, and Identification workshop for November 28, 2017.

DATES: The Atlantic Shark Identification workshop originally scheduled for September 7, 2017, in Panama City, FL, has been rescheduled to November 30, 2017, and the Protected Species Safe Handling, Release, and Identification workshop originally scheduled for September 13, 2017, in Panama City, FL, has been rescheduled to November 28, 2017. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The locations of the rescheduled workshops have not changed. The Atlantic Shark Identification workshop and the Protected Species Safe Handling, Release, and Identification workshop will be held in Panama City, FL. See **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by fax: (727) 824–5398.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding these workshops are posted on the Internet at: *http://www.nmfs.noaa.gov/sfa/hms/compliance/workshops/index.html.*

Correction

In the **Federal Register** of June 8, 2017, (82 FR 26670) in FR Doc. 2017–11923, on page 26670, in the third column, the date of the third Atlantic Shark Identification workshop listed under the heading ''Workshop Dates, Times, and Locations'' is corrected to read as follows:

3. November 30, 2017, 12 p.m.–4 p.m., LaQuinta Inn & Suites, 7115 Coastal Palms Boulevard, Panama City, FL 32408.

Also, in the **Federal Register** of June 8, 2017, (82 FR 26670) in FR Doc. 2017–11923, on page 26671, in the first column, the date of the sixth Protected Species Safe Handling, Release, and Identification workshop listed under the heading ''Workshop Dates, Times, and Locations'' is corrected to read as follows:

6. November 28, 2017, 9 a.m.–5 p.m., Hilton Garden Inn, 1101 North Highway 231, Panama City, FL 32405.

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

Dated: October 11, 2017.

Emily H. Menashes,

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

[FR Doc. 2017–22441 Filed 10–16–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Air Force Materiel Command, Department of the Air Force.

ACTION: Notice of intent.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant Battle Sight Technology, LLC of Germantown, OH, a partial exclusive license to practice the invention in any right, title and interest the Air Force has in: U.S. Patent No. 8,137,597 issued on 20 March 2012 entitled ''ONE-PART, PRESSURE ACTIVATED CHEMILUMINESCENT MATERIAL,'' by Dr. Lawrence Brott.

DATES: Written Objections must be filed no later than fifteen (15) calendar days after the date of the publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO, 2240 B Street, Rm. 204, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO, 2240 B Street, Rm. 204, Wright-Patterson AFB, OH 45433–7109.

SUPPLEMENTARY INFORMATION: The Department of the Air Force intends to grant a license for the patent and pending applications unless a written objection is received within fifteen (15) calendar days from the date of publication of this Notice. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 204, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

Henry Williams,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2017–22476 Filed 10–16–17; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0124]

Agency Information Collection Activities; Comment Request; Implementation of Title I/II–A Program Initiatives

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before December 18, 2017.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2017–ICCD–0124. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Erica Johnson, 202–245–7676.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the

following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Implementation of Title I/II–A Program Initiatives.

OMB Control Number: 1850–0902.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 770.

Total Estimated Number of Annual Burden Hours: 821.

Abstract: The second round of data collection for the Implementation of Title I/II–A Program Initiatives study will continue to examine the implementation of policies promoted through the Elementary and Secondary Education Act (ESEA) at the state and district levels, in four core areas: School accountability and support for low-performing schools, improving teacher and leader effectiveness, state content standards, and assessments. The first round of data collection for this study was conducted in Spring and Summer 2014.

The purpose of this follow-up data collection is to provide policy makers with detailed information on the core policies promoted by Title I and Title II–A being implemented at the state and district levels, and the resources and supports they provide to schools and teachers. The timing of the data collection is critical to provide early information on the implementation of the Every Student Succeeds Act (ESSA) in the 2017–18 school year.

This study will rely on information collected from existing sources, for which there are no respondents or burden, and on a set of revised state and district surveys based on the 2014 data collection in order to address the study's research questions. Extant data sources include (a) the National Assessment of Educational Progress (NAEP) and (b) EDFacts data.

The revised surveys of states and school districts will begin in March 2018. All respondents will have the opportunity to complete an electronic (*e.g.,* web-based) survey (or paper survey, if preferred). The survey respondents are described briefly below:

State Surveys: The state survey will be sent to the chief state school officer in each of the 50 states and the District of Columbia. The state surveys will be administered using an electronic instrument divided into modules corresponding to the four core areas.

School District Surveys. The school district survey will be sent to school superintendents from the same nationally representative sample of 570 school districts that participated in the 2014 survey, as well as a new nationally representative sample of 149 charter school districts. The district survey will be web-based and modularized, corresponding to the four core areas, to allow for completion by one or multiple respondents.

Dated: October 12, 2017.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2017–22445 Filed 10–16–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2386–004, Project No. 2387–003, and Project No. 2388–004]

City of Holyoke Gas & Electric Department; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* Subsequent Licenses.

b. *Project Nos.:* 2386–004, 2387–003, and 2388–004.

c. *Date filed:* August 31, 2016.

d. *Applicant:* City of Holyoke Gas & Electric Department.

e. *Names of Projects:* Holyoke Number 1 Hydro Project, P–2386–004; Holyoke Number 2 Hydro Project, P–2387–003; and Holyoke Number 3 Hydro Project, P–2388–004.

f. *Locations:* Holyoke Number 1 (P–2386–004) and Holyoke Number 2 (P–2387–003) are located between the first and second level canals, and Holyoke Number 3 (P–2388–004) is located between the second and third level canals on the Holyoke Canal System (Canal System), adjacent to the Connecticut River, in the city of Holyoke in Hampden County, Massachusetts. The projects do not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Paul Ducheney, Superintendent, City of Holyoke Gas and Electric Department, 99 Suffolk Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com.*

i. *FERC Contact:* Kyle Olcott, (202) 502–8963 or *kyle.olcott@ferc.gov.*

j. *Deadline for filing scoping comments:* November 9, 2017.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket numbers P–2386–004, P–2387–003, and/or P–2388–004.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. These applications are not ready for environmental analysis at this time.

l. *The City 1 project consists of:* (1) An intake at the wall of the First Level Canal fed by the Canal System with two 14.7-foot-tall by 24.6-foot-wide trashrack screens with 3.5-inch clear spacing; (2) two parallel 10-foot-diameter, 36.5-foot-long penstocks; (3) a 50-foot-long by 38-foot-wide brick powerhouse with two 240-kilowatt and two 288-kilowatt turbine generator units; (4) two parallel 20-foot-wide, 328.5-foot-long brick arched tailrace conduits discharging into the Second Level Canal; and, (5) appurtenant facilities. There is no transmission line associated with the project as it is located adjacent to the substation of interconnection.

The City 2 project consists of: (1) An intake at the wall of the First Level Canal fed by the Canal System with three trashrack screens (one 16.2-foot-

tall by 26.2-foot-wide and two 14.8-foot-tall by 21.8-foot-long) with 3-inch clear spacing; (2) two 9-foot-diameter, 240-foot-long penstocks; (3) a 17-foot-high by 10-foot-diameter surge tank; (4) a 60-foot-long by 40-foot-wide by 50-foot high powerhouse with one 800-kilowatt vertical turbine generator unit; (5) two parallel 9-foot-wide, 10-foot-high, 120-foot-long brick arched tailrace conduits discharging into the Second Level Canal; (6) an 800-foot-long, 4.8-kilovolt transmission line; and (7) appurtenant facilities.

The City 3 project consists of: (1) A 52.3-foot-long by 14-foot-high intake trashrack covering an opening in the Second Level Canal fed by the Canal System; (2) two 11-foot-high by 11-foot-wide headgates; (3) two 85-foot-long, 93-square-foot in cross section low pressure brick penstocks; (4) a 42-foot-long by 34-foot-wide by 28-foot-high reinforced concrete powerhouse with one 450-kilowatt turbine generator unit; (5) a 29.7-foot-wide, 10-foot-deep, 118-foot-long open tailrace discharging into the Third Level Canal; and, (6) 4.8-kilovolt generator leads that connect directly to the 4.8-kilovolt area distribution system; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to address the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item H above.

n. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Scoping Process

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Holyoke Number 1 Hydro Project, Holyoke Number 2 Hydro Project, and Holyoke Number 3 Hydro Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on October 10, 2017.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: October 10, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22414 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP18–22–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Compliance filing Leach XPress Implementation, CP15–514 to be effective 11/6/2017.

Filed Date: 10/6/17.

Accession Number: 20171006–5054.

Comments Due: 5 p.m. ET 10/18/17.

Docket Numbers: RP18–23–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: Petition for Limited Tariff Waiver Due of Iroquois Gas Transmission System, L.P.

Filed Date: 10/6/17.

Accession Number: 20171006–5084.

Comments Due: 5 p.m. ET 10/18/17.

Docket Numbers: RP18–24–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Update Non-Conforming Agreements—November 2017 to be effective 11/1/2017.

Filed Date: 10/6/17.

Accession Number: 20171006–5126.

Comments Due: 5 p.m. ET 10/18/17.

Docket Numbers: RP18–25–000.

Applicants: Columbia Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated & Non-Conforming Service Agreements—LXP to be effective 11/6/2017.

Filed Date: 10/6/17.

Accession Number: 20171006–5138.

Comments Due: 5 p.m. ET 10/18/17.

Docket Numbers: RP18–26–000.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: § 4(d) Rate Filing: QPC Tariff Part 1 ? 5 Revision to be effective 12/1/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5022.

Comments Due: 5 p.m. ET 10/23/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 10, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22416 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–9–000]

Xcel Energy Services Inc. v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on October 10, 2017, Xcel Energy Services Inc. (Complainant), on behalf of its public utility affiliate Southwestern Public Service Company (SPS), filed a formal complaint against Southwest Power Pool, Inc. (SPP or Respondent) pursuant to sections 206 and 306 of the Federal Power Act (FPA), 16 U.S.C. 824(e) and 825(e), and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2017), alleging that SPP has violated its Tariff by assessing Attachment Z2 credit payment obligations to SPS in a manner that is inconsistent with the SPP Tariff, violates the filed rate doctrine, is inconsistent with SPS's network transmission service agreements with

SPP, and is otherwise unjust, unreasonable, all as more fully explained in the complaint.

Complainants certify that copies of the complaint were served on the contact for Respondent, as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2017). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests, must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 30, 2017.

Dated: October 11, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22470 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–10–000]

Bloom Energy Corporation; Notice of Petition for Declaratory Order

Take notice that on October 10, 2017, pursuant to section 385.207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 292.205(c) and 385.207 (2017), Bloom Energy Corporation (Bloom) filed a petition for declaratory order requesting that the Commission declare that certain Bloom facilities, which have internalized the hydrogen producing second-use process, meet the Commission's standards for cogeneration units as set forth in 18 CFR 292.205(a)(1)–(2) and 18 CFR 292.205(d) of the Commission's regulations, all as more fully explained in the petition.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on November 9, 2017.

Dated: October 11, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22471 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG18–6–000.

Applicants: PowerFin ASL 1, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of PowerFin ASL 1, LLC.

Filed Date: 10/11/17.

Accession Number: 20171011–5088.

Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: EG18–7–000.

Applicants: PowerFin SolarMundo, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of PowerFin SolarMundo, LLC.

Filed Date: 10/11/17.

Accession Number: 20171011–5089.

Comments Due: 5 p.m. ET 11/1/17.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2398–006; ER10–2399–006; ER14–1933–006; ER10–2406–007; ER10–2409–006; ER10–2410–006; ER10–2411–007; ER10–2412–007; ER17–1315–003; ER10–2414–007; ER11–2935- 008; ER16–1724–003; ER13–1816–007.

Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Headwaters Wind Farm LLC, High Trail Wind Farm, LLC, Meadow Lake Wind Farm LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm V LLC, Old Trail Wind Farm, LLC, Paulding Wind Farm II LLC, Paulding Wind Farm III LLC, Sustaining Power Solutions LLC.

Description: Notice of Non-Material Change in Status of Blackstone Wind Farm, LLC, et. al.

Filed Date: 10/10/17.

Accession Number: 20171010–5383.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER10–3246–008; ER10–2475–013; ER10–2474–013; ER13–1266–008.

Applicants: PacifiCorp, Nevada Power Company, Sierra Pacific Power Company, CalEnergy, LLC.

Description: Errata to June 30, 2016 Triennial Market Power Analysis and Supplement for the Northwest Region of the BHE Northwest Companies.

Filed Date: 10/6/17.

Accession Number: 20171006–5119.

Comments Due: 5 p.m. ET 10/27/17.

Docket Numbers: ER17–2179–001.

Applicants: California Independent System Operator Corporation.

Description: Compliance filing: 2017–10–10 Remove Conceptual Statewide Plan Compliance to be effective 9/27/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5344.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER17–2379–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Administrative Filing Amendment for ER17–2379–000 to be effective 8/30/2017.

Filed Date: 10/11/17.

Accession Number: 20171011–5170.

Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: ER18–49–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Service Agreement Recollation to be effective 10/10/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5250.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER18–50–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Administrative Filing Amendment for ER17–2379–000 to be effective 8/30/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5265.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER18–51–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Interconnection Service Agreement No. 3808, Queue No. AB2–050 to be effective 9/7/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5285.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER18–52–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Service Agreement No. 4795; Queue AC2–139 (WMPA) to be effective 9/8/2017.

Filed Date: 10/10/17.

Accession Number: 20171010–5291.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER18–54–000.

Applicants: Pacific Gas and Electric Company.

Description: § 205(d) Rate Filing: Balancing Accounts Update 2018 (TRBAA, RSBAA, ECRBAA) to be effective 1/1/2018.

Filed Date: 10/10/17.

Accession Number: 20171010–5332.

Comments Due: 5 p.m. ET 10/31/17.

Docket Numbers: ER18–55–000.

Applicants: MP2 Energy LLC.

Description: § 205(d) Rate Filing: Notice of Change in Category Seller Status to be effective 10/12/2017.

Filed Date: 10/11/17.

Accession Number: 20171011–5083.

Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: ER18–56–000.

Applicants: Midcontinent Independent System Operator, Inc., Consumers Energy Company.

Description: § 205(d) Rate Filing: 2017–10–11 Consumers Energy Company's Transmission Depreciation Rates Filing to be effective 1/1/2018.

Filed Date: 10/11/17.

Accession Number: 20171011–5087.

Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: ER18–57–000.

Applicants: MP2 Energy NE LLC.

Description: § 205(d) Rate Filing: Notice in Change in Category Seller to be effective 10/12/2017.

Filed Date: 10/11/17.

Accession Number: 20171011–5091.

Comments Due: 5 p.m. ET 11/1/17.

Docket Numbers: ER18–58–000.

Applicants: Dyon LLC.

Description: Tariff Cancellation: Notice of Cancellation to be effective 10/12/2017.

Filed Date: 10/11/17.

Accession Number: 20171011–5148.

Comments Due: 5 p.m. ET 11/1/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22460 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–7–000]

American Electric Power Service Corporation v. Midcontinent Independent System Operator, Inc.; Notice of Complaint

Take notice that on October 10, 2017, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824(e), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, American Electric Power Service Corporation on behalf of its operating company affiliates that are transmission owners (TOs) in the PJM Interconnection, L.L.C. (PJM) (together AEP or Complainants) [1] filed a formal complaint against Midcontinent Independent System Operator, Inc. (MISO or Respondent) alleging that MISO failed to provide AEP and other PJM TOs with more than $4.8 million of revenues from Seams Elimination Charge/Cost Adjustments/Assignments, a non-bypassable surcharge designed to recover all of the revenues lost due to the elimination of through and out rates on December 1, 2004 in the MISO/PJM region, all as more fully explained in the complaint.

AEP certifies that copies of the complaint were served on the contacts for the Midcontinent Independent System Operator, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as

[1] American Electric Power Service Corporation (AEPSC) is filing this Complaint on behalf of its following operating company affiliates: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 30, 2017.

Dated: October 11, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22462 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

	Docket Nos.
SunE Beacon Site 2 LLC	EG17–122–000
Great Bay Solar I, LLC	EG17–123–000
Lackawanna Energy Center LLC	EG17–124–000
SunE Beacon Site 5 LLC	EG17–125–000
Rattlesnake Power, LLC	EG17–126–000
Apple Blossom Wind, LLC	EG17–127–000
Stuttgart Solar, LLC	EG17–130–000
Cap Ridge Wind I, LLC	EG17–131–000
Cap Ridge Wind II, LLC	EG17–132–000
Cap Ridge Wind III, LLC	EG17–133–000
Cap Ridge Wind IV, LLC	EG17–134–000
Cap Ridge Interconnection, LLC	EG17–135–000
Aguaytia Energy del Peru SRL (I Squared Capital).	FC17–4–000

Take notice that during the month of September 2017, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2017).

Dated: October 11, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22461 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–47–000]

Voyager Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Voyager Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22464 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–6–000]

FirstEnergy Service Company; Notice of Waiver Request

Take notice that on October 6, 2017, pursuant to rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practices and Procedures 18 CFR 385.207, FirstEnergy Service Company (Service Company), submitted a request that the Commission waive specified portions of 18 CFR 35.39 and any other rules and regulations as may be necessary, to allow Service Company to establish a centralized RTO interface services group to provide services to certain franchised public utilities and market-regulated power sales affiliates within the FirstEnergy Corp. holding company system, as more fully explained in its waiver request.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on October 27, 2017.

Dated: October 10, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22413 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14227–003]

Nevada Hydro Company, Inc.; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Unconstructed Project.

b. *Project No.:* P–14227–003.

c. *Date filed:* October 2, 2017.

d. *Applicant:* Nevada Hydro Company, Inc.

e. *Name of Project:* Lake Elsinore Advanced Pumped Storage (LEAPS) Project.

f. *Location:* On Lake Elsinore and San Juan Creek near the town of Lake Elsinore in Riverside and San Diego counties, California. The project would occupy about 845 acres of federal land.

g. *Filed Pursuant to:* 18 CFR part 4 of the Commission's Regulations.

h. *Applicant Contact:* Rexford Wait, Nevada Hydro Company, Inc., 2416 Cades Way Vista, California (760) 599–1815.

i. *FERC Contact:* Jim Fargo at (202) 502–6095 or email at *james.fargo@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item m below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: December 1, 2017

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The first page of any filing should include docket number P–14227–003.

m. The application is not ready for environmental analysis at this time.

n. *The proposed project would consist of the following:* (1) A new upper reservoir (Decker Canyon) with a 200-foot-high main dam and a gross storage volume of 5,750 acre-feet at a normal reservoir surface elevation of 2,792 feet above mean sea level (msl); (2) a single 21-foot-diameter concrete power shaft and power tunnel with two steel lined penstocks; (3) an underground powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (4) an existing lower reservoir (Lake Elsinore) with a gross storage volume of 54,500 acre-feet at a normal reservoir surface elevation of 1,245 feet above msl; (5) about 32 miles of 500-kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

o. The license application and associated filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph m.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are designating Nevada Hydro, Inc. as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

q. *Post-filing process:* The major milestones of the post-filing process for the LEAPS Project are provided below. The issuance of the Ready for Environmental Analysis (REA) Notice and subsequent milestones will not occur until the additional information needs of Commission staff on the final license application have been satisfied, which may include the completion of any needed additional studies. The milestones that provide opportunities for stakeholder input are highlighted in **bold**.

- **Additional study requests due**
- Issue Scoping Document 1 for comments
- **Public Scoping Meetings**
- **Comments on Scoping Document 1 due**
- Issue Scoping Document 2 (if necessary)
- Issue REA Notice soliciting comments, recommendations, terms and conditions, and prescriptions
- **Comments, recommendations, terms and conditions, and prescriptions due**
- Issue updated EIS
- **Comments on updated EIS due**
- Issue final EIS (if necessary)

Dated: October 11, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22473 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 19, 2017, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*** Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1036TH—MEETING
REGULAR MEETING
[October 19, 2017 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD18–1–000	Agency Administrative Matters.
A–2	AD18–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Market Update.
A–4	AD16–24–000	Winter Operations and Market Performance in Regional Transmission Organizations and Independent System Operators.
	ER17–1567–000, ER15–623–000, EL15–29–000, ER16–372–000, EL17–32–000.	ODEC and Advanced Energy Management Alliance v. PJM Interconnection, L.L.C.
	EL17–36–000	ISO New England Inc.
	ER17–1565–000, ER16–551–003, ER13–2266–004.	Algonquin Gas Transmission, LLC.
	RP16–618–000, ER17–1561–000, ER16–1404–000, ER16–120–001 ER16–120–003.	New York Independent System Operator, Inc.
	EL15–37–002, EL13–62–001	Independent Power Producers of New York.
	EL13–62–002	New York State Public Service Commission et al.
	EL16–92–001	Midcontinent Independent System Operator, Inc.
	ER17–1570–000	Midwest Independent Transmission System Operator, Inc.
	ER11–4081–000	Coalition of MISO Transmission Customers v. Midcontinent Independent System Operator, Inc.
	EL16–112–001, ER17–892–000	Public Citizen, et al. v. Midcontinent Independent System Operator, Inc.
	EL15–70–000, EL15–71–000, EL15–72–000, EL15–82–000.	Southwest Power Pool, Inc.
	ER17–1568–000, ER17–1568–001, EL16–110–000, ER16–1286–000, EL17–11–000, EL17–69–000, ER17–1575–000, ER17–1575–001, ER17–1092–000, ER17–1482–000.	California Independent System Operator Corporation.
	ER17–2312–000, ER17–2568–000, ER17–2412–000, ER17–2402–000, ER17–2311–000, ER17–2263–000, ER17–2237–000, ER17–1459–000, ER18–1–000.	
	Electric	
E–1	RM17–11–000	Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls.
E–2	RM15–11–002	Reliability Standard for Transmission System Planned Performance for Geomagnetic Disturbance Events.
E–3	ER15–1809–001, EL18–12–000	ATX Southwest, LLC.
E–4	ER15–958–003, ER15–958–004, EL18–13–000	Transource Kansas, LLC.
E–5	ER15–2236–001, EL18–14–000	Midwest Power Transmission Arkansas, LLC.
E–6	EL15–2237–001, ER15–2237–003, EL18–15–000.	Kanstar Transmission, LLC.
E–7	ER15–2594–003, EL18–16–000, ER17–953–000.	South Central MCN LLC.
E–8	EL16–110–000	Southwest Power Pool, Inc.
E–9	EL16–1286–002, EL16–110–001	Southwest Power Pool, Inc.
E–10	EL17–11–000	Alabama Power Company v. Southwest Power Pool, Inc.
E–11	EL17–69–000	Buffalo Dunes Wind Project, LLC, Enel Green Power North America, Inc., Alabama Power Company, and Southern Company Services, Inc. v. Southwest Power Pool, Inc.

1036TH—MEETING—Continued
REGULAR MEETING
[October 19, 2017 10:00 a.m.]

Item No.	Docket No.	Company
E–12	ER17–1575–000, ER17–1575–001	Southwest Power Pool, Inc.
E–13	EL10–49–005	Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation v. Virginia Electric and Power Company.
E–14	EL10–49–004	Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation v. Virginia Electric and Power Company.
E–15	EL18–17–000	Midcontinent Independent System Operator, Inc.
E–16	ER16–471–001	Midcontinent Independent System Operator, Inc.
E–17	ER17–1000–000, ER17–1000–001, ER17–1013–000, ER17–1013–001 (not consolidated).	Midcontinent Independent System Operator, Inc.
E–18	EL16–99–000, EL18–18–000 (consolidated)	Midcontinent Independent System Operator, Inc.
E–19	ER16–1817–003, ER16–1346–002	Midcontinent Independent System Operator, Inc.
E–20	ER14–1242–006, ER14–2860–003, ER14–2862–003.	Midcontinent Independent System Operator, Inc.
E–21	EL16–12–002, ER16–1817–002	Internal MISO Generation v. Midcontinent Independent System Operator, Inc.
E–22	ER17–2110–000	ISO New England Inc.
E–23	EL16–91–000, EL18–19–000 (consolidated)	Southwest Power Pool, Inc.
E–24	ER17–998–000, EL17–61–000	DATC Path 15, LLC.
	Gas	
G–1	OMITTED.	
G–2	RP17–397–000	Dominion Transmission, Inc.
G–3	RP17–461–000	Texas Eastern Transmission, LP.
G–4	OR17–13–000	GT Pipeline, LLC.
	Hydro	
H–1	PL17–3–000	Policy Statement on Establishing License Terms for Hydroelectric Projects.
H–2	P–308–008	PacifiCorp.
H–3	P–14760–001, P–14761–001, P–14762–001	Percheron Power, LLC.
	P–14763–001, P–14764–001	NorthHydro, LLC.
H–4	EL16–50–001	Percheron Power, LLC.
H–5	P–2210–261	Appalachian Power Company.

A free webcast of this event is available through *www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar.

The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Issued: October 12, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22545 Filed 10–13–17; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER17–2558–000]

NTE Ohio, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding NTE Ohio, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 31, 2017.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 11, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–22463 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC17–13–000]

Commission Information Collection Activity (FERC–717); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection, FERC–717, (Open Access Same-Time Information System and Standards for Business Practices and Communication Protocol) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission published Notice in the **Federal Register** in Docket No. IC17–13–000, (82 FR 37580, 8/11/2017) requesting public comments. FERC received no comments in response to the Notice and is indicating that in its submittal to the OMB.

DATES: Comments on the collection of information are due November 16, 2017.

ADDRESSES: Comments filed with OMB, identified by OMB Control No. 1902–0173, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–0710.

A copy of the comments should also be sent to the Commission, in Docket No. IC17–13–000 by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp.*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–717, Open Access Same-Time information System and Standards for Business Practices and Communication Protocols.

OMB Control No.: 1902–0173.

Type of Request: Three-year approval of the FERC–717 information collection requirements with no changes to the current reporting requirements.

Abstract: The Commission directs all public utilities that own, control or operate facilities for transmitting energy in interstate commerce to provide certain types of information regarding their transmission operations on an Open Access Same-time Information System (OASIS). The Commission does not believe that open-access nondiscriminatory transmission services can be completely realized until it removes real-world obstacles that prevent transmission customers from competing effectively with the Transmission Provider. One of the obstacles is unequal access to transmission information. The Commission believes that transmission customers must have simultaneous access to the same information available to the Transmission Provider if truly nondiscriminatory transmission services are to be a reality.

The Commission also established Standards of Conduct requiring that personnel engaged in transmission system operations function independently from personnel engaged in marketing functions. The Standards of Conduct were designed to prevent employees of a public utility (or any of its affiliates) engaged in marketing functions from preferential access to OASIS-related information or from engaging in unduly discriminatory business practices. Companies were required to separate their transmission operations/reliability functions from their marketing/merchant functions and prevent system operators from providing merchant employees and employees of affiliates with transmission-related information not available to all customers at the same time through public posting on the OASIS.

Type of Respondents: Transmission Owners and Transmission Operators.

Estimate of Annual Burden: [1] The Commission estimates an adjustment in the annual public reporting burden for the FERC–717. The adjustment is due to Transmission Providers being allowed to file responses jointly or individually. The Transmission Provider may delegate this responsibility to a Responsible Party such as another Transmission Provider, an Independent System Operator, a Regional Transmission Group, or a Regional Reliability Council. The number comprise two separate entities: Transmission Owners and Transmission Operators. The responses submitted are our best estimate of the Transmission Operators and remaining individual Transmission Owners. The rationale is that some Transmission Owners have elected to turn over operational control of their collective transmission systems to Transmission Operators, including RTOs/ISOs (as authorized in 18 CFR 37.5). These Transmission Operators offer OASIS access to the collective systems facilitating a single OASIS transmission request serving multiple transmission systems. As a result of

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 Code of Federal Regulations 1320.3.

these efficiency gains, the lower respondent count is appropriate.

As a result of the efficiency gains, and an overestimate of the respondents in our past request, we are submitting a more accurate number of respondents. The estimate below reflects the work associated with the current information collection requirements:

FERC–717, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS

Information collection requirements	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours and cost per response [2]	Total annual burden hours and total annual cost
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC–717	170	1	170	30 hrs.; $2,295	5,100 hrs.; $390,150.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: October 11, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–22472 Filed 10–16–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9035–6]

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 10/02/2017 through 10/06/2017
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: *https://cdxnodengn.epa.gov/cdx-nepa-public/action/eis/search.*

EIS No. 20170198, Final, USAF, MD, Presidential Aircraft Recapitalization Program, Joint Base Andrews-Naval Air Facility, Review Period Ends: 11/15/2017, Contact: Ms Jean Renolds 210–925–4534.

EIS No. 20170200, Draft, FTA, PA, King of Prussia Rail Project, Comment Period Ends: 12/4/2017, Contact: Daniel Koenig 202–366–8224.

EIS No. 20170201, Draft, USN, CA, Hawaii-Southern Californian Training and Testing, Comment Period Ends: 12/12/2017, Contact: Nora Macariola-See 808–472–1402.

EIS No. 20170202, Draft, USFS, CO, CP District-wide Salvage, Comment Period Ends: 11/30/2017, Contact: Mike Tooley 719–274–6321.

Dated: October 9, 2017.

Kelly Knight,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2017–22165 Filed 10–13–17; 12:00 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9969–52–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held November 29 and 30 at The George Washington University Milken Institute School of Public Health 950 New Hampshire Ave. NW., Washington, DC 20052. The CHPAC advises the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: November 29 and 30 at The George Washington University Milken Institute School of Public Health in Washington, DC.

ADDRESSES: 950 New Hampshire Ave. NW., Washington, DC 20052.

FOR FURTHER INFORMATION CONTACT: Angela Hackel, Office of Children's Health Protection, USEPA, MC 1107T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–2977 or *hackel.angela@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *epa.gov/children.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Angela Hackel at 202–5566–2977.

Dated: October 2, 2017.

Angela Hackel,

Designated Federal Official.

[FR Doc. 2017–22498 Filed 10–16–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9969–71–OA]

Notification of a Public Teleconference of the Science Advisory Board Risk and Technology Review (RTR) Methods Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference meeting of the Science Advisory Board (SAB) Risk and Technology Review (RTR) Methods

[2] The Commission staff thinks that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based upon FERC's 2017 annual average of $158,754 (for salary plus benefits), the average hourly cost is $76.50/hour.

Panel to discuss the draft Panel report in response to the Agency request to peer review EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017).*

DATES: The public teleconference will be held on Tuesday, December 5, 2017, from 11:00 a.m. to 3:00 p.m. (Eastern time).

ADDRESSES: The public teleconference will be held by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this meeting notice may contact Dr. Bryan J. Bloomer, Designated Federal Officer (DFO), via phone at (202) 564–4222, or email at *bloomer.bryan@epa.gov.* General information about the SAB, as well as updates concerning the meeting announced in this notice, may be found on the EPA Web site at *http://www.epa.gov/sab.*

Technical Contact for EPA's Draft Reports: Any technical questions concerning EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017),* should be directed to Chris Sarsony, EPA Office of Air and Radiation, Office of Air Quality Planning and Standards, at (919) 541–4843 or *sarsony.chris@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB RTR Methods Panel will hold a public teleconference to discuss its draft report regarding the EPA's draft *Screening Methodologies to Support Risk and Technology Reviews (RTR) (External Review Draft May, 2017).* The Panel will provide their advice to the Administrator through the chartered SAB.

EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the SAB conduct a review of the methods for conducting Risk and Technology Review Assessments required by the Clean Air Act. These assessments evaluate the effects of industrial emissions of hazardous air pollutants (HAPs) on public health and the environment. The RTR Methods Review Panel convened a public face-to-face meeting on June 29–30, 2017, to deliberate on the peer review charge questions. The Panel will meet via a public teleconference to discuss the draft report developed by the Panel and to hear and consider public comments.

Availability of Meeting Materials: Prior to the meeting(s), the review documents, meeting agendas and other supporting materials (if applicable) will be accessible on the meeting page at this URL *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RTR%20Screening%20Methods%20Review?OpenDocument.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the EPA's charge, meeting materials, or the group providing advice. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instructions below to submit comments.

Oral Statements: In general, individuals or groups requesting to make an oral presentation will be limited to three minutes during a public teleconference. Interested parties wishing to provide comments should contact Dr. Bloomer (preferably via email), at the contact information noted above by November 28, 2017, to be placed on the list of public speakers for the teleconference.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be supplied to the DFO (preferably via email) at the contact information noted above by November 28, 2017. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Bloomer at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: October 5, 2017.

Khanna Johnston,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2017–22496 Filed 10–16–17; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2017–6012]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The collection provides EXIM staff with the information necessary to monitor the borrower's payments for exported goods covered under its short and medium-term export credit insurance policies. It also alerts EXIM staff of defaults, so they can manage the portfolio in an informed manner.

DATES: Comments must be received on or before December 18, 2017 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Mia Johnson, Export-Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571 Form can be viewed at *https://www.exim.gov/sites/default/files/pub/pending/eib92-29.pdf*

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 92–29 Export-Import Bank Report of Premiums Payable for Exporters Only.

OMB Number: 3048–0017.
Type of Review: Regular.
Need and Use: The ''Report of Premiums Payable for Exporters Only'' form is used by exporters to report and pay premiums on insured shipments to various foreign buyers under the terms of the policy and to certify that premiums have been correctly computed and remitted. Individual transactions that an exporter may have with the same foreign borrower can be sub-totaled and entered as a single line item for the specific month provided the length of payment term is identical. The use of sub-totals reduces the administrative burden on the exporter. The 'Report of Premiums Payable for Exporters Only' is used by the Bank to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program.
Affected Public: This form affects entities involved in the export of U.S. goods and services.
Annual Number of Respondents: 2,600.
Estimated Time per Respondent: 15 minutes.
Annual Burden Hours: 650 hours.
Frequency of Reporting or Use: Monthly.

Government Expenses

Reviewing Time per Year: 1,950 hours.
Average Wages per Hour: $42.50.
Average Cost per Year: $82,875.
Benefits and Overhead: 20%.
Total Government Cost: $99,450.

Bassam Doughman,

IT Specialist.

[FR Doc. 2017–22451 Filed 10–16–17; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 10–90, WT Docket No. 10–208; DA 17–926; DA 17–975]

Instructions for Filing 4G LTE Coverage Data To Determine Areas Presumptively Eligible for Mobility Fund Phase II Support; Contact Information Due by October 23, 2017; Responses Due by January 4, 2018

AGENCY: Federal Communications Commission.

ACTION: Notification of filing instructions; deadlines for filing responses and providing contact information.

SUMMARY: In these documents, the Rural Broadband Auctions Task Force, and the Wireline Competition and the Wireless Telecommunications Bureau (Bureaus), provide instructions for filing 4G Long Term Evolution (LTE) coverage data pursuant to the *MF–II Challenge Process Order,* announce that the Commission has published a notice of the Office of Management and Budget's (OMB) approval of this information collection in the **Federal Register**, and announce the deadlines by which subject entities must submit contact information and file responses to this information collection.

DATES: Contact information due by October 23, 2017; responses to information collection due by January 4, 2018.

FOR FURTHER INFORMATION CONTACT: Ken Lynch at (202) 418–7356 or Ben Freeman at (202) 418–0628, or email *ltedata@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice, *Instructions for Filing 4G LTE Coverage Data to Determine Areas Presumptively Eligible for Mobility Fund II Support* (*4G LTE Coverage Data Instructions Public Notice*), WC Docket No. 10–90, WT Docket No. 10–208, DA 17–926, released on September 22, 2017, and the Public Notice, *Responses to the Mobility Fund Phase II Data Collection Are Due January 4, 2018,* WC Docket No. 10–90, WT Docket No. 10–208, DA 17–975 released October 6, 2017. The complete text of these documents is available for public inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Federal Communications Commission's (Commission) Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0926/DA-17-926A1.pdf* and *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1006/DA-17-975A1.pdf.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format) by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

On August 3, 2017, the Commission adopted the *MF–II Challenge Process Order* (FCC 17–102), which established the procedures for a robust challenge process to ensure that the Commission targets Mobility Fund Phase II (MF–II) support to areas that lack unsubsidized 4G LTE service. The *MF–II Challenge Process Order* adopted parameters for a one-time collection of 4G LTE coverage data that the Commission will use, in conjunction with subsidy data, to establish the map of areas presumptively eligible for MF–II support. The instructions attached to the *4G LTE Coverage Data Collection Public Notice* fulfill the directive in the *MF–II Challenge Process Order* that the Bureaus provide filing instructions, including data specifications, formatting information, and any other necessary technical parameters for the collection, and provide the detailed information filers will need to generate and submit their 4G LTE coverage data—specifically, who must file, what must be filed, when to file, and how to file. The provider-specific information submitted as part of the data collection will be treated as confidential.

Entities subject to this information collection must submit contact information for this collection using the template posted at *https://www.fcc.gov/MF2-LTE-Collection* by October 23, 2017. Such entities must collect and submit their responses to this information collection using the process and format described in the instructions attached to the *4G LTE Coverage Data Collection Public Notice* no later than January 4, 2018, which is 90 days after the date on which the Commission published notice in the **Federal Register** of the Office of Management and Budget's approval of this information collection (*see* 82 FR 46494 (Oct. 5, 2017)).

Additional information about this data collection can be found on the Commission's MF–II 4G LTE Data Collection Web page at *www.fcc.gov/MF2-LTE-Collection.*

Federal Communications Commission.

William Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2017–22453 Filed 10–16–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–83]

Third Meeting of the Broadband Deployment Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the third meeting of Broadband Deployment Advisory Committee (BDAC).

DATES: Thursday, November 9, 2017, 9:30 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Brian Hurley, Designated Federal Officer (DFO), at (202) 418–2220 or *brian.hurley@fcc.gov;* or Paul D'Ari, Deputy DFO, at (202) 418–1550 or *paul.dari@fcc.gov.* The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will accommodate as many participants as possible; however, admittance will be limited to seating availability. The Commission will also provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *www.fcc.gov/live.* Oral statements at the meeting by parties or entities not represented on the BDAC will be permitted to the extent time permits, at the discretion of the BDAC Chair and the DFO. Members of the public may submit comments to the BDAC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the BDAC should be filed in Docket 17–83.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the BDAC will consider initial recommendations from its Model Code for Municipalities, Model Code for States, Competitive Access to Broadband Infrastructure, and Removing State and Local Regulatory Barriers Working Groups. The BDAC will also consider and discuss an initial report from its Streamlining Federal Siting Working Group. In addition, the BDAC will continue its discussions on how to accelerate the deployment of broadband by reducing and/or removing regulatory barriers to infrastructure investment. This agenda may be modified at the discretion of the BDAC Chair and the DFO.

Federal Communications Commission.

Marilyn Jones,

Senior Counsel for Number Administration, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2017–22469 Filed 10–16–17; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of open meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 (Oct. 6, 1972), notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Wednesday, November 1, 2017, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet *http://fdic.windrosemedia.com.* Questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Federal Deposit Insurance Corporation.

Dated: October 12, 2017.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–22421 Filed 10–16–17; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

October 13, 2017.

TIME AND DATE: 10:00 a.m., Thursday, October 26, 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 on behalf of McGary et al.* v. *The Marshall County Coal Company et al.,* Docket Nos. WEVA 2015–583–D et al. (Issues include whether the Judge erred in requiring the operators' Chief Executive Officer to personally read a prepared statement at the mines in question.)

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 INFORMATION: 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. 2017–22591 Filed 10–13–17; 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 November 14, 2017.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Lincoln County Bancshares, Inc.,* and NFB Acquisitions, Inc., both of Troy, Missouri; to acquire voting shares of New Frontier Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire shares of New Frontier Bank, St. Charles, Missouri.

Board of Governors of the Federal Reserve System, October 12, 2017.

Ann Misback,

Secretary of the Board.

[FR Doc. 2017–22484 Filed 10–16–17; 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 November 2, 2017.

A. Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Robert G. Good,* Corrales, New Mexico; and Robert G. Good, Corrales, New Mexico, M. Carolyn Good, and Good Living Trust/Family Trust, both of Los Ranchos, New Mexico, Cynthia Alysce Good, and the 2005 Natalie Grace Good Trust, both of Andover, Massachusetts, Lisa Lynn Thompson, Lorena, Texas, Lisa Lynn Graves Heritage Trust, Thomas Cody Graves, Cody Clark Graves, Cody Clark Graves Heritage Trust, Debra Lee Bridges, Debra Lee Graves Heritage Trust, all of Goldthwaite, Texas, as a group acting in concert; to retain voting shares Goldthwaite Bancshares, Inc., and thereby retain voting shares of Mills County State Bank, both of Goldthwaite, Texas.

Board of Governors of the Federal Reserve System, October 12, 2017.

Ann Misback,

Secretary of the Board.

[FR Doc. 2017–22485 Filed 10–16–17; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001; Docket No. 2017–0053; Sequence 14]

Information Collection; Affidavit of Individual Surety, Standard Form 28

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995, the Regulatory Secretariat Division (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form (SF) 28, Affidavit of Individual Surety.

DATES: Submit comments on or before December 18, 2017.

ADDRESSES: Submit comments identified by Information Collection 9000–0001 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 9000–0001. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0001, SF 28, Affidavit of Individual Surety.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Mr. Poe/IC 9000–0001, SF 28, Affidavit of Individual Surety.

Instructions: Please submit comments only and cite OMB Control 9000–0001, Affidavit of Individual Surety, SF 28, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst,

Acquisition Policy Division, GSA, 202–969–7207 or email *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety SF 28 is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. To qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Respondents: 500.

Responses per Respondent: 1.

Total Responses: 500.

Hours per Response: 0.3.

Total Burden Hours: 150.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0001, SF 28, Affidavit of Individual Surety, in all correspondence.

Dated: October 11, 2017.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2017–22450 Filed 10–16–17; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Potential Reviewers To Serve on the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is seeking nominations for possible membership on the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP) in the National Institute for Occupational Safety and Health (NIOSH), World Trade Center Health Program (WTCHP). The Disease, Disability, and Injury Prevention and Control Special Emphasis Panel provides advice and guidance to the Secretary, Department of Health and Human Services (HHS); the Director, Centers for Disease Control and Prevention (CDC), and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR) regarding the concept review, scientific and technical merit of grant and cooperative agreement assistance applications, and contract proposals relating to the causes, prevention, and control of diseases, disabilities, injuries, and impairments of public health significance; exposure to hazardous substances in the environment; health promotion and education; and other related activities that promote health and well-being. Members and Chairs shall be selected by the Secretary, HHS, or other official to whom the authority has been delegated, on an ''as needed'' basis in response to specific applications being reviewed with expertise to provide advice. Members will be selected from authorities in the various fields of prevention and control of diseases, disabilities, and injuries. Members of other chartered HHS advisory committees may serve on the panel if their expertise is required. Consideration is given to professional training and background, points of view represented, and upcoming applications to be reviewed by the committee.

DATES: Nominations for membership on the WTCHP SEPs must be received no later than December 15, 2017. Packages received after this time will not be considered for the current membership cycle; but will be kept on file for future cycles. The membership cycles are listed under the Advisory Council Review on the Funding Opportunity Announcement, which is available at: *https://grants.nih.gov/grants/guide/pa-files/PAR-16-098.html.*

ADDRESSES: All nominations should be mailed to Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–74, Atlanta, Georgia 30329, emailed to *wtcscience@cdc.gov,* or faxed to (404) 471–2616.

FOR FURTHER INFORMATION CONTACT: Mia Wallace, Management Analyst, CDC/NIOSH/WTCHP, 1600 Clifton Road NE., Mailstop E–74, Atlanta, Georgia 30329, Telephone: (404) 498–2253; Email: *mwallace@cdc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens appointed to serve on a CDC SEP and can be full-time employees of the U.S. Government. Current participation on CDC federal workgroups or prior experience serving on another federal advisory committee does not disqualify a reviewer. However, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Reviewers appointed to the SEP, CDC are not considered Special Government Employees, and will not be required to file financial disclosure reports.

Nominees interested in serving as a member on a WTCHP Peer Review Panel should submit the following items:

- Current *curriculum vitae,* including complete contact information (name, affiliation, mailing address, telephone number, and email address);
- A statement summarizing the nominee's Areas of Expertise (include unique experiences, skills and knowledge the individual will bring to the WTCHP), Ethnic/Racial Minority Status, and Citizenship; and
- A statement confirming that the nominee is not a registered federal lobbyist.

Background: The WTCHP is administered by NIOSH. The James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (hereafter referred to as ''the Zadroga Act'') was signed by President Obama on January 2, 2011, and was re-authorized on December 18, 2015. The Zadroga Act continues monitoring and treatment activities and requires the establishment (under Subtitle C) of a research program on health conditions resulting from the September 11, 2001, terrorist attacks. For additional information on the program please refer to: *http://www.cdc.gov/wtc.*

The Zadroga Act lists the following broad research areas:

- Physical and mental health conditions that may be related to the September 11, 2001, terrorist attacks;
- Diagnosing WTC-related health conditions for which there has been diagnostic uncertainty; and
- Treating WTC-related health conditions for which there has been treatment uncertainty.

Research mentioned in the Zadroga Act includes epidemiologic and other research studies on WTC-related health conditions or emerging conditions among (1) enrolled WTC responders and certified-eligible WTC survivors under treatment; (2) sampled populations outside the NYC disaster area, in Manhattan (as far north as 14th Street) and in Brooklyn; and (3) control populations, to identify potential for long-term adverse health effects in less exposed populations.

Major areas of interest include, but are not limited to, the following:

Linking 9/11 exposure to health conditions:

- Cancers, multisystem or autoimmune, cardiovascular and neurologic disease (including age at diagnosis);
- Characterizing patterns of illness (age, gender, comorbidities, etc.); and
- Characterizing alterations in health and development for those exposed to 9/11 as children.

Characterizing established WTC-related diseases and comorbidities:

- Identifying phenotypes, biomarkers, epigenetics; and
- Care models that address complex co-morbidities and other modifiable factors.
- Health services research and value-based care that addresses disaster-related injury and illness for chronic disease.

(**Note:** Health services research *examines how people get access to health care, how much care costs, and what happens to patients as a result of this care. The main goals of health services research are to identify the most effective ways to organize, manage, finance, and deliver high quality care; reduce medical errors; and improve patient safety (Agency for Healthcare Research and Quality, 2002*).

Characterizing the work-ability and occupational outcomes for those impacted by 9/11.

Lessons learned in recovery:

- Identifying and operationalizing key elements of psychological resilience for disaster responders; and
- Establishing comparison groups for disaster-related research for key health indicators for first responders.

(**Note:** Concepts of psychological resilience *vary across disciplines with investigations addressing various outcomes ranging from reported levels of stress, burnout, compassion fatigue, and general indicators of well-being. Also proposed are interpersonal, intrapersonal and environmental factors that suggest a more stable and enduring personality trait impacting self-regulation.*)

Relevant diseases or conditions include, but are not limited to, the following:

- Respiratory diseases
- Cancer (including detection/diagnosis of pre-malignant changes)
- Cardiovascular Disease
- Psychological resilience and well-being
- Persistent psychiatric conditions such as posttraumatic stress, anxiety and depressive disorders
- Cognitive changes
- Aging—the impacts of aging on those impacted by 9/11 illness and injury
- Neurological Diseases
- Aerodigestive health
- Multisystem or auto-immune diseases
- Gastro-esophageal disorders
- Gastrointestinal health
- Chronic musculoskeletal conditions resulting from acute traumatic injury and overuse disorders

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2017–22436 Filed 10–16–17; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Form ACF–196R, ''TANF Quarterly Financial Report''

OMB No.: 0970–0446

Description: This information collection is authorized under Section 411(a)(3) of the Social Security Act. This request is for continued approval of Form ACF–196R for quarterly financial reporting under the Temporary Assistance for Needy Families (TANF) program. States participating in the TANF program are required by statute to report financial data on a quarterly basis. The forms meet the legal standard and provide essential data on the use of federal TANF funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs, and to prepare budget submissions and annual reports required by Congress. Financial reporting under the TANF program is governed by 45 CFR part 265.

This form was first developed in 2014 to replace Form ACF–196. No changes are being proposed with this request for OMB review. No comments were received in response to the publication of the initial **Federal Register** Notice on May 30, 2017, 82 FR 24714.

Respondents: State agencies administering the TANF program (50 States plus the District of Columbia)

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196R	51	4	14	2,856

Estimated Total Annual Burden Hours: 2,856.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201, Attn: Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Mary Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2017–22377 Filed 10–16–17; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: National Child Abuse and Neglect Data System.

OMB No.: 0970–0424.

Description: The Administration on Children, Youth and Families in the U.S. Department of Health and Human Services (HHS) established the National Child Abuse and Neglect Data System (NCANDS) to respond to the 1988 and 1992 amendments (Pub. L. 100–294 and Pub. L. 102–295) to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 *et seq.*), which called for the creation of a coordinated national data collection and analysis program, both universal and case specific in scope, to examine standardized data on false, unfounded, or unsubstantiated reports.

In 1996, the Child Abuse Prevention and Treatment Act was amended by Public Law 104–235 to require that any state receiving the Basic State Grant work with the Secretary of the Department of Health and Human Services (HHS) to provide specific data on child maltreatment, to the extent practicable. These provisions were retained and expanded upon in the 2010 reauthorization of CAPTA (Pub. L. 111–320). Item (17) below was enacted with the Justice for Victims of Trafficking Act of 2015 (Pub. L. 114–22). The law goes into effect in 2017 and it is anticipated that states will begin reporting with FFY 2018 data. Item (18) below was enacted with the Comprehensive Addiction and Recovery Act of 2016 (CARA) (Pub. L. 114–198). The law goes into effect in 2017 and it is anticipated that states will begin reporting with FFY 2018 data. Each state to which a grant is made under this section shall annually work with the Secretary to provide, to the maximum extent practicable, a report that includes the following:

1. The number of children who were reported to the state during the year as victims of child abuse or neglect.

2. Of the number of children described in paragraph (1), the number with respect to whom such reports were—

A. substantiated;

B. unsubstantiated; or

C. determined to be false.

3. Of the number of children described in paragraph (2)—

A. the number that did not receive services during the year under the state program funded under this section or an equivalent state program;

B. the number that received services during the year under the state program funded under this section or an equivalent state program; and

C. the number that were removed from their families during the year by disposition of the case.

4. The number of families that received preventive services, including use of differential response, from the state during the year.

5. The number of deaths in the state during the year resulting from child abuse or neglect.

6. Of the number of children described in paragraph (5), the number of such children who were in foster care.

7.

A. The number of child protective service personnel responsible for the—

i. intake of reports filed in the previous year;

ii. screening of such reports;

iii. assessment of such reports; and

iv. investigation of such reports.

B. The average caseload for the workers described in subparagraph (A).

8. The agency response time with respect to each such report with respect to initial investigation of reports of child abuse or neglect.

9. The response time with respect to the provision of services to families and children where an allegation of child abuse or neglect has been made.

10. For child protective service personnel responsible for intake, screening, assessment, and investigation of child abuse and neglect reports in the state—

A. information on the education, qualifications, and training requirements established by the state for child protective service professionals, including for entry and advancement in the profession, including advancement to supervisory positions;

B. data of the education, qualifications, and training of such personnel;

C. demographic information of the child protective service personnel; and

D. information on caseload or workload requirements for such personnel, including requirements for average number and maximum number of cases per child protective service worker and supervisor.

11. The number of children reunited with their families or receiving family preservation services that, within five years, result in subsequent substantiated reports of child abuse or neglect, including the death of the child.

12. The number of children for whom individuals were appointed by the court to represent the best interests of such children and the average number of out of court contacts between such individuals and children.

13. The annual report containing the summary of activities of the citizen review panels of the state required by subsection (c)(6).

14. The number of children under the care of the state child protection system who are transferred into the custody of the state juvenile justice system.

15. The number of children referred to a child protective services system under subsection (b)(2)(B)(ii).

16. The number of children determined to be eligible for referral, and the number of children referred, under subsection (b)(2)(B)(xxi), to agencies providing early intervention services under part C of the Individuals with Disabilities Education Act (20 U.S.C. 1431 *et seq.*).

17. The number of children determined to be victims described in subsection (b)(2)(B)(xxiv).

18. The number of infants—

(A) identified under subsection (b)(2)(B)(ii);

(B) for whom a plan of safe care was developed under subsection (b)(2)(B)(iii); and

(C) for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii).

The Children's Bureau proposes to continue collecting the NCANDS data through the two files of the Detailed Case Data Component, the Child File (the case-level component of NCANDS) and the Agency File (additional aggregate data, which cannot be collected at the case level). Technical assistance will be provided so that all states may provide the Child File and Agency File data to NCANDS.

The reauthorization of CAPTA, subsection (b)(2)(B)(xxiv), specifies for ''requiring identification and assessment of all reports involving children known or suspected to be victims of sex trafficking (as defined in section 103(10) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102 (10)); and S. 178–38.'' To comply with the new reporting requirements for item 17, NCANDS will use a new field in the Child File.

The Children's Bureau proposes to modify the Child File by modifying the maltreatment fields.

• Add a new maltreatment type code, 7=sex trafficked, to the existing Fields 26, 28, 30, 32 (Maltreatment-1 Type, Maltreatment-2 Type, Maltreatment-3 Type, Maltreatment-4 Type).

The reauthorization of CAPTA, subsection (b)(2)(B)(ii), specifies collecting the number of (A) screened-in and screened-out referrals from healthcare providers involved in the delivery or care of infants and who referred such infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder; (B) of those screened-in, for whom a plan of safe care was developed, under subsection (b)(2)(B)(iii); and (C) of those screened-in, for whom a referral was made for appropriate services, including services for the affected family or caregiver, under subsection (b)(2)(B)(iii). To comply with the new reporting requirements for item 18, NCANDS will use a combination of existing fields in the Child File and a new field in the Agency File.

The Children's Bureau proposes to modify the Agency File by adding 1 new field, under Section 2, Referrals and Reports.

• 2.5. Number of screened-out referrals from healthcare providers involved in the delivery or care of infants and who referred such infants born with and identified as being affected by substance abuse or withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder.

The Children's Bureau proposes to modify the Child File by adding two new fields.

• Field 151, Has A Safe Care Plan: The Safe Care Plan field will establish a flag as to whether a child has a safe care plan.

• Field 152, Referral to CARA-Related Services: The Referral to CARA-related Services field will establish a flag as to whether a referral was made for appropriate services, including services for the affected family or caregiver.

Respondents: State governments, the District of Columbia, and the Commonwealth of Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Case Data Component (Child File and Agency File)	52	1	149	7,717

Estimated Total Annual Burden Hours: 7,717.

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV* Attn: Desk Officer for the Administration for Children and Families.

Mary Jones,

ACF/OPRE Reports Clearance Officer.

[FR Doc. 2017–22422 Filed 10–16–17; 8:45 am]

BILLING CODE 4184–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with the attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the EUNICE KENNEDY SHRIVER NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NICHD.

Date: December 1, 2017.

Open: 8:00 a.m. to 11:30 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research; talks by various intramural scientists, and current organizational structure.

Place: National Institutes of Health, Building 31A, Conference Room 2A48, 31 Center Drive, Bethesda, MD 20892.

Closed: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31A, Conference Room 2A48, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, D(med)Sci, Scientific Director, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, Building 31A, Room 2A46, 31 Center Drive, Bethesda, MD 20892, 301–594–5984, *stratakc@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/meetings/Pages/index.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated:

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–22398 Filed 10–16–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: December 4–5, 2017.

Time: December 4, 2017, 9:00 a.m. to 5:00 p.m.

Agenda: NICHD Director's report; Update on Next Generation Researchers' Initiative; NIH Research Plan on Rehabilitation Annual Report; NCMRR Director's Report; Clinical Trials update; Follow-up of past NCMRR Concepts; All of Us: The Precision Medicine Initiative.

Place: NICHD Offices, 6710B Rockledge Drive, Room 1425/1427, Bethesda, MD 20892.

Time: December 5, 2017, 8:30 a.m. to 12:00 p.m.

Agenda: FDA Pediatric Device Consortium; Update on Interagency Committee on Disability Research; Efforts in Cardiac and Pulmonary Rehabilitation; Scientific Presentation on Outcomes Measurement in Rehabilitation.

Place: NICHD Offices, 6710B Rockledge Drive, Room 1425/1427, Bethesda, MD 20892.

Contact Person: Ralph M. Nitkin, Ph.D., Deputy Director, National Center for Medical Rehabilitation Research (NCMRR), Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Room 2116, MSC 7002, Bethesda, MD 20892, (301) 402–4206, *RN21e@nih.gov*.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/advisory/nabmrr/Pages/index.aspx* where the current roster and minutes from past meetings are posted.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 11, 2017.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–22399 Filed 10–16–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Medicinal Chemistry Contract Proposals for the BPN.

Date: November 6, 2017.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Glover Park Hotel, 2505 Wisconsin Avenue NW., Washington, DC 20007.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Joel.saydoff@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Contract Review DMFP.

Date: November 7, 2017.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ernie Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *lyonse@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 11, 2017.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–22400 Filed 10–16–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2017–0055]

Agency Information Collection Activities: EngageDHS

AGENCY: Office of the Chief Procurement Officer, Department of Homeland Security (DHS).

ACTION: 60-Day Notice and request for comments; New Collection, 1601–NEW.

SUMMARY: The DHS Office of the Chief Procurement Officer, will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until December 18, 2017. This process is conducted in accordance with 5 CFR 1320.1

ADDRESSES: You may submit comments, identified by docket number DHS–2017–0055, at:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Mike Villano, (202) 447–5446, *Mike.Villano@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: Under 41 U.S.C. 3306, agencies are required to use advance procurement planning and conduct market research. Advance planning and market research is a means of developing the agency's acquisition requirements. As part of this process, companies frequently ask to meet with DHS representatives for numerous reasons including: sharing information on technologies and company capabilities or to ask how to do business with DHS. DHS needs the information being collected to prepare for productive meetings, share information across the enterprise about touchpoints the company has had at DHS, and to better track the frequency and number of meetings between DHS and companies. No personal information is being collected.

This is a means of improving the procurement process that is used to support the DHS mission. The above statute is implemented by 48 CFR (FAR) Part 10, Market Research. The information collection method the agency requests is not specifically mentioned in the regulation but it is nonetheless permissible because it reasonable and does not request more information than is necessary. Under 48 CFR (FAR) 1.102–4(e), Role of the Acquisition Team, agencies are allowed to implement a policy, procedure, strategy or practice if it is in the interest of the Government and is not otherwise prohibit.

The information is being used by DHS to help determine the department personnel who should be attending the meetings. It is also used by DHS representatives to better prepare for the meeting, so that it is productive for both DHS and the companies It is helpful for DHS to know background information about the company as well as whether they have met with DHS before and whether they currently support the Department. DHS also receives inquiries from oversight bodies, such as Congress, regarding with how many companies DHS has met with as well as whether DHS has met with specific companies. The meeting information provides source data for answering those inquiries in an accurate and timely manner. EngageDHS is a fillable form that will be used to collect vendor/industry meetings with DHS.

Upon a request for a meeting, DHS will ask companies to complete a request form and submit via email to the DHS Industry Liaison mailbox at *DHSIndustryLiaison@hq.dhs.gov.* Once it is received by DHS, this form could be electronically loaded into DHS' system, called EngageDHS. (EngageDHS is DHS' implementation of Microsoft Dynamics CRM.) This process makes it easier and faster for companies to send in the form (email versus paper mail). It also reduces the burden on DHS employees as they do not need to manually input the information into EngageDHS. Performing data collection as discussed above would also reduce the burden on the companies requesting meetings with DHS as they would only have to fill out the form at the time of their first meeting request. So for example, if a company over time meets with representatives from multiple DHS Components (*e.g.,* Transportation Security Administration, Federal Emergency Management Agency, Coast Guard, Immigration and Customs Enforcement, etc.), the company would only have to fill out the form once.

There is no assurance of confidentiality provided to the respondents for the collection of this information. The collection of information is covered by DHS/ALL/PIA–006 DHS General Contact Lists DHS/ALL–021 Department of Homeland Security Contractors and Consultants, October 23, 2008, 73 FR 63179.

This is a new information collection. OMB is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Office of the Chief Procurement Officer, DHS.

Title: Agency Information Collection Activities: EngageDHS.

OMB Number: 1601–NEW.

Frequency: Annually.

Affected Public: Private and Public Sector.

Number of Respondents: 750.

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 187.5.

Dated: October 10, 2017.

Melissa Bruce,

Executive Director, Enterprise Business Management Office.

[FR Doc. 2017–22509 Filed 10–16–17; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6009–N–04]

Privacy Act of 1974; System of Records: Section 811 Project Rental Assistance Evaluation—Phase II

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, notice is hereby given that the Office of Policy Development and Research (PD&R), Department of Housing and Urban Development (HUD), provides public notice regarding its System of Records for the Section 811 Project Rental Assistance Evaluation—Phase II. This evaluation will assess the implementation and effectiveness of the Section 811 Project Rental Assistance program for extremely low-income nonelderly adults with disabilities. Primary data collection will include interviews with grantees and program partners and stakeholders and surveys of Section 811 Project Rental Assistance and Project Rental Assistance Contract residents. Secondary (existing) datasets will include HUD administrative data, Medicare and Medicaid data from the Centers for Medicare & Medicaid Services (CMS), state Medicaid data from six state Medicaid agencies, Project Rental Assistance and Project Rental Assistance Contract program documents, and neighborhood administrative data. A more detailed description of the proposed system of records is contained in the purpose section of this notice.

DATES:

Applicable Date: This notice action shall become applicable November 16, 2017.

Comments Due Date: November 16, 2017.

ADDRESSES: You may submit comments by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov.

Follow the instructions provided on that site to submit comments electronically.

Facsimile: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office, Helen Goff Foster, The Executive Secretariat, 451 7th Street SW., Room 10139, Washington, DC 20410–0001.

Note: All submissions received *must* include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Helen Goff Foster, Senior Agency Official for Privacy, at 451 7th Street SW., Room 10139; U.S. Department of Housing and Urban Development; Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The new System of Records will encompass data collected by PD&R to evaluate the Section 811 HUD Project Rental Assistance program. The Section 811 Project Rental Assistance program funds a new model of housing assistance that provides funding to state housing agencies to work in partnership with state human services and Medicaid agencies to create community-based supportive housing for extremely low-income nonelderly adults with disabilities, including those who are currently in or at risk for residing in institutions or who are currently (or at risk for becoming) homeless. This study is the second phase of a multiphase evaluation. Phase I documented the implementation experience of the first 12 state housing agencies that were awarded the first round of Project Rental Assistance grants. In Phase II, the evaluation is focused on 6 states selected from 28 state grantees from the first and second rounds of Section 811 Project Rental Assistance funding: California, Delaware, Louisiana, Maryland, Minneapolis, and Washington. The Phase II evaluation will continue to follow the implementation of the program but will also assess the impact of the program on participants' quality of life and care, housing and neighborhood, and utilization and access to health services and supports, as well as assess the cost-effectiveness of this supportive housing model compared to other models of supportive housing for persons with disabilities.

The new notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records, and the types of exemptions in place for the records. The notice also includes the business address of the HUD officials who will inform interested persons of how they may gain access to and/or request amendments to records pertaining to themselves.

Publication of this notice allows the Department to provide new information about its system of records notices in a clear and cohesive format. The new system of records will incorporate Federal privacy requirements and Department's policy requirements. The Privacy Act places on Federal agencies principal responsibility for compliance with its provisions, by requiring Federal agencies to safeguard an individual's records against an invasion of personal privacy; protect the records contained in an agency system of records from unauthorized disclosure; ensure that the records collected are relevant, necessary, current, and collected only for their intended use; and adequately safeguard the records to prevent misuse of such information. In addition, this notice demonstrates the Department's focus on industry best practices to protect the personal privacy of the individuals covered by this SORN.

Pursuant to the Privacy Act and the Office of Management and Budget (OMB) guidelines, a report of the amended system of records was submitted to OMB, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform, as instructed by paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' November 28, 2000.

System Name and Number:

Section 811 Project Rental Assistance Evaluation—Phase II

SECURITY CLASSIFICATION:

This information will not be classified.

SYSTEM LOCATION:

The records are maintained at the Abt Associates (contractor) offices at 55 Wheeler Street, Cambridge, MA 02138 and 4550 Montgomery Avenue, Bethesda, MD 20814, and the U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Carol S. Star, Program Evaluation Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; telephone number 202–402–6139 (this is not a toll-free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 501 and 502 of the Housing and Urban Development Act of 1970 (Pub. L. 91–609), 12 U.S.C. 1701z–1, 1701z–2.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to allow the Department to collect, track, and study information gathered on Section 811 Project Rental Assistance program participants and to analyze the effectiveness of this rental assistance model compared to other supportive housing models for extremely low-income nonelderly adults with disabilities. This is the second of a multiphase evaluation. The evaluation is funded by the Program Evaluation Division in PD&R. The project will evaluate the implementation of the Section 811 Project Rental Assistance program, its impact on residents, and the cost-effectiveness of this new housing assistance model for persons with disabilities in six states: California, Delaware, Louisiana, Maryland, Minneapolis, and Washington.

Phase II of the Section 811 Project Rental Assistance evaluation will rely on both primary and secondary sources of data to inform the overall evaluation. Primary data collection includes interviews with grantees and program's partners and stakeholders, and surveys of Section 811 Project Rental Assistance and Project Rental Assistance Contract residents. Secondary (existing) datasets will include HUD administrative data, Medicare and Medicaid data from CMS, state Medicaid data from six state Medicaid agencies, Project Rental Assistance and Project Rental Assistance Contract program documents, and neighborhood administrative data.

Primary data collection with grantees, partnering agencies, and Project Rental Assistance and Project Rental Assistance Contract residents is necessary to describe the implementation of the Project Rental Assistance program, identify characteristics of successful program strategies, and assess the impact of the

program on Project Rental Assistance residents compared to residents in the traditional Project Rental Assistance Contract program. The collection of secondary data is necessary to identify the outcomes of the Project Rental Assistance program and characteristics of Project Rental Assistance residents, Project Rental Assistance Contract residents, and individuals in the program and comparison groups, and to determine the effectiveness of this new model of housing assistance.

This analysis will inform HUD leadership, policymakers, and HUD partners that implement supportive housing programs for nonelderly adults with disabilities. In addition, the records collected through this evaluation represent HUD's effort to assess and report to Congress on the implementation and effectiveness of this rental assistance approach. The data collected for Section 811 Project Rental Assistance Evaluation—Phase II will be used and stored solely for research purposes, and will not be used to identify individuals or make decisions that affect the rights, benefits, or privileges of specific individuals. The data in this system will include location data, which will be used to analyze the neighborhoods in which Section 811 Project Rental Assistance and Project Rental Assistance Contract residents live. The data in the system will also include information about health, housing, and quality of life measures, which will be used to analyze the extent to which people's lives are being improved by the Section 811 Project Rental Assistance program. The data in this system will be analyzed using statistical methods and only reported in the aggregate. Resulting reports will not disclose or identify any individuals or sensitive personal information. The Section 811 Project Rental Assistance Evaluation is in direct service of the mission of PD&R, which is to ''inform policy development and implementation to improve life in American communities through conducting, supporting, and sharing research, surveys, demonstrations, program evaluations, and best practices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Data will be collected from households assisted by the Section 811 Project Rental Assistance and Section 811 Project Rental Assistance Contract programs, other extremely low-income households including a person with a disability served by other HUD-assisted housing programs, a sample of individuals receiving Medicaid or similar state plan services, Section 811 housing agency grantees, and partnering agencies (state Medicaid agencies, property owners, service providers, and public housing agencies). All individuals live in the states of California, Delaware, Louisiana, Maryland, Minnesota, and Washington.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data sets will contain the following categories of records:

- *Responses to resident survey:* Include participants' names, address, telephone numbers, names and contact information of proxies and/or legal guardians (if applicable), study identifier, information about their experience with the transition to HUD-assisted housing, subjective assessment of housing quality, subjective assessment of neighborhood quality, information about access to supportive services and unmet needs, information about help with supportive services, subjective assessment of quality of life and community inclusion.
- *Administrative interviews:* Include identifying information—such as full name; job title; and contact information, including addresses, email addresses, and telephone numbers—of program staff and stakeholders (grantee, Medicaid agency, property owners, service providers, and public housing authorities), and qualitative responses about several aspects of the program design and implementation.
- *HUD Administrative data:* Include data on individuals, households, and properties available through HUD administrative data. Collection will be brought into the dataset directly from HUD's Tenant Rental Assistance Certification System (TRACS), Public and Indian Housing Information Center (PIC) Inventory Management System (IMS), and Integrated Real Estate Management System (iREMS). Tenant-level and household-level data include participants' full names, dates of birth, addresses, phone numbers, Social Security numbers; information pertaining to the participating family structure, household size, household income, race and demographics, disability status, unit characteristics; and information about participation in HUD programs. Property-level data include housing agency, property, unit characteristic, and financial information and contact information for property owners, including full names, addresses, phone numbers, and email addresses.
- *Medicare and Medicaid data:* Include data on individuals available through the Centers for Medicare & Medicaid Services and state Medicaid agencies (CMS). Collection will be brought into the dataset directly from CMS and state Medicaid agencies under a Data Use Agreement with HUD and its contractor Abt Associates. Include study identifier (that can be matched to individuals' full names, dates of birth, Social Security numbers), (such as diagnoses), healthcare utilization, and costs. medical record number, and information pertaining to the individuals' medical services, medical information. RECORD SOURCE CATEGORIES: (1) Resident surveys collected directly from Section 811 Project Rental Assistance and Project Rental Assistance Contract residents who have agreed to participate in the survey; (2) Administrative interviews collected directly from state housing agency grantees; (3) Administrative interviews collected directly from partnering agencies who have agreed to participate in the study; Administrative data derived from HUD's tenant and property data systems; and Non-HUD administrative data, such as Medicare and historical Medicaid data; and state Medicaid data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

To appropriate agencies, entities, and persons to the extent that such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I1—HUD's Library of Routine Uses, published in the **Federal Register** (July 17, 2012, at 77 FR 41996).

1. To researchers for the purpose of producing a dataset to be used to support the Rent Reform Demonstration and Impact Evaluation of the Rent Reform Demonstration. The data collection will specifically provide data of the household's characteristics to describe the sample and ensure that the two study groups are random, and provide information that allows for the initial triennial calculations to be verified.

2. To appropriate agencies, entities, and persons when: (a) HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised; (b) HUD has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is

reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Abt Associates provides all project staff with *HIPAA Rules of the Road—Practical Information for Ensuring Compliance,* IRB 101 Training, General Security Awareness Training, and Collaborative Institutional Training Initiative (CITI) Human Subjects Training. All study team members also undergo project-specific training on maintaining privacy and safe data storage and handling procedures. All study team members sign a nondisclosure agreement.

All study team members will be made aware of the project-specific data regulations and best practices associated with handling data for the study. These practices are incorporated in the study protocol and will be detailed in training plans for interviewers, support staff, and data analytic staff. All staff who will have access to the data containing personally identifiable information (PII) or protected health information (PHI) will sign a confidentiality agreement pursuant to the requirements of all data use agreements, which will be attached to the data security plan. All staff will also receive an annual reminder of the terms of the agreement.

Abt will guarantee this level of restricted access by only using secure transfer mechanisms, such as Huddle, Abt's FedRAMP Moderate accredited file transfer service for moving data in and out of the system, or another secure file transfer system (SFTP) of the transferring agency's choice. Abt will also only access the data through its restricted access folder on the Analytic Computing Environment, ACE 3, which meets NIST SP 800–53, Revision 4 FISMA Moderate Standards and utilizes FedRAMP Moderate accredited services from Amazon as infrastructure. Abt Associates will retain all data collected over the life of the study and any analysis files generated with those data for as long as required and only under conditions specified in the study protocol. At the end of the contract, Abt will destroy records that do not need to be retained. Abt will destroy the remainder of the files after the contract ends, as is required in the contract. The retention and disposal procedures are in keeping with HUD's records management policies as described in 44 U.S.C. 3101 and 44 U.S.C. 3303 and with HUD's Records Disposition Schedule 67 PD&R, Item 6 (*https://portal.hud.gov/hudportal/documents/huddoc?id=22256x67ADMH.pdf*). Abt Associates will submit all de-identified data over to HUD at the end of the contract, with the exception of the ResDAC and Medicaid data, which will not be included as per memorandum of understanding with these agencies.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The study's approved data security plan describes the safeguarding of any hardcopy, recorded, and electronic information on human subjects that will be a part of the study. All study team members are aware of the project-specific data regulations and best practices associated with handling data for the study. These practices are incorporated in the study protocol and will be detailed in training plans for interviewers, support staff, and data analytic staff. All staff who will have access to the data containing PII or PHI information sign a confidentiality agreement, per the requirements of all data use agreements.

Abt will guarantee this level of restricted access by only using secure transfer mechanisms, such as Huddle, Abt's FedRAMP Moderate accredited file transfer service for moving data in and out of the system, or another SFTP of the transferring agency's choice. Abt will also only access the data through its restricted access folder on the Analytic Computing Environment, ACE 3, which meets NIST SP 800–53 Revision 4 FISMA Moderate Standards and utilizes FedRAMP Moderate accredited services from Amazon as infrastructure.

RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about records, contact Helen Goff Foster, Senior Agency Official for Privacy, at 451 7th Street SW., Room 10139, U.S. Department of Housing and Urban Development, Washington, DC 20410–0001, telephone number 202–708–3054 (this is not a toll-free number). When seeking records about yourself from this system of records or any other Housing and Urban Development (HUD) system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity, meaning that you must provide your full name, address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made, under penalty of perjury, as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which Office of HUD you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the Freedom of Information Act (FOIA) staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA Office may not conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, Procedures for Inquiries. Additional assistance may be obtained by contacting Helen Goff Foster, Senior Agency Official for Privacy, at 451 7th Street SW., Room 10139, Department of Housing and Urban Development, Washington, DC 20410–0001, or the HUD Departmental Privacy Appeals Officers; Office of General Counsel; Department of Housing and Urban Development; 451 7th Street SW., Washington, DC 20410–0001.

NOTIFICATION PROCEDURES:

Individual wishing to determine to whether this system of records contains information about them may do so by contacting their lending institutions or contacting HUD's Privacy Officer or Freedom of Information Act Office at the addresses above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: September 5, 2017.

Helen Goff Foster,

Chief Administrative Officer and Executive Secretary, Senior Agency Official for Privacy.

[FR Doc. 2017–22474 Filed 10–16–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/A0A501010.999900 253G]

Bureau of Indian Education Strategic Plan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultations.

SUMMARY: Notice is hereby given that the Bureau of Indian Education (BIE) will conduct a series of consultation sessions regarding its proposed strategic plan. The BIE will conduct five on-site tribal consultation sessions and one telephonic session. The on-site consultation sessions will be held at geographically diverse locations across the country to maximize Tribal input early in the process. The telephonic session will be held on December 14, 2017.

DATES: The BIE will conduct the following five on-site consultation sessions and one telephonic consultation. The on-site sessions will be held:

1. Wednesday November 15, 2017, in Salem, OR from 1:00 p.m.–5:00 p.m. PST.

2. Tuesday November 28, 2017, in Anadarko, OK from 1:00 p.m.–5:00 p.m. CST.

3. Tuesday December 5, 2017, in Bismarck, ND from 1:00 p.m.–5:00 p.m. MDT.

4. Tuesday December 12, 2017, in Albuquerque, NM from 1:00 p.m.–5:00 p.m. MDT.

The last session will be held telephonically and by webinar on Thursday December 14, 2017, by calling 631–992–3221 and entering the passcode 759–763–471. The Web site for the webinar is *https://attendee.gotowebinar.com/register/7727750735595699458,* and the webinar ID is 993–210–731. This session can accommodate 500 participants.

ADDRESSES: The on-site sessions will be held at the following locations:

- Wednesday November 15, 2017, on-site consultation session will be held at Chemawa Indian School Auditorium, 3700 Chemawa Road NE., Salem, OR 97305
- Tuesday November 28, 2017, on-site consultation session will be held at Riverside Indian School, 101 Riverside Drive, Anadarko, OK 73005
- Tuesday December 5, 2017, on-site consultation session will be held at United Tribes Technical College, Lewis Goodhouse Wellness Center, 3315 University Drive, Bismarck, ND 58504
- Tuesday December 12, 2017, on-site consultation session will be held at the National Indian Programs Training Center, 1011 Indian School Road NW., Albuquerque, NM 87104

The draft strategic plan will be available at: *https://www.bie.edu/consultation/index.htm.* Send written comments to Ms. Paulina Bell, Bureau of Indian Education, by any of the following methods: (Preferred method) email: *paulina.bell@bie.edu;* mail, hand-carry or use an overnight courier service to Bureau of Indian Education, ATTN: Ms. Paulina Bell, RE: BIE Draft Strategic Plan Consultation Comments, 1849 C Street NW., Mail Stop 3609, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Paulina Bell, Bureau of Indian Education; telephone: (202) 208–3479.

SUPPLEMENTARY INFORMATION: The BIE is committed to improving and enhancing its service delivery and improving the education of Indian students served by BIE-funded schools. The BIE is developing a bureau-wide strategic plan to guide its work and service delivery to students, schools, and tribes. To that end, the BIE recently engaged its staff in a process of strategic performance planning with the intention of submitting the proposed *draft* strategic plan for collaborative and meaningful consultation with Tribes early in the process.

On March 8, 2017, April 11, 2017, June 14, 2017, July 18–20, 2017, and August 29–30, 2017, the BIE convened local, regional, and central office BIE personnel in order to formulate proposed strategic plan vision, mission, and organizational values statements as well as goals and strategies to implement the goals in the planning process.

In order to ensure that its strategic planning efforts result in a high quality, effective, and useful plan, BIE partnered with external subject matter expert organizations specializing in educational strategic performance planning, including the Council of Chief State School Officers (CCSSO), the South Central Comprehensive Center located at the University of Oklahoma (SC3), and the Building State Capacity and Productivity Center (BSCPC). These organizations are providing BIE with valuable technical subject matter expertise and shared best practices in developing an effective, five-year strategic plan proposal with which to engage tribes in meaningful and timely consultation.

BIE emphasizes that it is early in the strategic planning process and views the proposed strategic plan as a useful *draft* document that will assist Tribes in affording meaningful and substantive input during the scheduled consultation sessions. BIE earnestly appreciates and values any constructive input regarding its *draft* strategic plan and invites tribes, tribal leaders, and/or their designees to consult on the proposed plan during the aforementioned meetings.

Dated: October 11, 2017.

Tony Dearman,

Director, Bureau of Indian Education.

[FR Doc. 2017–22446 Filed 10–16–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024109; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the

Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from Pickerel Island, Vilas County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1991, human remains representing, at minimum, one individual were removed from Pickerel Island (47–VI–0197) in Vilas County, WI. The human remains are from multiple discoveries and excavations but collectively represent one adult male. They were originally found eroding out of a slope caused by ice expansion on the northwestern portion of the island in 1991 by the President of the Big St. Germain Lake Home Owners Association. In 1992, the WHS in conjunction with the Wisconsin Valley Improvement Company, the Mississippi Valley Archaeology Center, and the Wisconsin Department of Natural Resources excavated the rest of the burial, which they determined to be in a secondary burial context. The human remains were then taken to the Wisconsin Historical Society that same year. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; and White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22432 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024051; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Defense Health Agency, National Museum of Health and Medicine, Silver Spring, MD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Defense, Defense Health Agency, National Museum of Health and Medicine, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the National Museum of Health and Medicine. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the National Museum of Health and Medicine at the address in this notice by November 16, 2017.

ADDRESSES: Mr. Brian F. Spatola, Curator of Anatomical Division, National Museum of Health and Medicine, U.S. Army Garrison Forest Glen, 2500 Linden Lane, Silver Spring, MD 20910, telephone (301) 319–3353, email *brian.f.spatola.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the National Museum of Health and Medicine, Silver Spring, MD. The human remains were removed from the Moundville site (1TU500) in Hale County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d).

The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the National Museum of Health and Medicine professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Kialegee Tribal Town; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Quapaw Tribe of Indians; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; Tunica-Biloxi Indian Tribe; and the United Keetoowah Band of Cherokee Indians in Oklahoma (''The Tribes'').

History and Description of the Remains

In early 1905 and late 1906, human remains representing, at minimum, 28 individuals were removed from the Moundville Site (1TU500) in Hale County, AL. The remains were removed by Clarence B. Moore during an archeological investigation of burial mounds and cemeteries near Moundville, AL. Artifacts were present at the time of excavation, but were not retained with the human remains. The human remains were donated to the Army Medical Museum by Clarence B. Moore in 1906. The date of the site associated with the human remains is approximately A.D. 700 to 1540. The remains consist of partial skeletons or single bone elements. Age and sex could not be identified. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the National Museum of Health and Medicine

Officials of the National Museum of Health and Medicine have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on: Osteological evidence, collection history, artifacts, and association with prehistoric archeological sites.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 28 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Choctaw Nation of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Choctaw Nation of Oklahoma and, if joined with the Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Mr. Brian F. Spatola, Curator of Anatomical Division, National Museum of Health and Medicine, U.S. Army Garrison Forest Glen, 2500 Linden Lane, Silver Spring, MD 20910, telephone (301) 319–3353, email *brian.f.spatola.civ@mail.mil,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Choctaw Nation of Oklahoma and, if joined with the Choctaw Nation of Oklahoma, The Muscogee (Creek) Nation, may proceed.

The National Museum of Health and Medicine is responsible for notifying The Tribes that this notice has been published.

Dated: August 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22435 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024107; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Museum, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from the Island Village site in Manitowoc County, WI.

This notice is published as part of the National Park Service's administrative

responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; and the Menominee Indian Tribe of Wisconsin.

History and Description of the Remains

In 1989, human remains representing, at minimum, four individuals were removed from the Island Village site (47–MN–0101) in Manitowoc County, WI. The site is located within the Kill Snake Marsh and Wildlife Area run by the Wisconsin Department of Natural Resources (WDNR). Employees of the WDNR found human remains and associated funerary objects brought to the surface by plowing. Representatives from the Wisconsin Historical Society visited the site and were given the human remains and associated funerary objects. The human remains represent four individuals, including one young adult and three juveniles. No known individuals were identified. The four associated funerary objects are 1 decorated German silver brooch or hair plate, 1 lot of five copper bracelets, 1 copper picture frame mat, and 1 lot of beads.

The kinds of associated funerary objects recovered suggest a historic period date for the human remains, specifically the mid-1800s. Objects like the silver German brooch did not come into use in the Great Lakes until after the 1830s. The picture frame mat was of the type that would have been used to frame an ambrotype or daguerreotype suggesting a post-1850 date. The Island Village site was first recorded in written documents by archeologist Charles E. Brown in 1906 who stated that a Mr. Louis Falge identified the site as a Potawatomi village. Archival research conducted by the Forest County Potawatomi Community, Wisconsin, identified the location as a historic village site that was led by Potawatomi chief Chaiconda. The site was described by Falge as being occupied and under cultivation until 1864, which corresponds with the estimated age of the associated funerary objects.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi; and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State Street, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi; and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, may proceed.

The Wisconsin Historical Society is responsible for notifying the Forest County Potawatomi Community, Wisconsin; Hannahville Indian Community, Michigan; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Menominee Indian Tribe of Wisconsin; Nottawaseppi Huron Band of the Potawatomi; and the Pokagon Band of Potawatomi Indians, Michigan and Indiana, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22430 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CEBE–24090; PPNECEBE00, PPMPSAS1Z.Y00000]

Cancellation of September 21, 2017, Meeting of the Cedar Creek and Belle Grove National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Cancellation of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that the September 21, 2017, meeting of the Cedar Creek and Belle Grove National Historical Park Advisory Commission previously announced in the **Federal Register**, Vol. 82, January 19, 2017, pp. 6643, is cancelled.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meetings may be obtained from Karen Beck-Herzog, Site Manager, Cedar Creek and Belle Grove National Historical Park, P.O. Box 700, Middletown, Virginia 22645, telephone (540) 868–9176, or visit the park Web site: *http://www.nps.gov/cebe/parkmgmt/park-advisory-commission.htm.*

SUPPLEMENTARY INFORMATION: The 15-member Commission was designated by Congress to provide advice to the Secretary of the Interior in the preparation and implementation of the park's general management plan and in the identification of sites of significance outside the park boundary (16 U.S.C. 410iii–7).

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2017–22378 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024111; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from the Nekoosa Mound Group, Wood County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1965, human remains representing, at minimum, one individual were removed from the Nekoosa Mound Group (47–WO–0014) in Wood County, WI. Very fragmentary partially cremated human remains were collected by archeologist William M. Hurley from Mound 4, one of the site's conical mounds. An unknown individual donated the human remains to the Wisconsin Historical Society at an unknown date. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Ho-Chunk Nation of Wisconsin; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of Minnesota Chippewa Tribe, Minnesota; and the Winnebago Tribe of Nebraska (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin, and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22433 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024102; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary object and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary object to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary object were removed from the Water Street Cemetery, Marinette County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary object. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1992, human remains representing, at minimum, one individual were removed from the historic Water Street Cemetery (47–MT–0288) in Marinette County, WI. Human remains were discovered by a construction crew digging under an existing gas and sewer line. The human remains were taken to the City of Marinette Police Department, whose personnel went to the site and uncovered the burial again, but did not conduct further excavations. The Police Department subsequently contacted the Wisconsin Burial Site Preservation Office (BSPO). Representatives of the BSPO and the Neville Public Museum screened the back dirt and excavated the area of the burial where they recovered wood from a coffin and the partial remains of one adult male. No known individuals were identified. The one associated funerary object is an assemblage of coffin wood.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described in this notice is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary object and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary object were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary object may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary object should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary object to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22425 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024104; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from the Paradise Valley site, Monroe County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1992, human remains representing, at minimum, two individuals were removed from the Paradise Valley site (47–MO–0251) in Monroe County, WI. The human remains were recovered from a cranberry bog by unknown individuals and reported to the Wisconsin Historical Society (WHS). Archeologists from the WHS took possession of the human remains and visited the site. They found no additional human remains or funerary objects that could be associated with the human remains. The site has since been reported as destroyed by cranberry operations. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed.

The Wisconsin Historical Society is responsible for notifying the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Winnebago Tribe of Nebraska; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22427 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024103; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society (WHS) has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit

a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from Dickensen Gravel Pit and Krainik Conical site in Juneau County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from Dickensen Gravel Pit (47–JU–0101) in Juneau County, WI. The human remains represent a single adult of indeterminate sex and were donated to the WHS by the County Coroner Clarence R. Sorenson in 1939. A letter written by John Barr in June of 1939 states that the human remains were exhumed by a dentist from New Lisbon at an unstated date from a cultivated field. No known individuals were identified. Charcoal was found with the human remains, but there is no record of it being brought to the WHS. Therefore, no associated funerary objects are present.

At an unknown date, human remains representing, at minimum, one individual were removed from Krainik Conical site (47–JU–0203) in Juneau County, WI. In 1980, Dick Robinson, a local landowner, donated to the WHS a box of items that he and his father had collected from the site over several years. In a letter dated December of 1980, Robinson made no mention of having collected human remains, but WHS employees identified three human long bone fragments representing one adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains were removed is not the aboriginal land of any Indian Tribe, but is near the judicially established aboriginal lands of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may proceed.

The Wisconsin Historical Society is responsible for notifying the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; Winnebago Tribe of Nebraska; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22426 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024108; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains and associated funerary

objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Wisconsin Historical Society, Madison, WI. The human remains and associated funerary objects were removed from Potato Lake Mounds, Rusk County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1914, human remains representing, at minimum, six individuals were removed from Potato Lake Mounds (47–RU–0013) in Rusk County, WI. The then landowner donated the remains to the Wisconsin Historical Society in 1916 and 1918, but there is no documentation as to where they were found at the site. The human remains represent six individuals—two juveniles, one adult female, one adult male, and two adults of indeterminate sex. No known individuals were identified. The four associated funerary objects are 2 ceramic sherds, 1 chert flake, and 1 lot of faunal remains.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22431 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024050; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of Defense, Defense Health Agency, National Museum of Health and Medicine, Silver Spring, MD

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Defense, Defense Health Agency, National Museum of Health and Medicine, has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or

Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the National Museum of Health and Medicine. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the National Museum of Health and Medicine at the address in this notice by November 16, 2017.

ADDRESSES: Mr. Brian F. Spatola, Curator of Anatomical Division, National Museum of Health and Medicine, U.S. Army Garrison Forest Glen, 2500 Linden Lane, Silver Spring, MD 20910, telephone (301) 319–3353, email *brian.f.spatola.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the National Museum of Health and Medicine, Silver Spring, MD. The human remains were removed from the Three Rivers Landing on the Tombigbee River (site 1WN76), Washington County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the National Museum of Health and Medicine professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); Alabama-Quassarte Tribal Town; Cherokee Nation; Chitimacha Tribe of Louisiana; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Eastern Shawnee Tribe of Oklahoma; Jena Band of Choctaw Indians; Kialegee Tribal Town; Mississippi Band of Choctaw Indians; Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama); Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)); Shawnee Tribe; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Quapaw Tribe of Indians; The Seminole Nation of Oklahoma; Thlopthlocco Tribal Town; Tunica-Biloxi Indian Tribe; and the United Keetoowah Band of Cherokee Indians in Oklahoma (''The Tribes'').

History and Description of the Remains

In 1905, human remains representing, at minimum, one individual were removed from the Three Rivers Landing on the Tombigbee River (site 1WN76), Washington County, AL, by Clarence B. Moore, during an archeological investigation of burial mounds. Artifacts were present at the time of excavation, but were not retained with the human remains. The human remains were donated to the Army Medical Museum by Clarence B. Moore in 1905. The date of the site associated with the human remains is approximately A.D. 200 to 1540. The remains consist of a partial femur and an innominate bone. Age could not be identified. Sex is female based on morphological features of the innominate bone. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the National Museum of Health and Medicine

Officials of the National Museum of Health and Medicine have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on: Osteological evidence, collection history, artifacts, and association with prehistoric archeological sites.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of The Choctaw Nation of Oklahoma.
- Pursuant to 43 CFR 10.11(c)(1)(ii), the disposition of the human remains may be to The Choctaw Nation of Oklahoma.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Mr. Brian F. Spatola, Curator of Anatomical Division, National Museum of Health and Medicine, U.S. Army Garrison Forest Glen, 2500 Linden Lane, Silver Spring, MD 20910, telephone (301) 319–3353, email *brian.f.spatola.civ@mail.mil,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Choctaw Nation of Oklahoma may proceed.

The National Museum of Health and Medicine is responsible for notifying The Tribes that this notice has been published.

Dated: August 22, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22434 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024106; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization

not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from an unknown location near Pembine and Red Arrow Park, Marinette County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In 1878, human remains representing, at minimum, one individual were removed from an unknown location in Marinette County, WI. The human remains, later identified as representing one adult female, were removed from a mound containing a number of other interments near the city of Pembine. The human remains were donated by the Milwaukee Chapter of the Wisconsin Archaeological Society to the Wisconsin Historical Society in 1908. No known individuals were identified. No associated funerary objects are present.

In 1991, human remains representing, at minimum, one individual were removed from Red Arrow Park (47–MT–0289) in Marinette County, WI. A fisherman discovered a mandible from an adult male off the Sea Gull sand bar. He brought the mandible to the Marinette City Police, who revisited the site the day after the discovery but did not find any other human remains. The Wisconsin Historical Society Burial Site Preservation Office took possession of the remains in December of 1991. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Menominee Indian Tribe of Wisconsin; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; and the Upper Sioux Community, Minnesota, that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22429 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–GETT–24089; PPMPSPD1Z.YM0000, PPNEGETTS1]

Cancellation of September 14, 2017, Meeting of the Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Cancellation of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given that the September 14, 2017, meeting of the Gettysburg National Military Park Advisory Commission previously announced in the **Federal Register**, Vol. 82, January 19, 2017, pp. 6641–6642, is cancelled.

FOR FURTHER INFORMATION CONTACT: Bill Justice, Acting Superintendent and Designated Federal Official, Gettysburg National Military Park, 1195 Baltimore Pike, Suite 100, Gettysburg, Pennsylvania 17325, at (717) 334–1124 or via email *bill_justice@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 101–377 (16 U.S.C. 430g–8), to advise the Secretary of the Interior on the coordination of the management of the Gettysburg National Military Park and Gettysburg Battlefield Historic District with local jurisdictions.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2017–22379 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0024105; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Wisconsin Historical Society, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Wisconsin Historical Society has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to the Wisconsin Historical Society. If no additional requestors come forward, transfer of control of the human remains to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to the Wisconsin Historical Society at the address in this notice by November 16, 2017.

ADDRESSES: Jennifer Kolb, Wisconsin Historical Society, 816 State St., Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the Wisconsin Historical Society, Madison, WI. The human remains were removed from the Sikora Burial Site and an unknown location near Antigo in Langlade County, WI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Wisconsin Historical Society professional staff in consultation with representatives of the Forest County Potawatomi Community, Wisconsin; Ho-Chunk Nation of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Menominee Indian Tribe of Wisconsin; and the Upper Sioux Community, Minnesota.

History and Description of the Remains

In August of 1991, human remains representing, at minimum, one individual were removed from the Sikora Burial Site (47–LG–0115) in Langlade County, WI. The human remains of one adult male were found during basement construction for a cottage on the southern shore of Rolling Stone Lake in the Township of Ainsworth. No associated funerary objects were recovered. The homeowners contacted the Antigo Police Department the same day as the discovery, and the police subsequently contacted the Wisconsin Burial Site Preservation Office. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, five individuals were removed from an unknown location near Antigo in Langlade County, WI. It is not known who removed the human remains, who donated them to the Wisconsin Historical Society, or when they were donated. In 1996, the human remains were discovered in a box labeled ''unaccessioned calvarium and representative parts of three mandibles, mound near Antigo, Langlade Co., Wisconsin.'' They were later determined to represent two adults, two children, and a young adult. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Wisconsin Historical Society

Officials of the Wisconsin Historical Society have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on Wisconsin Historical Society records, burial location, archeological context, oral histories, and skeletal analysis.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian Tribe.
- Treaties, Acts of Congress, or Executive Orders indicate that the land from which the Native American human remains were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Minnesota Chippewa Tribe, Minnesota; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of Minnesota Chippewa Tribe, Minnesota (hereafter referred to as The Aboriginal Land Tribes).
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains may be to The Aboriginal Land Tribes.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Jennifer Kolb, Wisconsin Historical Society, 816 State St, Madison, WI 53706, telephone (608) 264–6434, email *Jennifer.Kolb@wisconsinhistory.org,* by November 16, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Aboriginal Land Tribes may proceed.

The Wisconsin Historical Society is responsible for notifying The Aboriginal Land Tribes and the Forest County Potawatomi Community, Wisconsin;

Ho-Chunk Nation of Wisconsin; and the Menominee Indian Tribe of Wisconsin that this notice has been published.

Dated: September 5, 2017.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2017–22428 Filed 10–16–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION

United States and Mexico United States Section; Notice of Availability of a Draft Environmental Assessment and Finding of No Significant Impact for Channel Maintenance Alternatives at Thurman I and II Arroyos in Hatch, NM, Rio Grande Canalization Project

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

ACTION: Notice of Availability of the Draft Environmental Assessment (EA).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations; and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the *Draft Environmental Assessment and Finding of No Significant Impact for Channel Maintenance Alternatives at Thurman I and II Arroyos in Hatch, NM, Rio Grande Canalization Project* is available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

Public Comments: USIBWC will consider substantive comments from the public and stakeholders for 30 days after the date of publication of this Notice of Availability in the **Federal Register**.

Please note all written and email comments received during the comment period will become part of the public record, including any personal information you may provide. 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and requests for public hearings should be sent to: Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

Background: The USIBWC is considering constructing sediment control projects at Thurman I and II, two ephemeral tributaries of the Rio Grande, located within a portion of the Rio Grande Canalization Project protective levee system in Hatch, Doña Ana County, New Mexico. The USIBWC has the statutory authority to maintain the Rio Grande (Act of June 4, 1936, 49 Stat. 1463, Pub. L. 648 and 22 United States Code 277). USIBWC commissioned a study in 2015 that recommended sediment control structures be built on Thurman I and II arroyos, among others, to trap sediment and assist in the maintenance of the Rio Grande.

The purpose is to construct sediment control structures on Thurman I and II arroyos with the following objectives:

(1) Control the inflow of sediment into the Rio Grande mainstem,

(2) Conduct a pilot study for channel maintenance alternatives, and

(3) Be accessible for maintenance and minimize operational costs.

This EA evaluates potential environmental impacts of the No Action Alternative and two alternatives. The Alternative A: No Action—Routine Sediment Excavation does not call for any construction but would require continued routine sediment excavation at the confluence of the arroyos and the Rio Grande. Alternative B: Mesh-Based Sediment Traps proposes to construct mesh and rebar sediment traps where each mesh would trap progressively smaller sediment particles. Alternative C: Sediment Basins is the Preferred Alternative, and calls for the construction of a sediment basin at each arroyo with a concrete end wall. Permits would be required from the U.S. Army Corps of Engineers for dredge and fill of Waters of the United States, per the Clean Water Act Sections 404 and 401.

Potential impacts on natural, cultural, and other resources were evaluated. Mitigation has been proposed for permits for construction. A Finding of No Significant Impact has been prepared for the Preferred Alternative based on a review of the facts and analyses contained in the EA.

FOR FURTHER INFORMATION CONTACT: Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

Availability: The electronic version of the Draft EA is available from the USIBWC Web page: *https://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

Dated: October 5, 2017.

Matt Myers,

Chief Legal Counsel.

[FR Doc. 2017–22475 Filed 10–16–17; 8:45 am]

BILLING CODE 7010–01–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 and motion for temporary relief entitled *Certain Network Personal Computers and Mobile Devices, DN 3265;* 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, a motion for temporary relief, and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Aqua Connect, Inc. on October 11, 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 network personal computers and mobile devices. The complaint names as respondent Apple, Inc. of Cupertino, CA. The complainant requests that the Commission issue a limited exclusion order, a cease and desist order and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondent, 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. 3265'') 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: October 11, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–22395 Filed 10–16–17; 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.*

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on November 3, 2017, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Conduent, 420 Lexington Avenue, New York, NY 10170.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 703–414–2163.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Conduent, 420 Lexington Avenue, New York, NY 10170, on November 3, 2017, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App.,

that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: October 10, 2017.

David M. Ziegler,

Chair, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2017–22479 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Appellate Procedure

AGENCY: Advisory Committee on the Federal Rules of Appellate Procedure, Judicial Conference of the United States.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on November 9, 2017, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Rules Committee Secretary, Rules Committee Staff, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

SUPPLEMENTARY INFORMATION: Announcement for this hearing was previously published in 82 FR 37610.

Dated: October 12, 2017.

Rebecca A. Womeldorf,

Rules Committee Secretary.

[FR Doc. 2017–22480 Filed 10–16–17; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on September 18, 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''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bosch Security Systems, Inc., Fairport, NY; Juniper Networks, Sunnyvale, CA; Korean Broadcast System, Seoul, REPUBLIC OF KOREA; Telstra, Melbourne, AUSTRALIA; Xytech Systems, Chatsworth, CA; and Yamaha Corporation, Hamamatsu, JAPAN, have been added as parties to this venture.

Also, Digital Media Centre B.V., Amsterdam, NETHERLANDS; IBM, Somers, NY; MNC Software, Inc., San Diego, CA; Real-Time Innovations (RTI), Sunnyvale, CA; SVT, Stockholm, SWEDEN; TransMedia Dynamics Ltd., Aylesbury, UNITED KINGDOM; Laurence Cook (individual member), Portland, OR; Gabor Fogacs (individual member), Budapest, HUNGARY; Laurance Hughes (individual member), Sydney, AUSTRALIA; Douglas McGee (individual member), Columbus, OH; Christiano Nuernberg (individual member), Cambridge, MA; and Joseph Spillman (individual member), Temecula, CA, 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 Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on June 26, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 20, 2017 (82 FR 33516).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–22440 Filed 10–16–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on September 26, 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''), PXI Systems Alliance, Inc. (''PXI Systems'') 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, Advanced Testing Technologies, Inc., Hauppauge, NY; and CERN, Geneva, SWITZERLAND, 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 PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems 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 March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on July 3, 2017. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 25, 2017 (82 FR 34550).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–22439 Filed 10–16–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Showa Denko K.K., SGL Carbon SE, and SGL GE Carbon Holding LLC (USA); Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive

Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Showa Denko K.K., SGL Carbon SE, and SGL GE Carbon Holding LLC (USA),* Civil Action No. 1:17–cv–1992. On September 27, 2017, the United States filed a Complaint alleging that Showa Denko K.K.'s (''SDK'') proposed acquisition of the global graphite electrodes business of SGL Carbon SE (''SGL'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires SDK to divest SGL's entire U.S. graphite electrodes business.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register.** Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street NW., Suite 8700, Washington, DC 20530 (telephone: 202–307–0924).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Showa Denko K.K., 13–9 Shiba Daimon 1-chome, Minato-ku, Tokyo 105–8518, Japan, SGL Carbon SE, Soehnleinstrasse 8, 65201 Weisbaden, Germany,* and *SGL GE Carbon Holding LLC (USA), 10130 Perimeter Parkway, Suite 500, Charlotte, NC 28216,* Defendants.

Case No: 1:17–cv–01992
Judge: James E. Boasberg

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to enjoin Showa Denko K.K.'s (''SDK'') proposed acquisition of SGL Carbon SE's (''SGL Carbon'') global graphite electrode business and to obtain other equitable relief. The United States alleges as follows:

I. NATURE OF THE ACTION

1. On October 20, 2016, SDK announced an agreement to acquire SGL Carbon's global graphite electrode business for approximately $264.5 million. SDK and SGL Carbon manufacture and sell large ultra-high power (''UHP'') graphite electrodes, a critical input needed to melt scrap steel in electric arc furnaces (''EAFs'') at steel mills. SDK and SGL Carbon are two of the three leading suppliers of large UHP graphite electrodes utilized in EAFs in the United States and have a combined market share of approximately 56 percent.

2. The proposed acquisition would eliminate vigorous head-to-head competition between SDK and SGL Carbon for the business of U.S. EAF customers. For a significant number of U.S. EAF steel mills, SDK and SGL Carbon are two of the top suppliers of large UHP graphite electrodes, and the competition between SDK and SGL Carbon has resulted in lower prices, higher quality electrodes, and better service. Notably, SDK and SGL Carbon are two of only three firms that operate manufacturing facilities in North America in an industry where a local manufacturing presence is important to customers to ensure reliability of supply at an affordable cost. The proposed acquisition likely would give SDK the ability to raise prices or decrease the quality of delivery and service provided to these customers.

3. As a result, the proposed acquisition likely would substantially lessen competition in the manufacture and sale of large UHP graphite electrodes sold to EAF steel mills in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. JURISDICTION AND VENUE

4. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

5. Defendants manufacture and sell large UHP graphite electrodes throughout the United States. They are engaged in a regular, continuous, and substantial flow of interstate commerce, and their activities in the manufacture and sale of large UHP graphite electrodes have a substantial effect upon interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. Defendants have consented to venue and personal jurisdiction in this district. This court has personal jurisdiction over each defendant and venue is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

III. DEFENDANTS AND THE PROPOSED ACQUISITION

7. Defendant SDK is a corporation organized under the laws of Japan and headquartered in Tokyo, Japan. SDK is one of Japan's leading chemical companies and graphite electrodes are a primary line of business. SDK, which operates in approximately 14 countries, had revenues of approximately $5.8 billion in 2016. SDK's worldwide revenues from sales of graphite electrodes in 2016 were $248 million, and its U.S. revenues from sales of graphite electrodes in 2016 were approximately $85 million.

8. Defendant SGL Carbon is a publicly-owned company organized under the laws of Germany and headquartered in Wiesbaden, Germany. SGL Carbon is a leading manufacturer of carbon-based products, ranging from carbon and graphite products to carbon fibers and composites, and its operations extend to 34 countries. In 2016, SGL Carbon had global revenues of approximately $885 million. SGL Carbon's worldwide revenues from sales of graphite electrodes in 2016 were approximately $326.6 million, and its U.S. revenues from sales of graphite electrodes in 2016 were approximately $58.6 million.

9. Defendant SGL GE Carbon Holding LLC (USA) (''SGL US''), an indirect, wholly-owned subsidiary of SGL Carbon, is a Delaware limited liability company headquartered in Charlotte, North Carolina. SGL US is the sole shareholder of SGL GE Carbon LLC, which owns the assets of SGL US's operations in the United States, including SGL's Hickman and Ozark graphite electrode plants.

10. Pursuant to an October 20, 2016 Sale and Purchase Agreement, SDK agreed to acquire all of the corporate entities comprising SGL Carbon's graphite electrodes global operations, including SGL US, for approximately $264.5 million.

IV. TRADE AND COMMERCE

A. *Industry Background*

11. Graphite electrodes are used as conductors of electricity to generate sufficient heat to melt scrap metal in EAFs or to refine steel in ladle

metallurgical furnaces. In a typical EAF operation, a series of electrodes (usually three) are attached to a crane-like device with connecting pins to form columns that are suspended over a large bucket of scrap steel. Large amounts of electricity are sent through the electrodes and the resulting heat melts the scrap into liquid.

12. Graphite electrodes are consumed as they are used and continually need to be replaced with fresh electrodes. Electrodes are designed in a range of sizes to fit the characteristics of each furnace and are suited to the electrical properties of a specific EAF. In particular, the opening through which electrodes are inserted into the furnace is only wide enough to admit electrodes of a certain diameter.

13. Graphite electrodes are subdivided into three grades: low power, high power, and UHP, where grade refers to the level of current-carrying capacity of the graphite electrode. EAFs typically utilize large UHP graphite electrodes that are between 18 and 32 inches in diameter and are characterized by an ability to withstand high currents and significant thermal stasis. Given that they are the most sophisticated products used for the most demanding steelmaking applications, large UHP graphite electrodes are produced by a smaller number of manufacturers than low power and high power graphite electrodes.

14. EAF steel mills, which are part of a vital U.S. industry involved in the manufacture and sale of steel and steel products used for many applications, represent an average of 45 percent of all domestic steel production. Large UHP graphite electrodes constitute a material operational input cost to these EAF steel mills that affects their ability to compete vigorously with steel made in blast furnaces both domestically and internationally. Over the past three years, U.S. EAF steel mills collectively averaged $262 million in large UHP graphite electrode purchases, and that number is expected to increase in the coming years due to a recent increase in steel demand and a decrease in the volume of steel imported into the United States.

15. Large UHP graphite electrodes are purchased through an annual bid process where manufacturers are invited to bid for an entire year or partial year's supply. Manufacturers are qualified through a trialing process where graphite electrodes are evaluated based on both commercial risks and the total cost per ton of melted steel. EAF customers evaluate electrode suppliers based on the reliability and efficiency of their electrodes, the timeliness of electrode delivery, the supplier's commercial business practices, and ongoing technical service capabilities. Many customers prefer qualified suppliers with domestic manufacturing capability (which helps ensure reliable on-time delivery) and a robust local service operation (which enables prompt deployment of established technical expertise and support). EAF customers typically avoid suppliers that develop a reputation for graphite electrode breakages even when they offer electrodes at steep discounts because the costs of temporarily shutting down a furnace to remove broken electrode pieces can be significantly greater than the potential short-term savings from cheaper electrodes.

16. Large UHP graphite electrodes are priced by the pound, and quantities are described using metric tons. A typical U.S. EAF furnace operating at an average utilization rate may spend up to $4 million per year on electrodes for that furnace. Electrodes usually are ordered in advance and are expected to be shipped in a timely manner by truck to each steel mill, where they are stored until used, although some customers have consignment arrangements with manufacturers that keep inventories of graphite electrodes in the manufacturers' own warehouses.

B. *The Relevant Product Market*

17. There are no functional substitutes for large UHP graphite electrodes for U.S. EAF steel mills. Without large UHP graphite electrodes, an EAF steel mill cannot be operated and must be idled. Moreover, each EAF steel mill requires large UHP graphite electrodes of a specific diameter; a customer cannot substitute a different size graphite electrode than that for which its EAF is outfitted because the electrode would not fit and could not handle the level of current. Thus, it is likely that every individual size of large UHP graphite electrodes is a separate relevant product market. Because market participation by manufacturers is similar, and potential anticompetitive effects likely are similar across the entire range of sizes, all large UHP graphite electrodes can be grouped together in a single market for purposes of analysis.

18. A small but significant increase in the price of large UHP graphite electrodes sold to EAF steel mills would not cause customers of such electrodes to substitute a different kind of electrode or any other product, or to reduce purchases of such electrodes in volumes sufficient to make such a price increase unprofitable. Accordingly, the manufacture and sale of large UHP graphite electrodes sold to EAF steel mills is a line of commerce and relevant product market within the meaning of Section 7 of the Clayton Act.

C. *The Relevant Geographic Market*

19. Individual U.S. EAF customers solicit bids from large UHP graphite electrode producers and these producers develop individualized bids based on each U.S. EAF customer Request for Proposal (''RFP''). This bidding process enables large UHP graphite electrode producers to engage in ''price discrimination,'' *i.e.,* to charge different prices to different EAF customers. A small but significant increase in the prices of large UHP graphite electrodes can therefore be targeted to customers in the United States, and would not cause a sufficient number of these customers to buy electrodes from customers outside the United States so as to make such a price increase unprofitable. Since the availability of domestic technical services is important to U.S. customers, these customers would not buy electrodes from customers outside the United States. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

D. *Anticompetitive Effects*

20. SDK and SGL Carbon have market shares of approximately 35 and 21 percent, respectively, in the relevant market. The third major seller of large UHP graphite electrodes to U.S. EAF customers has a market share of 22 percent. The remaining competitors combined account for only 22 percent of the market and are comprised of firms based in Japan, India, Russia, and China.

21. As articulated in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission (the ''Horizontal Merger Guidelines''), the Herfindahl-Hirschman Index (''HHI''), discussed in Appendix A, is a widely-used measure of market concentration. Market concentration is often a useful indicator of the level of competitive vigor in a market and the likely competitive effects of a merger. The more concentrated a market, the more likely it is that a transaction would result in a meaningful reduction in competition and harm consumers. Markets in which the HHI exceeds 2,500 points are considered highly concentrated, and transactions that result in highly concentrated markets and increase the HHI by more than 200 points are presumed to be likely to enhance market power.

22. In the market for the manufacture and sale of large UHP graphite electrodes used in U.S. EAF steel mills, the pre-merger HHI is 2230 and the post-merger HHI is 3693, representing an increase in the HHI of 1,463. Under the Horizontal Merger Guidelines, the proposed acquisition will result in a highly concentrated market and is thus presumed likely to enhance market power.

23. In addition to increasing concentration, SDK's acquisition of SGL Carbon's global graphite electrode business would eliminate head-to-head competition between SDK and SGL Carbon to supply large UHP graphite electrodes to U.S. EAF steel mills. SDK and SGL Carbon both have a strong reputation for high-quality graphite electrodes, a robust local manufacturing presence, an established delivery infrastructure, and superior technical service capabilities and support, including proprietary software specifically designed to assist steel mills in the installation and efficient maintenance of electrodes within their EAFs. SDK and SGL Carbon compete directly on price, quality, delivery, and technical service, and the competition between them has directly benefitted U.S. EAF customers.

24. Only one other significant competitor besides SDK and SGL Carbon sells large UHP graphite electrodes in the U.S. and has a similar reputation for quality, shipment and delivery logistics, and local technical service. The transaction is likely to lead to higher prices because, for most customers, it will reduce the number of significant bidders from three to two.

25. Although other firms have participated in the U.S. market with limited sales, none of these firms individually or collectively are positioned to constrain a unilateral exercise of market power by SDK after the acquisition. The most significant of these firms, based in Japan, has a long history of sales of large UHP graphite electrodes in the United States, a good reputation for quality, and an enduring small presence in the market. However, it and the remaining small firms that have made sales to U.S. EAF steel mills are disadvantaged by their lack of domestic manufacturing capability, limited delivery and technical service infrastructure, and high costs. Some additionally are disadvantaged because of lower product quality. The response of other participants in the relevant market therefore would not be sufficient to constrain a unilateral exercise of market power by SDK after the acquisition.

26. For all of these reasons, the proposed transaction likely would substantially lessen competition in the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills and lead to higher prices and decreased quality of delivery and service.

E. *Difficulty of Entry*

27. Entry of additional competitors into the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills is unlikely to be timely, likely, or sufficient to prevent the harm to competition caused by the elimination of SGL Carbon as an independent supplier. Over the past two decades, several firms have attempted to make a meaningful entry into the U.S. market, notably from India and China, but have not been able to make substantial sales or become preferred suppliers.

28. Firms attempting to enter into the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills face significant entry barriers in terms of cost and time. First, a new entrant into this business must be able to construct a manufacturing facility, which entails substantial time and expense. Second, such an entrant must have the technical capabilities necessary to design and manufacture high quality graphite electrodes that meet customer requirements for performance and reliability. Third, both new entrants and graphite electrode manufacturers who do not currently participate in the U.S. market must typically demonstrate competence to EAF customers in the U.S. through a lengthy qualification and trial period during which the supplier must establish a strong performance record and avoid product breakages that can cause EAF outages. Fourth, an entrant must have a strong local infrastructure in place to assure customers of reliable delivery and the prompt deployment of qualified expertise, including technical services associated with installation and maintenance of the electrodes.

29. As a result of these barriers, entry into the market for the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills would not be timely, likely, or sufficient to defeat the substantial lessening of competition that likely would result from SDK's acquisition of SGL Carbon's global graphite electrode business.

V. VIOLATION ALLEGED

30. The acquisition of SGL Carbon's global graphite electrode business by SDK likely would substantially lessen competition for the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

31. Unless enjoined, the transaction likely would have the following anticompetitive effects, among others:

a. competition between SDK and SGL Carbon in the market for the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills would be eliminated; and

b. prices for large UHP graphite electrodes sold to U.S. EAF steel mills likely would be less favorable, and quality of delivery and service likely would decline.

VI. REQUESTED RELIEF

32. The United States requests that this Court:

a. adjudge and decree SDK's proposed acquisition of SGL Carbon's global graphite electrode business to be unlawful and in violation of Section 7 of the Clayton Act, 15 U.S.C. 18;

b. preliminarily and permanently enjoin and restrain defendants and all persons acting on their behalf from consummating the proposed acquisition or from entering into or carrying out any contract, agreement, plan, or understanding, the effect of which would be to combine SGL Carbon's global graphite electrode business with the operations of SDK;

c. award the United States its costs of this action; and

d. award the United States such other and further relief as the Court deems just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA

Andrew M. Finch,
Acting Assistant Attorney General.

Bernard A. Nigro, Jr.,
Deputy Assistant Attorney General.

Patricia A. Brink,
Director of Civil Enforcement.

Maribeth Petrizzi,
Chief, Litigation II Section.
D.C. Bar # 435204

David E. Altschuler,
Assistant Chief, Litigation II Section.
D.C. Bar # 983023

Bashiri Wilson,*
James K. Foster

Attorneys, U.S. Department of Justice, Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC

20530, Tel.: (202) 514–8362, Fax: (202) 514–9033, Email: bashiri.wilson@usdoj.gov.

*Attorney of Record

Dated: September 27, 2017

Appendix A

DEFINITION OF HHI

The term ''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches a maximum of 10,000 points when it is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* § 5.3 (issued by the U.S. Department of Justice and the Federal Trade Commission on August 19, 2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power. *Id.*

United States District Court for the District Of Columbia

United States of America, Plaintiff, v. *Showa Denko K.K., SGL Carbon SE, and SGL GE Carbon Holding LLC (USA),* Defendants.

Case No: 1:17–cv–01992

Judge: James E. Boasberg

COMPETITIVE IMPACT STATEMENT

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On October 20, 2016, defendants Showa Denko K.K. (''SDK''), SGL Carbon SE (''SGL Carbon''), and SGL GE Carbon Holding LLC (USA) (''SGL US'') entered into an agreement pursuant to which SDK agreed to acquire SGL Carbon's global graphite electrode business for approximately $264.5 million.

The United States filed a civil antitrust Complaint on September 27, 2017 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for the manufacture and sale of large ultra-high power (''UHP'') graphite electrodes sold to electric arc furnace (EAF) steel mills in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition likely would give SDK the ability and incentive to increase prices or decrease the quality of delivery and service provided to U.S. EAF customers.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest SGL Carbon's entire U.S. graphite electrodes business (the ''Divestiture Assets'') to Tokai Carbon Co., Ltd. (''Tokai'') or to an alternate Acquirer approved by the United States. Under the terms of the Hold Separate, defendants will take certain steps to ensure that the Divestiture Assets are operated as a competitive, independent, economically viable, and ongoing business concern, that the Divestiture Assets will remain independent and uninfluenced by the consummation of the acquisition, and that competition is maintained during the pendency of the ordered divestiture.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Transaction

SDK, a Japanese corporation headquartered in Tokyo, Japan, is one of Japan's leading chemical companies, and had global sales of approximately $5.8 billion in 2016. SDK is one of the world's largest providers of graphite electrodes, with global sales of $248 million in 2016, including approximately $85 million in U.S. revenues from graphite electrodes sales.

SGL Carbon is a German-based corporation headquartered in Wiesbaden, Germany. SGL Carbon is a leading manufacturer of carbon-based products, ranging from carbon and graphite products to carbon fibers and composites, with operations in 34 countries. SGL Carbon is a leading global producer of graphite electrodes, with worldwide graphite electrode revenues of approximately $326.6 million in 2016, including approximately $58.6 million from sales of graphite electrodes in the United States.

SGL US, an indirect, wholly-owned subsidiary of SGL Carbon, is a Delaware limited liability company headquartered in Charlotte, North Carolina. SGL US is the sole shareholder of SGL GE Carbon LLC, which owns the assets of SGL US's operations in the United States, including SGL Carbon's Hickman and Ozark graphite electrode plants.

Pursuant to an agreement dated October 20, 2016, SDK intends to acquire SGL Carbon's global graphite electrode operations, including SGL US, for approximately $264.5 million. The proposed acquisition, as initially agreed to by defendants, would lessen competition substantially in the manufacture and sale of large UHP graphite electrodes to U.S. EAF customers. This acquisition is the subject of the Complaint and proposed Final Judgment filed today by the United States.

B. Graphite Electrode Industry Overview

Graphite electrodes are used to conduct electricity to generate sufficient heat to melt scrap metal in EAFs or to refine steel in ladle metallurgical furnaces. In a typical EAF operation, a series of electrodes are attached to a steel arm with connecting pins to form columns that are suspended over a large bucket of scrap steel. Large amounts of electricity are sent through the electrodes and the resulting heat melts the scrap into liquid. Graphite electrodes are consumed as they are used and continually need to be replaced with fresh electrodes. Electrodes are designed in a range of sizes to fit the characteristics of each furnace and are suited to the electrical properties of a specific EAF.

Graphite electrodes are subdivided into three grades based on their level of current-carrying capacity: low power, high power, and UHP. EAFs typically utilize UHP graphite electrodes that are between 18 and 32 inches in diameter and are characterized by an ability to withstand high currents. Large UHP graphite electrodes are the most sophisticated products used for the most demanding steelmaking applications and, as a result, are produced by a smaller number of manufacturers than

low power or high power graphite electrodes.

EAF steel mills, which are a part of a vital U.S. industry involved in the manufacture and sale of steel and steel products used for many applications, represent an average of 45 percent of all domestic steel production. Over the past three years, U.S. EAF steel mills collectively averaged $262 million in large UHP graphite electrode purchases, and that number is expected to increase in the coming years due to a recent increase in steel demand and a decrease in the volume of steel imported into the United States.

Large UHP graphite electrodes are purchased through an annual bid process where manufacturers are invited to bid for an entire year or partial year's supply. EAF customers evaluate electrode suppliers based on the reliability and efficiency of their electrodes, the timeliness of electrode delivery, the supplier's commercial business practices, and ongoing technical service capabilities. Many U.S. customers prefer suppliers that have a domestic manufacturing capability and a robust local service operation. Given the high costs of temporarily shutting down a furnace to remove broken electrode pieces, EAF customers typically avoid suppliers that develop a reputation for graphite electrode breakages even if the supplier offers electrodes at steep discounts. Electrodes usually are ordered in advance and are expected to be shipped in a timely manner by truck to each steel mill, where they are stored until used, although some customers have consignment arrangements with manufacturers that keep inventories of graphite electrodes in the manufacturers' own warehouses.

C. Relevant Markets Affected by the Proposed Acquisition

As alleged in the Complaint, there are no functional substitutes for large UHP graphite electrodes for U.S. EAF steel mills. Without large UHP graphite electrodes, EAF steel mills cannot be operated and must be idled. Moreover, customers cannot substitute a different size graphite electrode for use in an EAF because the electrode size and current-carrying capacity is tailored to the specific facility. For these reasons, the Complaint alleges that it is likely that every individual size of large UHP graphite electrodes is a separate relevant product market. Because market participation by manufacturers is similar, and potential anticompetitive effects likely are similar across the entire range of sizes, all large UHP graphite electrodes can be grouped together in a single market for purposes of analysis. The Complaint alleges that a hypothetical profit-maximizing monopolist of large UHP graphite electrodes likely would impose a small but significant non-transitory increase in price (''SSNIP'') that would not be defeated by substitution to a different kind of electrode or any other product, or result in a reduction in purchases of such electrodes in volumes sufficient to make such a price increase unprofitable. Accordingly, the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills is a line of commerce and relevant market within the meaning of Section 7 of the Clayton Act.

As alleged in the Complaint, the United States is the relevant geographic market for the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills. In the United States, individual EAF customers solicit bids from producers of large UHP graphite electrodes, and these producers develop individualized bids based on each customer's Request for Proposal. The bidding process enables large UHP graphite electrode producers to engage in ''price discrimination,'' *i.e.,* to charge different prices to different EAF customers. A small but significant increase in the prices of large UHP graphite electrodes can therefore be targeted to customers in the United States without causing a sufficient number of these customers to use arbitrage to defeat the price increase, such as by buying electrodes from customers outside the country so as to make such a price increase unprofitable. Since the availability of domestic technical services is important to U.S. customers, these customers would not buy electrodes from customers outside the United States. Accordingly, the United States is a relevant geographic market within the meaning of Section 7 of the Clayton Act.

D. Anticompetitive Effects

According to the Complaint, the proposed acquisition would substantially increase concentration in the relevant market. SDK and SGL Carbon have market shares of approximately 35 and 21 percent, respectively, in the relevant market; a third major seller of large UHP graphite electrodes to U.S. EAF customers has a market share of 22 percent. The remaining competitors, which include firms from Japan, India, Russia, and China, have a combined 22 percent share. Under the Herfindahl-Hirschman Index (''HHI''), a widely-used measure of market concentration utilized in the Horizontal Merger Guidelines issued by the Department of Justice and the Federal Trade Commission (the ''Horizontal Merger Guidelines''), the pre-merger HHI is 2230 and the post-merger HHI is 3693, representing an increase in the HHI of 1,463. As discussed in the Horizontal Merger Guidelines and alleged in the Complaint, these HHIs indicate that the proposed acquisition will result in a highly concentrated market and is presumed likely to enhance market power.

In addition to increasing concentration, the Complaint alleges that SDK's acquisition of SGL Carbon's global graphite electrode business would eliminate head-to-head competition between SDK and SGL Carbon in the relevant market. Both SDK and SGL Carbon have a strong reputation for high-quality graphite electrodes, a robust local manufacturing presence, an established delivery infrastructure, and superior technical service capabilities and support, including proprietary software specifically designed to assist steel mills in the installation and efficient maintenance of electrodes within their EAFs. As alleged in the Complaint, SDK and SGL Carbon compete directly on price, quality, delivery, and technical service, and the competition between them has directly benefitted U.S. EAF customers.

The Complaint further alleges that the acquisition is likely to lead to higher prices because there is only one other significant competitor with a comparable reputation for product quality, shipment and delivery logistics, and local technical service, and therefore, for most customers, the transaction will reduce the number of significant bidders from three to two. According to the Complaint, the remaining market participants, each of which has participated in the U.S. market with only limited sales, are not in a position to constrain a unilateral exercise of market power by SDK after the acquisition. The most significant of these firms, based in Japan, has a long history of sales of large UHP graphite electrodes in the United States, a good reputation for quality, and an enduring small presence in the market. However, this firm and the other remaining firms that have made limited sales to U.S. EAF steel mills are each disadvantaged by a lack of domestic manufacturing capability, limited delivery and technical service infrastructure, and high costs. As a result, none of these firms will be able to replace the competition lost as a result of SDK's acquisition of SGL Carbon's global graphite electrode business.

E. Barriers to Entry

As alleged in the Complaint, entry of additional competitors into the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills is unlikely to be timely, likely, or sufficient to prevent the harm to competition caused by the elimination of SGL Carbon as an independent supplier. New entrants face significant entry barriers in terms of cost and time, including the substantial time and expense required to construct a manufacturing facility, the need to build technical capabilities sufficient to meet customer expectations, the requirement that a new supplier demonstrate competence to U.S. customers through a lengthy qualification and trialing period, and the need to create a strong local infrastructure to ensure reliable and prompt delivery and technical service.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestiture requirement of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing an independent and economically viable competitor in the manufacture and sale of large UHP graphite electrodes in the relevant market.

Pursuant to the proposed Final Judgment, defendants must divest SGL Carbon's entire U.S. graphite electrodes business, which is defined in Paragraph II(F) to include SGL Carbon's manufacturing facilities located in Ozark, Arkansas and Hickman, Kentucky and all tangible and intangible assets used in connection with SGL Carbon's U.S. graphite electrodes business. Among the assets to be divested is SGL Carbon's CEDIS® EAF performance monitoring system, proprietary software specifically designed to assist steel mills in the installation and efficient maintenance of electrodes within their EAFs.

Paragraph IV(A) of the proposed Final Judgment provides that defendants must divest the Divestiture Assets to Tokai Carbon Co., Ltd., or to an alternative acquirer acceptable to the United States within 45 days of the Court's signing of the Hold Separate. The Divestiture Assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the operations can and will be operated by Tokai or an alternate purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with Tokai or any other prospective purchaser.

The proposed Final Judgment contains several provisions designed to facilitate the Acquirer's immediate use of the Divestiture Assets. Paragraph IV(J) provides the Acquirer with the option to enter into a transition services agreement with SGL Carbon to obtain back office and information technology services and support for the Divestiture Assets for a period of up to one year. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional 12 months. Paragraph IV(K) provides the Acquirer with the option to enter into a supply contract with SDK for connecting pins sufficient to meet all or part of the Acquirer's needs for a period of up to three years. Connecting pins are a component used to connect graphite electrodes in an EAF, and the inclusion of a supply option in the proposed Final Judgment will enable Tokai or an alternate acquirer to devote additional capacity to the manufacture of large UHP graphite electrodes if it so chooses. The proposed Final Judgment provides that the United States, in its sole discretion, may approve one or more extensions of this supply contract for a total of up to an additional 12 months.

The proposed Final Judgment also contains provisions intended to facilitate the Acquirer's efforts to hire the employees involved in SGL Carbon's U.S. graphite electrode business. Paragraph IV(D) of the proposed Final Judgment requires defendants to provide the Acquirer with organization charts and information relating to these employees and make them available for interviews, and provides that defendants will not interfere with any negotiations by the Acquirer to hire them. In addition, Paragraph IV(E) provides that for employees who elect employment with the Acquirer, defendants, subject to exceptions, shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which the employees would generally be provided if transferred to a buyer of an ongoing business. The paragraph further provides, that for a period of 12 months from the filing of the Complaint, defendants may not solicit to hire, or hire any such person who was hired by the Acquirer, unless such individual is terminated or laid off by the Acquirer or the Acquirer agrees in writing that defendants may solicit or hire that individual.

In the event that defendants do not accomplish the divestiture within the period provided in the proposed Final Judgment, Paragraph V(A) provides that the Court will appoint a trustee selected by the United States to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After its appointment becomes effective, the trustee will file monthly reports with the Court and the United States setting forth its efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the

summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register.**

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against SDK's acquisition of SGL Carbon's global graphite electrode business. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the manufacture and sale of large UHP graphite electrodes sold to U.S. EAF steel mills. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *US Airways Group, Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.'').[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also US Airways,* 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the

[1] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also US Airways,* 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft,* 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also US Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also US Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *US Airways,* 38 F. Supp. 3d at 76.

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 27, 2017

Respectfully submitted,

Bashiri Wilson*

United States Department of Justice, *Antitrust Division, Litigation II Section, 450 Fifth Street NW., Suite 8700, Washington, DC 20530, Tel.: (202) 598–8794, Fax: (202) 514–9033*, Email: *bashiri.wilson@usdoj.gov.*

*Attorney of Record

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Showa Denko K.K., SGL Carbon SE,* and *SGL GE Carbon Holding LLC (USA),* Defendants,

Case No: 1:17–cv–01992

Judge: James E. Boasberg

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on September 27, 2017, the United States and defendants, Showa Denko K.K., SGL Carbon SE, and SGL GE Carbon Holding LLC (USA), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. DEFINITIONS

As used in this Final Judgment:

A. ''Acquirer'' means Tokai or another entity to which defendants divest the Divestiture Assets.

B. ''SDK'' means defendant Showa Denko K.K., a Japanese corporation headquartered in Tokyo, Japan, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73–CV–681–W–1, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D.Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

C. ''SGL'' means defendant SGL Carbon SE, a German corporation headquartered in Wiesbaden, Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees, including defendant SGL GE Carbon Holding LLC (USA), a Delaware limited liability company that is an indirect, wholly-owned subsidiary of SGL Carbon SE, and is headquartered in Charlotte, North Carolina.

D. ''Tokai'' means Tokai Carbon Co., Ltd., a Japanese corporation headquartered in Tokyo, Japan, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Divestiture Assets'' means SGL's U.S. Graphite Electrodes Business.

F. ''SGL's U.S. Graphite Electrodes Business'' means SGL GE Carbon Holding LLC (USA), all of its subsidiaries, and all additional operations of SGL related to the production, distribution, engineering, development, sale, and servicing of graphite electrodes manufactured in the United States, including, but not limited to:

1. The manufacturing facility located at 3931 Carbon Plant Rd., Ozark, Arkansas 72949 (the ''Ozark Facility'');

2. The manufacturing facility located at 2320 Myron Cory Dr., Hickman, Kentucky 42050 (the ''Hickman Facility'');

3. All tangible assets used in connection with SGL's U.S. Graphite Electrodes Business, including research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with SGL's U.S. Graphite Electrodes Business; all licenses, permits, and authorizations issued by any governmental organization relating to SGL's U.S. Graphite Electrodes Business; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements relating to SGL's U.S. Graphite Electrodes Business; all customer lists, contracts, accounts, and credit records relating to SGL's U.S. Graphite Electrodes Business; all repair and performance records and all other records relating to SGL's U.S. Graphite Electrodes Business; and

4. All intangible assets used in connection with SGL's U.S. Graphite Electrodes Business, including, but not limited to, all patents, licenses and sublicenses, intellectual property, copyrights, trademarks, trade names, service marks, service names (excluding any trademark, trade name, service mark, or service name containing the name ''SGL''), technical information, computer software (including, but not limited to, SGL's CEDIS® EAF performance monitoring system) and related documentation, know-how, trade secrets, drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances, quality assurance and control procedures, design tools and simulation capability, all manuals and technical information SGL provides to its own employees, customers, suppliers, agents, or licensees, and all research data concerning historic and current research and development efforts relating to SGL's U.S. Graphite Electrodes Business, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

G. ''Relevant Employees'' means all SGL personnel involved in the production, distribution, engineering, development, sale, or servicing of graphite electrodes for SGL's U.S. Graphite Electrodes Business.

III. APPLICABILITY

A. This Final Judgment applies to SDK and SGL, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. DIVESTITURE

A. Defendants are ordered and directed, within 45 calendar days after the Court's signing of the Hold Separate Stipulation and Order in this matter, to divest the Divestiture Assets in a manner consistent with this Final Judgment to Tokai or an alternative Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event defendants are attempting to divest the Divestiture Assets to an Acquirer other than Tokai, defendants promptly shall make known, by usual and customary means (to the extent defendants have not already done so), the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment.

C. In accomplishing the divestiture ordered by this Final Judgment, defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privileges or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States with organization charts and information relating to Relevant Employees, including name, job title, past experience relating to SGL's U.S. Graphite Electrodes Business, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable the Acquirer to make offers of employment. Upon request, defendants shall make Relevant Employees available for interviews with the Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by the Acquirer to employ any Relevant Employees. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of Relevant Employees other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

E. For any Relevant Employees who elect employment with the Acquirer, defendants shall waive all noncompete and nondisclosure agreements, vest all unvested pension and other equity rights, and provide all benefits to which

the Relevant Employees would generally be provided if transferred to a buyer of an ongoing business. For a period of twelve (12) months from the filing of the Complaint in this matter, defendants may not solicit to hire, or hire, any such person who was hired by the Acquirer, unless (1) such individual is terminated or laid off by the Acquirer or (2) the Acquirer agrees in writing that defendants may solicit or hire that individual. Nothing in Paragraphs IV(D) and (E) shall prohibit defendants from maintaining any reasonable restrictions on the disclosure by any employee who accepts an offer of employment with the Acquirer of the defendant's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to defendants' businesses and clients, and (3) unrelated to the Divestiture Assets.

F. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of SGL's U.S. Graphite Electrodes Business; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Defendants shall warrant to the Acquirer that each asset will be operational on the date of sale.

H. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

I. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

J. At the option of the Acquirer, SGL shall enter a transition services agreement to provide back office and information technology services and support for SGL's U.S. Graphite Electrodes Business for a period of up to one (1) year. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this transition services agreement, it shall so notify the United States in writing at least three (3) months prior to the date the transition services contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the transition services contract expires. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing any needed assistance. The SGL employee(s) tasked with providing these transition services may not share any competitively sensitive information of the Acquirer with any other SGL or SDK employee.

K. At the option of the Acquirer, SDK shall enter into a supply contract for connecting pins sufficient to meet all or part of the Acquirer's needs for a period of up to three (3) years. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions for connecting pins. The United States, in its sole discretion, may approve one or more extensions of this supply contract for a total of up to an additional twelve (12) months. If the Acquirer seeks an extension of the term of this supply contract, it shall so notify the United States in writing at least three (3) months prior to the date the supply contract expires. If the United States approves such an extension, it shall so notify the Acquirer in writing at least two (2) months prior to the date the supply contract expires.

L. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business of the production, distribution, engineering, development, sale, or servicing of large diameter ultra-high power graphite electrodes in the United States. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment,

1) shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the production, distribution, engineering, development, sale, or servicing of large diameter ultra-high power graphite electrodes in the United States; and

2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF DIVESTITURE TRUSTEE

A. If defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the Divestiture

Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the Divestiture Trustee and defendants are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other agents retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

H. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute Divestiture Trustee.

VI. NOTICE OF PROPOSED DIVESTITURE

A. In the event defendants are divesting the Divestiture Assets to an Acquirer other than Tokai, within two (2) business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or Section V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or Section V of this Final Judgment.

VIII. HOLD SEPARATE

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. AFFIDAVITS

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or Section V, defendants shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30)

calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally-recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

1) access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

2) to interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or response to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. NO REACQUISITION

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date:

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

United States District Judge

[FR Doc. 2017–22443 Filed 10–16–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on September 22, 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''), Border Security Technology Consortium (''BSTC'') 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, Michigan Technology University, Houghton, MI; and TRI–COR Industries, Inc., Alexandria, VA, 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 BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

The last notification was filed with the Department on June 8, 2017. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 2017 (85 FR 34551).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2017–22442 Filed 10–16–17; 8:45 am]

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DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: The Department of Justice. announces the membership of its 2017 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Mary A. Lamary, Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

2017 FEDERAL REGISTER

Name	Position title
Office of the Attorney General—OAG	
HUNT, JODY (DETAIL)	CHIEF OF STAFF AND COUNSELOR.
MORRISSEY, BRIAN	COUNSELOR TO THE ATTORNEY GENERAL.
CUTRONA, DANIELLE	SENIOR COUNSELOR.
Office of the Deputy Attorney General—ODAG	
HUR, ROBERT	PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL.
SWANSON, JAMES	ASSOCIATE DEPUTY ATTORNEY GENERAL.
SCHOOLS, SCOTT	ASSOCIATE DEPUTY ATTORNEY GENERAL.
GUAHAR, TASHINA	ASSOCIATE DEPUTY ATTORNEY GENERAL.
CROWELL, JAMES A	CHIEF OF STAFF/ASSOCIATE DEPUTY ATTORNEY GENERAL.
CONNOLLY, ROBERT	DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.
GOLDSMITH, ANDREW	NATIONAL CRIMINAL DISCOVERY COORDINATOR.
MICHALIC, MARK	EMERGENCY PREPAREDNESS AND CRISIS RESPONSE COORDINATOR.
GEISE, JOHN	CHIEF, PROFESSIONAL MISCONDUCT REVIEW UNIT.
Office of the Associate Attorney General—OASG	
PANUCCIO, JESSE	PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL.
MCARTHUR, ERIC	DEPUTY ASSOCIATE ATTORNEY GENERAL.
COX, STEVE	DEPUTY ASSOCIATE ATTORNEY GENERAL.
MURRAY, BRIAN	DEPUTY ASSOCIATE ATTORNEY GENERAL.
FRANCISCO, NOEL	SENIOR ADVISOR.
Office of the Solicitor General—OSG	
WALL, JEFFREY	PRINCIPAL DEPUTY SOLICITOR GEN.
DREEBEN, MICHAEL R	DEPUTY SOLICITOR GENERAL.
KNEEDLER, EDWIN S	DEPUTY SOLICITOR GENERAL.
STEWART, MALCOLM L	DEPUTY SOLICITOR GENERAL.
Office of Privacy and Civil Liberties	
WINN, PETER	DIRECTOR, OFFICE OF PRIVACY AND CIVIL LIBERTIES.
Antitrust Division—ATR	
FINCH, ANDREW	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
NIGRO, BERNARD	DEPUTY ASSISTANT ATTORNEY GENERAL.
ARMINGTON, ELIZABETH J	CHIEF, ECONOMIC REGULATORY SECTION.
BRINK, PATRICIA A	DIRECTOR OF CIVIL ENFORCEMENT.
COHEN, SCOTT	EXECUTIVE OFFICER.
DRENNAN, RONALD	CHIEF, COMPETITION POLICY SECTION.
FAMILANT, NORMAN	CHIEF, ECONOMIC LITIGATION SECTION.
FOUNTAIN, DOROTHY	SENIOR COUNSEL AND DIRECTOR OF RISK MANAGEMENT.
GREER, TRACY	ATTORNEY ADVISOR.
HOLLAND, CAROLINE	CHIEF COUNSEL FOR COMPETITION POLICY AND INTERGOVERNMENTAL RELATIONS.
LIMARZI, KRISTEN	CHIEF, APPELLATE SECTION.
MUCCHETTI, PETER J	CHIEF, LITIGATION I SECTION.
MAJURE, WILLIAM ROBERT	DIRECTOR OF ECONOMICS.
MARTINO, JEFFREY	CHIEF, NEW YORK FIELD OFFICE.
PETRIZZI, MARIBETH	CHIEF, LITIGATION II SECTION.

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Name	Position title
PHELAN, LISA M	CHIEF, NATIONAL CRIMINAL ENFORCEMENT SECTION.
POTTER, ROBERT A	CHIEF, LEGAL POLICY SECTION.
PRICE JR., MARVIN N	DIRECTOR OF CRIMINAL ENFORCEMENT.
SCHEELE, SCOTT A	CHIEF, TELECOMMUNICATIONS AND MEDIA ENFORCEMENT SECTION.
STRIMEL, MARY	CHIEF, WASHINGTON CRIMINAL II SECTION.
VONDRAK, FRANK	CHIEF, CHICAGO FIELD OFFICE.
KEMPF, DONALD	DEPUTY ASSISTANT ATTORNEY GENERAL.
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O'NEILL, KATHLEEN S	CHIEF TRANSPORTATION, ENERGY AND AGRICULTURE SECTION.
HOAG, AARON	CHIEF, NETWORKS AND TECHNOLOGY ENFORCEMENT SECTION.
KENDLER, OWEN	CHIEF, LITIGATION III SECTION.
Bureau of Alcohol, Tobacco, Firearms, and Explosives—ATF	
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SMITH, CHARLES B	EXECUTIVE ASSISTANT TO THE DIRECTOR.
GLEYSTEEN, MICHAEL P	ASSISTANT DIRECTOR, FIELD OPERATIONS.
CANINO, CARLOS	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS (PROGRAMS).
CROKE, KENNETH	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—EAST.
KUMOR, DANIEL	ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
DIXIE, WAYNE	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—EAST.
LOMBARDO, REGINA	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS—CENTRAL.
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CZARNOPYS, GREGORY P	DEPUTY ASSISTANT DIRECTOR, FORENSIC SERVICES.
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MCDERMOND, JAMES E	ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
REID, DELANO	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
MICHALIC, VIVIAN B	ASSISTANT DIRECTOR, MANAGEMENT.
FRANDE, FRANCIS	DEPUTY ASSISTANT DIRECTOR, MANAGEMENT AND CHIEF FINANCIAL OFFICER.
MAGEE, JEFFREY	ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
GRAHAM, ANDREW R	DEPUTY ASSISTANT DIRECTOR, INDUSTRY OPERATIONS.
GROSS, CHARLES R	CHIEF COUNSEL.
ROESSNER, JOEL	DEPUTY CHIEF COUNSEL.
EPSTEIN, ERIC	ATTORNEY ADVISOR.
MCDANIEL, MASON	CHIEF TECHNOLOGY OFFICER.
GILBERT, CURTIS	DEPUTY ASSISTANT DIRECTOR, ENFORCEMENT PROGRAM AND SERVICES.
CHITTUM, THOMAS	CHIEF, SPECIAL OPERATIONS DIVISION.
DURASTANTI, JOHN	DEPUTY ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
SHAEFER, CHRISTOPHER	ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
BENNETT, MEGAN	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
MILANOWSKI, JAMES	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
BOYKIN, LISA	DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT (HUMAN RESOURCES).
LOWREY, STUART	DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
VIDOLI, MARINO	ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
GOLD, VICTORIA	DEPUTY ASSISTANT DIRECTOR, IT/DEPUTY CIO.
ROBINSON, DONALD	SPECIAL AGENT IN CHARGE, NATIONAL CENTER FOR EXPLOSIVES TRAINING AND RESEARCH (NCETR).
WALKER, CARL	SPECIAL AGENT IN CHARGE, ATLANTA.
BOARD, DANIEL	SPECIAL AGENT IN CHARGE, BALTIMORE.
LEADINGHAM, MICKEY	SPECIAL AGENT IN CHARGE, BOSTON.
HYMAN, CHRISTOPHER	SPECIAL AGENT IN CHARGE, CHARLOTTE.
VELINOR, TREVOR	SPECIAL AGENT IN CHARGE, COLUMBUS.
TEMPLE, WILLIAM	SPECIAL AGENT IN CHARGE, DALLAS.
LIVINGSTON, DEBRA	SPECIAL AGENT IN CHARGE, DENVER.
SHOEMAKER, STEPHANIE	SPECIAL AGENT IN CHARGE, DETROIT.
MILANOWSKI, FREDERICK	SPECIAL AGENT IN CHARGE, HOUSTON.
LAUDER, GEORGE	SPECIAL AGENT IN CHARGE, KANSAS CITY.
HARDEN, ERIC	SPECIAL AGENT IN CHARGE, LOS ANGELES.
LOWREY, STUART	SPECIAL AGENT IN CHARGE, LOUISVILLE.
FORCELLI, PETER	SPECIAL AGENT IN CHARGE, MIAMI.
GERIDO, STEVE	SPECIAL AGENT IN CHARGE, NASHVILLE.
NICHOLS, DANA	SPECIAL AGENT IN CHARGE, NEW ORLEANS.
ASHAN, BENEDICT	SPECIAL AGENT IN CHARGE, NEW YORK.
DEVITO, JOHN	SPECIAL AGENT IN CHARGE, NEWARK.
RABADI, ESSAM	SPECIAL AGENT IN CHARGE, PHILADELPHIA.
DURASTANI, JOHN	SPECIAL AGENT IN CHARGE, PHOENIX.

2017 FEDERAL REGISTER—Continued

Name	Position title
SNYDER, JILL A	SPECIAL AGENT IN CHARGE, SAN FRANCISCO.
PLEASANTS, DAREK	SPECIAL AGENT IN CHARGE, SEATTLE.
MODZELEWSKI, JAMES	SPECIAL AGENT IN CHARGE, ST PAUL.
MCCRARY, DARYL	SPECIAL AGENT IN CHARGE, TAMPA.
BOXLER, MICHAEL B	SPECIAL AGENT IN CHARGE, WASHINGTON, DC.
	Bureau of Prisons—BOP
KANE, THOMAS R	DEPUTY DIRECTOR.
JOSLIN, DANIEL M	ASSISTANT DIRECTOR, HUMAN RESOURCES MANAGEMENT DIVISION.
GRIFFITH, L. CRISTINA	SENIOR DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES MANAGEMENT DIVISION.
SIMPSON, GARY M	CHIEF EXECUTIVE OFFICER/ASSISTANT DIRECTOR, FEDERAL PRISON INDUSTRIES.
SIBAL, PHILIP J	SENIOR DEPUTY DIRECTOR, REENTRY SERVICES DIVISION.
YEICH, KENNETH	SENIOR DEPUTY ASSISTANT DIRECTOR, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
GROSS, BRADLEY T	ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.
BURNS, LONERYL C	SENIOR DEPUTY ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.
SCARANTINO, THOMAS J	SENIOR DEPUTY ASSISTANT DIRECTOR, CORRECTIONAL PROGRAMS DIVISION.
LARA, FRANCISCO	ASSISTANT DIRECTOR, CORRECTIONAL PROGRAMS DIVISION.
AYERS, NANCY	CHIEF, OFFICE OF PUBLIC AFFAIRS.
DUNBAR, ANGELA	REGIONAL DIRECTOR, MIDDLE ATLANTIC REGION.
KIZZIAH, GREGORY	WARDEN, USP, BIG SAND, KY.
GARRETT, JUDITH	ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
HURWITZ, HUGH J	SENIOR DEPUTY ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
THOMPSON, SONYA	SENIOR DEPUTY ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
SCHULT, DEBORAH G	ASSISTANT DIRECTOR, HEALTH SERVICES DIVISION.
HYLE, KENNETH	SENIOR DEPUTY GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL.
KENNEY, KATHLEEN M	ASSISTANT DIRECTOR, OFFICE OF GENERAL COUNSEL.
KENDALL, PAUL F	SENIOR COUNSEL, OFFICE OF GENERAL COUNSEL.
RODGERS, RONALD L	SENIOR COUNSEL, OFFICE OF GENERAL COUNSEL.
WILLS, JAMES C	SENIOR DEPUTY COUNSEL, OFFICE OF GENERAL COUNSEL.
COSBY, JIMMY L	DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.
BROWN JR., ROBERT M	SENIOR DEPUTY DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.
DUNBAR, ANGELA P	ASSISTANT DIRECTOR, CORRECTIONAL PROGRAMS DIVISION.
FEATHER, MARION M	ASSISTANT DIRECTOR, RE-ENTRY SERVICES DIVISION.
BUTTERFIELD, PATTI	SENIOR DEPUTY ASSISTANT DIRECTOR, RE-ENTRY SERVICES DIVISION.
CARAWAY, JOHN	REGIONAL DIRECTOR, MIDDLE ATLANTIC REGION.
QUINTANA, FRANCISCO J	WARDEN, FMC, LEXINGTON, KY.
BARNHART, JONATHAN	WARDEN FCI, MANCHESTER, KY.
ORMOND, JOHNATHAN R	WARDEN, USP, MCCREARY, KY.
STEWART, TIMOTHY S	WARDEN, FCI, CUMBERLAND, MD.
HOLLAND, JAMES C	COMPLEX WARDEN—FMC, FCC, BUTNER, NC.
MORA, STEVE B	ASSISTANT DIRECTOR, PROGRAM REVIEW DIVISION.
LAYER, PAUL M	SENIOR DEPUTY ASSISTANT DIRECTOR, PROGRAM REVIEW DIVISION.
RASKIN, MINA	SENIOR DEPUTY ASSISTANT DIRECTOR, PROGRAMS REVIEW DIVISION.
FINLEY, SCOTT	SENIOR DEPUTY ASSISTANT DIRECTOR, RE-ENTRY SERVICES DIVISION.
BATTS, MYRON T	WARDEN FCI, MEMPHIS, TN.
WILSON, ERIC D	COMPLEX WARDEN, FCC, PETERSBURG, VA.
SAAD, JENNIFER S	WARDEN, FCI, GILMER, WV.
YOUNG, DAVID L	WARDEN, FCI, BECKLEY, WV.
COAKLEY, JOSEPH D	WARDEN, USP, HAZELTON, WV.
RAVELL, SARA M	REGIONAL DIRECTOR, NORTH CENTRAL REGION.
MOSES, STANCIL	WARDEN, USP, FCC, FLORENCE, CO.
FOX, JACK W	COMPLEX WARDEN—ADX, FCC, FLORENCE, CO.
WERLICH, THOMAS	WARDEN, FCI, GREENVILLE, IL.
KALLIS, STEVEN	WARDEN, FCI, PEKIN, IL.
HUDSON JR., DONALD J	WARDEN, FCI, THOMSON, IL.
KRUEGER, JEFFREY	COMPLEX WARDEN—USP, FCC, TERRE HAUTE, IN.
ENGLISH, NICOLE	WARDEN, USP, LEAVENWORTH, KS.
PAUL, DAVID	WARDEN, FMC, ROCHESTER, MN.
SANDERS, LINDA L	WARDEN USMCFP, SPRINGFIELD, MO.
CARVAJAL, MICHAEL D	REGIONAL DIRECTOR, NORTHEAST REGION.
TATUM, ESKER L	WARDEN, MCC, NEW YORK, NY.
VON BLANCHENSEE, BAR	WARDEN, FCI, OTISVILLE, NY.
YOUNG, SCOTT	WARDEN, FCI, FAIRTON, NJ.
ORTIZ, DAVID	WARDEN, FCI, FORT DIX, NJ.
QUAY, HERMAN	WARDEN, MDC, BROOKLYN, NY.
ODDO, LEONARD	WARDEN, FCC, ALLENWOOD, PA.
BALTAZAR JR., JUAN	WARDEN, USP, CANAAN, PA.
EBBERT, DAVID W	WARDEN USP, LEWISBURG, PA.
ZUNIGA, RAFAEL	WARDEN, FCI, MCKEAN, PA.
PERDUE, RUSSELL A	WARDEN, FCI, SCHUYLKILL, PA.

2017 FEDERAL REGISTER—Continued

Name	Position title
CARAWAY, JOHN	REGIONAL DIRECTOR, SOUTH CENTRAL REGION.
KELLER, JEFFREY A	REGIONAL DIRECTOR SOUTHEAST REGION.
BEASLEY, GENE	COMPLEX WARDEN, FCC, FOREST CITY, AR.
FOX, JOHN B	WARDEN, FTC, OKLAHOMA CITY, OK.
LARA, FRANCISCO J	COMPLEX WARDEN—USP, FCC, BEAUMONT, TX.
UPTON, JODY R	WARDEN, FMC, CARSWELL, TX.
HANSON, RALPH	WARDEN, FCI, THREE RIVERS, TX.
CHANDLER, RODNEY W	WARDEN, FCI, FORT WORTH, TX.
MARBERRY, HELEN J	REGIONAL DIRECTOR, SOUTHEAST REGION.
ROMERO, BILLY	WARDEN, FCI, TALLADEGA, AL.
JARVIS, TAMYRA	COMPLEX WARDEN—USP2, FCC, COLEMAN, FL.
LOCKETT, CHARLES L	WARDEN—USP, COLEMAN 1, COLEMAN, FL.
BLACKMON, BRUCE E	WARDEN, FCI MARIANNA, FL.
RAMIREZ, GLOVANNI	WARDEN, FDC, MIAMI, FL.
HARMON, DARRIN	WARDEN, USP, ATLANTA, GA.
FLOURNOY JR., JOHN V	WARDEN, FCI, JESUP, GA.
MARTIN, MARK S	COMPLEX WARDEN, FCC, YAZOO CITY, MS.
BRAGG, M. TRAVIS	WARDEN, FCI, BENNETTSVILLE, SC.
MOSLEY, BONITA S	WARDEN, FCI, EDGEFIELD, SC.
ANTONELLI, BRYAN	WARDEN FCI, WILLIAMSBURG, SC.
VAZQUEZ, NORBAL	WARDEN MDC, GUAYNABO, PUERTO RICO.
MITCHELL, MARY M	REGIONAL DIRECTOR, WESTERN REGION.
LOTHROP, WILLIAMS	WARDEN, FCI, PHOENIX, AZ.
SHARTLE, JOHN T	COMPLEX WARDEN—USP, FCC, TUSCON, AZ.
LANGFORD, STEPHEN A	COMPLEX WARDEN FCC, LOMPOC, CA.
MILUSNIC, LOUIS J	WARDEN, MDC. LOS ANGELES, CA.
SHINN, DAVID C	COMPLEX WARDEN, FCC, VICTORVILLE, CA.
MATEVOUSIAN, ANDRE V	WARDEN, USP, ATWATER, CA.
PLUMLEY, BRUCE	WARDEN, FCI, MENDOTA, CA.
IVES, RICHARD B	WARDEN FCI, SHERIDAN, OR.
Civil Division—CIV	
READLER, CHAD	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
ANDERSON, DANIEL R	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
MAO, ANDY	DEPTY DIRECTOR, FRAUD SECTION.
FLENTJE, AUGUST	SPECIAL COUNSEL TO THE ASSISTANT ATTORNEY GENERAL.
LANGSAM, STEPANIE	INTERIM ADMINISTRATOR FOR FUNDS, OFFICE OF THE SPECIAL MASTER FOR THE SEPT 11 VICTIM COMPENSATION FUND.
GRIFFITHS, JOHN R	BRANCH DIRECTOR, FEDERAL PROGRAMS.
COPPOLINO, ANTHONY J	DEPUTY BRANCH DIRECTOR.
DAVIDSON, JEANNE E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
FARGO, JOHN J	DIRECTOR, IP, COMMERCIAL LITIGATION BRANCH.
BENSON, BARRY F	DIRECTOR, AVIATION AND ADMIRALTY SECTION.
BHATTACHARYA, RUPA	SPECIAL MASTER FOR THE SEPTEMBER 11 VICTIM COMPENSATION FUND (DUAL).
REEVES, CATHERINE	DEPTY DIRECTOR, TORTS/CSTL—VACCINE.
GLYNN, JOHN PATRICK	DIRECTOR, ENVIRONMENTAL TORT LITIGATION SECTION.
EMERSON, CATHERINE V	DIRECTOR, OFFICE OF MANAGEMENT PROGRAMS.
PEREZ, LOUIS E	DEPUTY DIRECTOR, (OPS), OFFICE OF IMMIGRATION LITIGATION, DISTRICT COURT.
PEACHEY, WILLIAM C	DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, DISTRICT COURT.
WARD, THOMAS	DEPUTY ASSISTANT ATTORNEY GENERAL—TORTS.
GRANSTON, MICHAEL D	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
MANHARDT, KIRK	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, CORPORATE AND FINANCIAL LITIGATION.
DINTZER, KENNETH	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, NATIONAL COURTS.
YAVELBERG, JAMIE ANN	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH, FRAUD SECTION.
HAUSKEN, GARY L	DEPUTY DIRECTOR, INTELLECTUAL PROPERTY/COMMERCIAL LITIGATION BRANCH.
BOLDEN, SCOTT	DEPUTY DIRECTOR, INTELLECTUAL PROPERTY.
HUNT, JOSEPH H	BRANCH DIRECTOR.
DAVIS, ETHAN	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
STEGER, JEFFREY	COUNSEL, CONSUMER PROTECTION BRANCH.
GOLDBERG, RICHARD	COUNSEL, CONSUMER PROTECTION BRANCH.
SHAPIRO, ELIZABETH J	DEPUTY BRANCH DIRECTOR.
COLLETTE, MATTHEW	DEPUTY DIRECTOR, APPELLATE STAFF.
KIRSCHMAN JR., ROBERT E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
HOCKEY, MARTIN	DEPUTY DIRECTOR, NATIONAL COURTS COMMERCIAL LITIGATION BRANCH.
LETTER, DOUGLAS	DIRECTOR, APPELLATE STAFF.
RAAB, MICHAEL APPELLATE	LITIGATION COUNSEL STERN, MARK B. APPELLATE LITIGATION COUNSEL.
TOUHEY, JR., JAMES G	DIRECTOR, FEDERAL TORT CLAIMS ACT SECTION.
LIEBER, SHEILA M	DEPUTY BRANCH DIRECTOR.
EINERSON, ROGER	SENIOR LEVEL TRIAL ATTORNEY.
BUCKINGHAM, STEPHEN J	SENIOR LEVEL TRIAL ATTORNEY.

2017 FEDERAL REGISTER—Continued

Name	Position title
MOLINA, JR., ERNESTO	DEPUTY DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
MARTIN, DANA	DEPUTY DIRECTOR, APPELLATE BRANCH.
MCCONNELL, DAVID M.	DIRECTOR, OFFICE OF IMMIGRATIO LITIGATION, APPELLATE SECTION.
MCINTOSH, SCOTT R	SENIOR LEVEL APELLATE COUNSEL.
BROWN, WALTER W	SENIOR PATENT ATTORNEY.
CARNEY, CHRISTOPHER	SENIOR TRIAL ATTORNEY, NAT COURTS/COMMERCIAL LITIGATION BRANCH.
O'MALLEY, BARBARA B	SPECIAL LITIGATION COUNSEL, AVIATION AND ADMIRALTY SECTION.
RICKETTS, JENNIFER D	BRANCH DIRECTOR.
FURMAN, JILL	DEPUTY DIRECTOR, CONSUMER PROTECTION BRANCH.
SCHUMATE, BRETT	DEPUTY ASSISTANT ATTORNEY GENERAL.
KISOR, COLIN	SENIOR TRIAL ATTORNEY, DISTRICT COURT.
FREEMAN, MARK	SENIOR LEVEL TRIAL ATTORNEY, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
KEENER, DONALD	SENIOR LEVEL TRIAL ATTORNEY, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
D'ALESSIO, JR., C.S	SENIOR LEVEL TRIAL ATTORNEY, CONSTITUTIONAL SECTION.
LINDEMANN, MICHAEL P	SENIOR TRIAL ATTORNEY (NATIONAL SECURITY).
QUINN, MICHAEL J	SENIOR TRIAL ATTORNEY.
GILLIGAN, JAMES J	SPECIAL LITIGATION COUNSEL.
HARVEY, RUTH A	DIRECTOR, COMMERCIAL LITIGATION BRANCH, CORPORATE AND FINANCIAL LITIGATION.
LATOUR, MICHELLE	DEPUTY DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
LIN, JEAN	SENIOR LEVEL TRIAL ATTORNEY, COMPLEX LITIGATION.
Civil Rights Division—CRT	
GORE, JOHN	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
MOOSSY, ROBERT J	DEPUTY ASSISTANT ATTORNEY GENERAL.
FITZGERALD, PAIGE	PRINCIPAL DEPUTY CHIEF, CRIMINAL SECTION.
KESSLER, TAMARA	CHIEF, CRIMINAL SECTION.
SIMMONS, SHAHEENA	CHIEF, EDUCATIONAL OPPORTUNITIES SECTION.
FRIEL, GREGORY	DEPUTY ASSISTANT ATTORNEY GENERAL.
LEVITT, JUSTIN	DEPUTY ASSISTANT ATTORNEY GENERAL.
HOWE, SUSAN E	EXECUTIVE OFFICER.
TOOMEY, KATHLEEN	DIRECTOR OF OPERATIONAL MANAGEMENT.
GINSBURG, JESSICA A	COUNSEL TO THE ASSISTANT ATTORNEY GENERAL.
KENNEBREW, DELORA	CHIEF, EMPLOYMENT LITIGATION SECTION.
MAJEED, SAMEENA S	CHIEF, HOUSING AND CIVIL ENFORCEMENT SECTION.
SEWARD, JON PRINCIPAL	DEPUTY CHIEF, HOUSING AND CIVIL ENFORCEMENT SECTION.
JANG, DEEANA L	CHIEF, FEDERAL COORDINATION AND COMPLIANCE SECTION.
HERREN JR., THOMAS C	CHIEF, VOTING SECTION.
WERTZ, REBECCA	PRINCIPAL DEPUTY CHIEF, VOTING SECTION.
FLYNN, DIANA KATHERINE	CHIEF, APPELLATE SECTION.
MCGOWAN, SHARON M	PRINCIPAL DEPUTY CHIEF, APPELLATE SECTION.
BOND, REBECCA B	CHIEF, DISABILITY RIGHTS SECTION.
EMBREY, DIANA	CHIEF, EMPLOYMENT COUNSEL.
FORAN, SHEILA	SPECIAL LEGAL COUNSEL, DISABILITY RIGHTS SECTION.
BLOOMBERG, MARK	SPECIAL LEGAL COUNSEL.
RUISANCHEZ, ALBERTO	DEPUTY SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.
PRESTON, JUDITH L	PRINCIPAL DEPUTY CHIEF, SPECIAL LITIGATION SECTION.
RAISH, ANNE	PRINCIPAL DEPUTY CHIEF, DISABILITY RIGHTS SECTION.
WOODARD, KAREN	PRINCIPAL DEPUTY CHIEF, EMPLOYMENT LITIGATION SECTION.
ROSENBAUM, STEVEN H	CHIEF, SPECIAL LITIGATION SECTION.
Criminal Division—CRM	
BLANCO, KENNETH A	DEPUTY ASSISTANT ATTORNEY GENERAL.
SWARTZ, BRUCE CARLTON	DEPUTY ASSISTANT ATTORNEY GENERAL.
AINSWORTH, PETER J	SENIOR COUNSEL, OFFICE OF OVERSEAS PROSECUTORIAL DEVELOPMENT ASSISTANCE AND TRAINING.
CARROLL, OVIE	DIRECTOR, CYBERCRIME LABORATORY, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
RYBICKI, DAVID	DEPUTY ASSISTANT ATTORNEY GENERAL.
ALEXANDRE, CARL	COUNSELOR FOR TRANSNATIONAL ORGANIZED CRIME & INTL AFFAIRS.
ARY, VAUGHN	DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
HO-GONZALES, WILLIAM	DEPUTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
TOLEDO, RANDY	DEPTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
CONNOR, DEBORAH L	DEPUTY CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
HARBIN, HARRY	SENIOR LEGAL COUNSEL FOR ASSET FORFEITURE AND MONEY LAUNDERING.
CARWILE, P. KEVIN	CHIEF, CAPITAL CASE UNIT.
DAY, M. KENDALL	CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
DOWNING, RICHARD W	DEPUTY CHIEF, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
EHRENSTAMM, FAYE	DIRECTOR, OPDAT.
GOODMAN, NINA	SENIOR COUNSEL FOR APPEALS.
GROCKI, STEVEN J	CHIEF, CHILD EXPLOITATION AND OBSCENITY SECTION.

2017 FEDERAL REGISTER—Continued

Name	Position title
HODGE, JENNIFER A.H	DEPUTY DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
HULSER, RAYMOND	CHIEF, PUBLIC INTEGRITY SECTION.
JAFFE, DAVID	DEPUTY CHIEF, ORGANIZED CRIME AND GANG SECTION.
JONES, JOSEPH M	SENIOR COUNSEL FOR INTERNATIONAL DEVELOPMENT AND TRAINING.
MCFADDEN, TREVOR	DEPUTY ASSISTANT ATTORNEY GENERAL.
KING, DAMON A	DEPUTY CHIEF, CHILD EXPLOITATION AND OBSCENITY SECTION.
LYNCH JR., JOHN T	CHIEF, COMPUTER CRIME, AND INTELLECTUAL PROPERTY SECTION.
MCHENRY, TERESA L	CHIEF, HUMAN RIGHTS AND SPECIAL PROSECUTIONS SECTION.
MELTON, TRACY	EXECUTIVE OFFICER.
OLMSTED, MICHAEL	SENIOR JUSTICE FOR THE EUROPEAN UNION AND INTERNATIONAL CRIMINAL MATTERS.
PAINTER, CHRISTOPHER M	SENIOR COUNSEL FOR CYBERCRIME.
RAABE, WAYNE C	DEPUTY CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
RODRIGUEZ, MARY D	DEPUTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
ROSENBAUM, ELI M	DIRECTOR, HUMAN RIGHTS ENFORCEMENT STRATEGY AND POLICY.
STEMLER, PATTY MERKAMP	CHIEF, APPELLATE SECTION.
TIROL, ANNALOU	DEPUTY CHIEF, PUBLIC INTEGRITY SECTION.
WEISSMANN, ANDREW	CHIEF, FRAUD SECTION.
MOSER, SANDRA	DEPUTY CHIEF, FRAUD SETION.
WROBLEWSKI, JONATHAN J	DIRECTOR, OFFICE OF POLICY AND LEGISLATION.
WYATT, ARTHUR G	CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
WYDERKO, JOSEPH	DEPUTY CHIEF, APPELLATE SECTION.
Environmental and Natural Resources Division—ENRD	
WOOD, JEFF	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
WILLIAMS, JEAN E	DEPUTY ASSISTANT ATTORNEY GENERAL.
GELBER, BRUCE S	DEPUTY ASSISTANT ATTORNEY GENERAL.
ALEXANDER, S. CRAIG	CHIEF, INDIAN RESOURCES SECTION.
BARSKY, SETH	CHIEF, WILDLIFE AND MARINE RESOURCES.
COLLIER, ANDREW	EXECUTIVE OFFICER.
DOUGLAS, NATHANIEL	DEPUTY SECTION CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
FERGUSON, CYNTHIA	SENIOR LITIGATOR, ENVIRONMENTAL JUSTICE.
GETTE, JAMES	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
GOLDFRANK, ANDREW M	CHIEF, LAND ACQUISITION SECTION.
GRANT, ERIC	DEPUTY ASSISTANT ATTORNEY GENERAL.
GRISHAW, LETITIA J	CHIEF, ENVIRONMENTAL DEFENSE SECTION.
HARRIS, DEBORAH	CHIEF, ENVIRONMENTAL CRIMES SECTION.
HOANG, ANTHONY P	SENIOR LITIGATION COUNSEL, NATURAL RESOURCES.
KILBOURNE, JAMES C	CHIEF, APPELLATE SECTION.
MAHAN, ELLEN M	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MARIANI, THOMAS	CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
DWORKIN, KAREN	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MERGEN, ANDREW	DEPUTY CHIEF, APPELLATE SECTION.
PASSARELLI, EDWARD	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
POUX,JOSEPH	DEPUTY CHIEF, ENVIRONMENTAL CRIMES SECTION.
RUSSELL, LISA L	CHIEF, NATURAL RESOURCES SECTION.
HIMMELCHOCH, SARAH	SENIOR ATTORNEY FOR E-DISCOVERY.
BRIGHTBILL, JONATHAN	DEPUTY ASSISTANT ATTORNEY GENERAL.
SHILTON, DAVID	SENIOR LITIGATION COUNSEL.
SINGER, FRANK	SENIOR LITIGATION COUNSEL.
STEWART, HOWARD P	SENIOR LITIGATION COUNSEL.
TENENBAUM, ALAN S	SENIOR LITIGATION COUNSEL.
VADEN, CHRISTOPHER S	DEPUTY CHIEF, ENVIRONMENTAL DEFENSE SECTION.
WARDZINSKI, KAREN M	CHIEF, LAW AND POLICY SECTION.
Executive Office for Immigration Review—EOIR	
ADKINS-BLANCH, CHARLES K	VICE CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
CLARK, MOLLY K	ATTORNEY EXAMINER.
COLE, PATRICIA A	ATTORNEY EXAMINER.
CREPPY, MICHAEL	ATTORNEY EXAMINER.
MANN, ANA	ATTORNEY EXAMINER.
GRANT, EDWARD R	ATTORNEY EXAMINER.
GREER, ANNE J	ATTORNEY EXAMINER.
GUENDELSBERGER, JOHN W	ATTORNEY EXAMINER.
JORDAN, WYEVETRA	ASSISTANT DIRECTOR FOR ADMINISTRATION.
LUMHO, KEKOA (DETAIL)	CHIEF INFORMATION OFFICER.
KELLER, MARY BETH	CHIEF IMMIGRATION JUDGE.
KING, JEAN	GENERAL COUNSEL.
LIEBOWITZ, ELLEN	ATTORNEY EXAMINER.
KELLY, EDWARD	ATTORNEY EXAMINER.
MALPHRUS, GARRY D	ATTORNEY EXAMINER.

2017 FEDERAL REGISTER—Continued

Name	Position title
MCGOINGS, MICHAEL	DEPUTY CHIEF, IMMIGRATION JUDGE.
MULLANE, HUGH G	ATTORNEY EXAMINER.
NEAL, DAVID	CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
O'CONNOR, BLAIR	ATTORNEY EXAMINER.
PAULEY, ROGER ANDREW	ATTORNEY EXAMINER.
STUTMAN, ROBIN M	CHIEF ADMINISTRATIVE HEARING OFFICER.
WENDTLAND, LINDA S	ATTORNEY EXAMINER.
Executive Office for Organized Crime Drug Enforcement Task Forces—OCDETF	
OHR, BRUCE G	DIRECTOR, OCDETF AND ASSOCIATE DEPUTY ATTORNEY GENERAL.
PADDEN, THOMAS W	DEPUTY DIRECTOR, OCDETF.
KELLY, THOMAS J	DIRECTOR, FUSION CENTER.
Executive Office for U.S. Attorneys—EOUSA	
WILKINSON, ROBERT "MONTY"	DIRECTOR.
BELL, SUZANNE L	DEPUTY DIRECTOR.
PELLETIER, JONATHAN	CHIEF FINANCIAL OFFICER.
FLESHMAN, JAMES MARK	CHIEF INFORMATION OFFICER.
CHANDLER, CAMERON G	ASSOCIATE DIRECTOR, OFFICE OF LEGAL EDUCATION.
FLINN, SHAWN	CHIEF HUMAN RESOURCES OFFICER.
MACKLIN, JAMES	GENERAL COUNSEL.
SMITH, DAVID L	COUNSEL FOR LEGAL INITIATIVES.
VILLEGAS, DANIEL A	COUNSEL, LEGAL PROGAMS AND POLICY.
WONG, NORMAN Y	DEPUTY DIRECTOR AND COUNSEL TO THE DIRECTOR.
Executive Office for U.S. Trustees—EOUST	
WHITE III, CLIFFORD J	DIRECTOR.
ELLIOTT, RAMONA D	DEPUTY DIRECTOR, GENERAL COUNSEL.
Justice Management Division—JMD	
LOFTHUS, LEE J	ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION.
SANTANGELO, MARI BARR	DEPUTY ASSISTANT ATTORNEY GENERAL FOR HUMAN RESOURCES AND ADMINISTRATION (CHCO).
LAMARY, MARY	DIRECTOR, HUMAN RESOURCES.
ALLEN, MICHAEL H	DEPUTY ASSISTANT ATTORNEY GENERAL FOR POLICY, MANAGEMENT, AND PLANNING, AND CHIEF OF STAFF.
LAURIA JOLENE A	DEPUTY ASSISTANT ATTORNEY GENERAL/CONTROLLER.
KLIMAVICZ, JOSEPH	DEPUTY ASSISTANT ATTORNEY GENERAL FOR INFORMATION RECOURCES MANAGEMENT AND CHIEF INFORMATION OFFICER.
GARY, ARTHUR	GENERAL COUNSEL.
SHAW, CYNTHIA	DIRECTOR, DEPARTMENTAL ETHICS OFFICE.
SELWESKI, MARK L	DIRECTOR, PROCUREMENT SERVICES STAFF.
ALVAREZ, CHRISTOPHER C	DIRECTOR, FINANCE STAFF.
DEELEY, KEVIN	DEPUTY CHIEF INFORMATION OFFICER.
FRONE, JAMILA	DIRECTOR, OFFICE OF ATTORNEY RECRUITMENT AND MANAGEMENT.
DUNLAP, JAMES L	DIRECTOR, SECURITY AND EMERGENCY PLANNING STAFF.
SNELL, ROBERT	DIRECTOR, FACILITIES AND ADMINISTRATIVE SERVICES STAFF.
FELDT, DENNIS G	DIRECTOR, LIBRARY STAFF.
RAYMOND, JOHN	DIRECTOR, IT POLICY AND PLANNING STAFF.
SELWESKI, MARK L	DIRECTOR, PROCUREMENT SERVICES STAFF.
DAUPHIN, DENNIS E	DIRECTOR, DEBT COLLECTION MANAGEMENT STAFF.
ARNOLD, KENNETH	DIRECTOR, ASSET FORFEITURE MANAGEMENT STAFF.
PULLEN, JEFFREY	SENIOR ADVISOR FOR FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY.
FUNSTON, ROBIN S	DIRECTOR, BUDGET STAFF.
ATTUCKS, MARK	DEPUTY DIRECTOR, BUDGET STAFF, OPERATIONS AND FUNDS CONTROL.
KLEPPINGER, ERIC D	DEPUTY DIRECTOR, BUDGET STAFF, OPERATIONS AND FUNDS CONTROL.
ROGERS, MELINDA	DIRECTOR, CYBERSECURITY SERVICES STAFF.
MACKERT, TODD	DEPUTY STAFF DIRECTOR, CYBER SECURITY SERVICES STAFF.
MCCRAE, DANIEL	DIRECTOR, SERVICE DELIVERY STAFF.
ZIMMER, DAWN	DEPUTY DIRECTOR, SERVICE DELIVERY STAFF.
BEWTRA, ANEET K	CHIEF TECHNOLOGY OFFICER.
RUBIN, DAVID	DIRECTOR, SERVICE ENGINEERING STAFF.
RODGERS, JANICE M	DIRECTOR, DEPARTMENTAL ETHICS OFFICE.
TOSCANO JR., RICHARD A	DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY STAFF.
MCCONKEY, MILTON ?	SENIOR ADVISOR.
COOK, TERENCE L	SENIOR ADVISOR.
ROPER, MATTHEW	DEPUTY DIRECTOR (AUDITING), FINANCE STAFF.

2017 FEDERAL REGISTER—Continued

Name	Position title
National Security Division—NSD	
ATKINSON, MICHAEL	SENIOR COUNSEL TO THE AAG.
HICKEY, ADAM	DEPUTY ASSISTANT ATTORNEY GENERAL.
WIEGMANN, JOHN B	DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LAW AND POLICY.
TOSCAS, GEORGE Z	DEPUTY ASSISTANT ATTORNEY GENERAL (COUNTERESPIONAGE-COUNTERTERRORISM).
JAYARAM, SANCHITHA	CHIEF, FOREIGN INVESTMENT REVIEW STAFF.
DUNNE, STEVEN M	CHIEF, APPELLATE UNIT.
EVANS, STUART	DEPUTY ASSISTANT ATTORNEY GENERAL, FISA OPERATINS AND INTELLIGENCE OVERSIGHT.
JENKINS, MARK A	EXECUTIVE OFFICER.
WEINSHEIMER, G. BRADLEY	DIRECTOR OF RISK MANAGEMENT AND COUNSELOR.
KEEGAN, MICHAEL	DEPUTY CHIEF, COUNTERTERRORISM SECTION.
KENNEDY, J. LIONEL	SPECIAL COUNSEL FOR NATIONAL SECURITY.
MULLANEY, MICHAEL J	CHIEF, COUNTERTERRORISM SECTION.
O'CONNOR, KEVIN	CHIEF, OVERSIGHT SECTION.
SANZ-REXACH, GABRIEL	CHIEF, OPERATIONS SECTION.
HARDEE, CHRISTOPHER	CHIEF, POLICY—OFFICE OF LAW AND POLICY.
LAUFMAN, DAVID	CHIEF, COUNTERINTELLIGENCE, EXPORT CONTROL AND ECONOMIC ESPIONAGE.
Office of Community Oriented Policing Services—COPS	
WASHINGTON, RUSSELL C	PRINCIPAL DEPUTY DIRECTOR.
BROWN-CUTLAR, SHANETTA	SENIOR ADVISOR TO THE DIRECTOR.
Office of Information Policy—OIP	
PUSTAY, MELANIE ANN	DIRECTOR.
Office of the Inspector General—OIG	
STORCH, ROBERT	DEPUTY INSPECTOR GENERAL.
MALMSTROM, JASON R	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
BLIER, WILLIAM M	GENERAL COUNSEL.
LEE, RENE	SENIOR COUNSEL TO THE INSPECTOR GENERAL.
BECKHARD, DANIEL C	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
O'NEILL, MICHAEL SEAN	DEPUTY ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
PELLETIER, NINA S	ASSISTANT INSPECTOR GENERAL FOR EVALUATION AND INSPECTIONS.
HAYES, MARK L	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT.
JOHNSON, ERIC A	ASSISTANT INSPECTOR GENERAL INVESTIGATIONS.
CHAWAGA, MARGARET	DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS.
PETERS, GREGORY T	ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
LOWELL, CYNTHIA	DEPUTY ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
MITZELFELD, JAMES A	SENIOR COUNSEL TO THE AIG/INV.
RATON, MITCH	CHIEF INNOVATION OFFICER.
SUMNER, PATRICIA	SENIOR COUNSEL TO THE ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
LAVINSKY, JOHN	SENIOR COUNSEL TO THE IG.
Office of Justice Programs—OJP	
HANSON, ALAN	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
HENNEBERG, MAUREEN A	DEPUTY ASSISTANT ATTORNEY GENERAL OPERATIONS MANAGEMENT.
GARRY, EILEEN M	DEPUTY DIRECTOR FOR PLANNING, BUREAU OF JUSTICE ASSISTANCE.
TRAUTMAN, TRACEY	DEPUTY DIRECTOR FOR PROGRAMS, BUREAU OF JUSTICE ASSISTANCE.
FEUCHT, THOMAS E	EXECUTIVE SCIENCE ADVISOR, NATIONAL INSTITUTE OF JUSTICE.
SPIVAK, HOWARD	PRINCIPAL DEPUTY DIRECTOR, NATIONAL INSTITUTE OF JUSTICE.
MARTIN, RALPH	DIRECTOR, OFFICE OF AUDIT, ASSESSMENT, AND MANAGEMENT.
MERKLE, PHILIP	DIRECTOR, OFFICE OF ADMINISTRATION.
MADAN, RAFAEL A	GENERAL COUNSEL.
MAHONEY, KRISTEN	DEPUTY DIRECTOR, POLICY MANAGEMENT, BUREAU OF JUSTICE ASSISTANCE.
ROBERTS, MARILYN M	DEPUTY DIRECTOR, OFFICE FOR VICTIMS OF CRIME.
MULROW, JERI	DIRECTOR, BUREAU OF JUSTICE STATISTICS.
SOLOMON, AMY	DIRECTOR FOR POLICY
MCGRATH, BRIAN	CHIEF INFORMATION OFFICER.
BENDA, BONNIE LEIGH	CHIEF FINANCIAL OFFICER.
ATSATT, MARILYNN B	DEPUTY CHIEF FINANCIAL OFFICER.
THOMAS, LATHIKA (MARY)	DIRECTOR FOR POLICY.
BECK, ALLEN J	SENIOR STATISTICIAN.
DARDEN, SILAS	DIRECTOR, OFFICE OF COMMUNICATIONS.
JONES, CHYRL	DEPUTY ADMINISTRATOR FOR PROGRAMS, OJJDP.
Office of Legal Counsel—OLC	
GANNON, CURTIS	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL OF LEGAL COUNSEL.

2017 FEDERAL REGISTER—Continued

Name	Position title
KOFFSKY, DANIEL L	DEPUTY ASSISTANT ATTORNEY GENERAL.
WHITAKER, HENRY	DEPUTY ASSISTANT ATTORNEY GENERAL.
HARRIS, SARAH	DEPUTY ASSISTANT ATTORNEY GENERAL.
COLBORN, PAUL P	SPECIAL COUNSEL.
HART, ROSEMARY A	SPECIAL COUNSEL.
SINGDAHLSEN, JEFFREY P	SENIOR COUNSEL.
STEWART, SCOTT	COUNSEL.
Office of Legal Policy—OLP	
NEWMAN, RYAN	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
TALLEY, BRETT	DEPUTY ASSISTANT ATTORNEY GENERAL.
JONES, KEVIN ROBERT	DEPUTY ASSISTANT ATTORNEY GENERAL.
THIEMANN, ROBYN L	DEPUTY ASSISTANT ATTORNEY GENERAL.
ESCALONA, PRIM	DEPUTY ASSISTANT ATTORNEY GENERAL.
KARP, DAVID J	SENIOR COUNSEL.
JACOBS, JOANNA	SENIOR COUNSEL FOR ALTERNATIVE DISPUTE RESOLUTION.
Office of Legislative Affairs—OLA	
RAMER, SAMUEL	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
LASSETER, DAVID	DEPUTY ASSISTANT ATTORNEY GENERAL.
Office of Professional Responsibility—OPR	
ASHTON, ROBIN	COUNSEL FOR PROFESSIONAL RESPONSIBILITY.
RAGSDALE, JEFFREY	DEPUTY COUNSEL ON PROFESSIONAL RESPONSIBILITY.
BIRNEY, WILLIAM	SENIOR ASSOCIATE COUNSEL.
HURLEY, RAYMOND	SENIOR ASSOCIATE COUNSEL.
Office of Public Affairs—PAO	
ISGUR FLORES, SARAH	DIRECTOR.
Office of Tribal Justice—OTJ	
TOULOU, TRACY S	DIRECTOR, OFFICE OF TRIBAL JUSTICE.
EDERHEIMER, JOSHUA	SENIOR ADVISOR.
Professional Responsibility Advisory Office—PRAO	
LUDWIG, STACY	DIRECTOR.
Tax Division—TAX	
HUBBERT, DAVID A	DEPUTY ASSISTANT ATTORNEY GENERAL.
BRUFFY, ROBERT	EXECUTIVE OFFICER.
BALLWEG, MITCHELL	COUNSELOR TO THE DEPUTY ASSISTANT ATTORNEY GENERAL FOR STRATEGIC TAX ENFORCEMENT.
WSZALEK, LARRY	CHIEF, CRIMINAL ENFORCEMENT SECTION, WESTERN REGION.
DALY, MARK	SENIOR TRIAL ATTORNEY.
DAVIS, NANETTE	SENIOR TRIAL ATTORNEY.
DONOHUE, DENNIS M	SENIOR LITIGATION COUNSEL.
PINCUS, DAVID	CHIEF, COURT OF FEDERAL CLAIMS SECTION.
GOLDBERG, STUART	SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
HAGLEY, JUDITH	SENIOR TRIAL ATTORNEY.
HARTT III, GROVER	CHIEF, CIVIL TRIAL SECTION SOUTHWESTERN REGION.
IHLO, JENNIFER	SENIOR TRIAL ATTORNEY.
CLARKE, RUSSELL SCOTT	CHIEF, CIVIL TRIAL SECTION, CENTRAL REGION.
JOHNSON, CORY	SENIOR TRIAL ATTORNEY.
KEARNS, MICHAEL J	CHIEF, CIVIL TRIAL SECTION, SOUTHERN REGION.
LARSON, KARI	SENIOR TRIAL ATTORNEY.
LINDQUIST III, JOHN A	SENIOR TRIAL ATTORNEY.
MELAND, DEBORAH	CHIEF, CIVIL TRIAL SECTION EASTERN REGION.
REID, ANN C	CHIEF, OFFICE OF REVIEW.
MULLARKEY, DANIEL P	CHIEF, CIVIL TRIAL SECTION, NORTHERN REGION.
PAGUNI, ROSEMARY E	CHIEF, CRIMINAL ENFORCEMENT SECTION, NORTHERN REGION.
ROTHENBERG, GILBERT S	CHIEF, APPELLATE SECTION.
CLARK, THOMAS J	DEPUTY CHIEF, APPELLATE SECTION.
SALAD, BRUCE M	CHIEF, CRIMINAL ENFORCEMENT SECTION, SOUTHERN REGION.
LYONS, ROBERT	CHIEF, CRIMINAL APPEALS AND TAX ENFORCEMENT POLICY SECTION.
SAWYER, THOMAS	SENIOR TRIAL ATTORNEY.
SERGI, JOSEPH A	SENIOR TRIAL ATTORNEY.

2017 FEDERAL REGISTER—Continued

Name	Position title
SHATZ, EILEEN M	SPECIAL LITIGATION COUNSEL.
SMITH, COREY J	SENIOR TRIAL ATTORNEY.
STEHLIK, NOREENE C	SENIOR TRIAL ATTORNEY.
SULLIVAN, JOHN	SENIOR TRIAL ATTORNEY.
WEAVER, JAMES E	SENIOR TRIAL ATTORNEY.
WARD, RICHARD	CHIEF, CIVIL TRIAL SECTION WESTERN REGION.
U.S. Marshals Service—USMS	
HARLOW, DAVID	DEPUTY DIRECTOR.
AUERBACH, GERALD	GENERAL COUNSEL.
BROWN, SHANNON B	ASSISTANT DIRECTOR, JPATS.
MOHAN, KATHERINE T	ASSISTANT DIRECTOR, HUMAN RESOURCES.
DRISCOLL, DERRICK	ASSISTANT DIRECTOR, INVESTIGATIVE OPERATIONS.
MATHIAS, KARL	ASSISTANT DIRECTOR FOR INFORMATION TECHNOLOGY.
BOLEN, JOHN	ASSISTANT DIRECTOR, JUDICIAL SECURITY.
EDWARDS, SOPHIA	DIRECTOR, BUSINESS STRATEGY AND NTEGRATION.
MUSEL, DAVID F	ASSOCIATE DIRECTOR, ADMINISTRATION.
SNELSON, WILLIAM D	ASSOCIATE DIRECTOR, OPERATIONS.
VIRTUE, TIMOTHY	ASSISTANT DIRECTOR, ASSET FORFEITURE.
HACKMASTER, NELSON	ASSISTANT DIRECTOR, PRISONER OPERATIONS.
DICKINSON. LISA	ATTORNEY ADVISOR.
O'BRIEN-ROGAN, CAROLE	PROCUREMENT EXECUTIVE, FINANCIAL SERVICES.
O'BRIEN, HOLLEY	CHIEF, FINANCIAL OFFICER, FINANCIAL SERVICES.
O''HEARN, DONALD	ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY.
PAN, MAUREEN	(ACTING) ASSISTANT DIRECTOR, MANAGEMENT SUPPORT.
ANDERSON, DAVID	ASSISTANT DIRECTOR, TRAINING.
Community Relations Service—CRS	
RATIFF, GERRI	DEPUTY DIRECTOR.
Rule of Law Office—ROL	
FAIRCHILD, FORDE	JUSTICE ATTACHE, AFGHANISTAN.
U.S. National Central Bureau INTERPOL—USNCB	
SALZGABER, WAYNE	DEPUTY DIRECTOR.

[FR Doc. 2017–22444 Filed 10–16–17; 8:45 am]
BILLING CODE 4410–CH–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Council on the Arts 192nd Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, notice is hereby given that a meeting of the National Council on the Arts will be held. Open to the public on a space available basis.

DATES: See the **SUPPLEMENTARY INFORMATION** section for meeting time and date. The meeting is Eastern time and the ending time is approximate.

ADDRESSES: Russell Senate Building, Room #SR–485, 2 Constitution Avenue NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Victoria Hutter, Office of Public Affairs, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

SUPPLEMENTARY INFORMATION: If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b, and in accordance with the July 5, 2016 determination of the Chairman. Additionally, discussion concerning purely personal information about individuals, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, to Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506, 202/682–5733, Voice/T.T.Y. 202/682–5496, at least seven (7) days prior to the meeting.

The upcoming meeting is:

National Council on the Arts 192nd Meeting

This meeting will be open.

Date and time: October 26, 2017; 10:00 a.m. to 12:00 p.m.

From 10:00 a.m. to 10:30 a.m.—Opening remarks and voting on recommendations for grant funding and rejection, followed by updates from the Chairman. There also will be the following presentations (times are approximate): from 10:30 a.m. to 11:00 a.m.—*Presentation from Missoula Children's Theatre* (Michael McGill, Executive Director, Missoula Children's Theatre); from 11:00 a.m. to 11:30 a.m.—*Presentation from Appalshop* (Ada Smith, Institutional Development

Director, Appalshop); and from 11:30 a.m.–12:00 p.m.—Remarks from Members of Congress.

Dated: October 12, 2017.

Sherry P. Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2017–22452 Filed 10–16–17; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2017–0207]

Entergy Nuclear Operations, Inc.; Palisades Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a June 29, 2017, request from Entergy Nuclear Operations, Inc. (Entergy or the licensee) from certain regulatory requirements. The exemption would allow, as a minimum, a certified fuel handler (CFH), in addition to a licensed senior operator, to approve the suspension of security measures for Palisades Nuclear Plant (Palisades) during certain emergency conditions or during severe weather after the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are docketed.

DATES: The exemption was issued on October 11, 2017.

ADDRESSES: Please refer to Docket ID NRC–2017–0207 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–2017–0207. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that a document is referenced.
- *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: Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Entergy is the holder of Renewed Facility Operating License No. DPR–20 for Palisades. The license provides, among other things, that the facility is subject to all applicable rules, regulations, and orders of the NRC now or hereafter in effect. The Palisades facility consists of a pressurized-water reactor located in Van Buren County, Michigan.

By letter dated January 4, 2017 (ADAMS Accession No. ML17004A062), the licensee submitted a Notification of Permanent Cessation of Power Operations for Palisades. In this letter, Entergy provided notification to the NRC of its intent to permanently cease power operations at Palisades no later than October 1, 2018.

In accordance with §§ 50.82(a)(1)(i) and (ii), and 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), the 10 CFR part 50 license for the facility will no longer authorize reactor operation or emplacement or retention of fuel in the reactor vessel after certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are docketed for Palisades.

By letter dated August 21, 2017 (ADAMS Accession No. ML17151A350), the NRC approved the CFH Training and Retraining Program for Palisades.

II. Request/Action

By letter dated June 29, 2017 (ADAMS Accession No. ML17180A004), the licensee requested an exemption from § 73.55(p)(1)(i) and (ii), pursuant to § 73.5, ''Specific exemptions.'' Section 73.55(p)(1)(i) and (ii) requires, in part, that the suspension of security measures during certain emergency conditions or during severe weather be approved as a minimum by a licensed senior operator before taking this action. Entergy requested an exemption from these rules to allow as a minimum either a licensed senior operator or a CFH to approve the suspension of security measures at Palisades after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted. There is no need for an exemption from these rules for a licensed senior operator to approve the suspension of security measures because the current regulation allows this. However, the exemption is needed to also allow, as a minimum, a CFH to provide this approval after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted.

III. Discussion

The NRC's security rules have long recognized the potential need to suspend security or safeguards measures under certain conditions. Accordingly, § 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable actions in an emergency that depart from license conditions or technical specifications when those actions are immediately ''needed to protect the public health and safety,'' and no actions consistent with license conditions and technical specifications that can provide adequate or equivalent protection are immediately apparent (48 FR 13970; April 1, 1983). This departure from license conditions or technical specifications must be approved, as a minimum, by a licensed senior operator. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27817; August 4, 1986), the Commission issued § 73.55(a), which provided, in part, that, in accordance with § 50.54(x) and (y), the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. The regulation further requires that this suspension be approved as a minimum by a licensed senior operator prior to taking the action.

In 1996, the NRC made a number of regulatory changes to address decommissioning. One of the changes was to amend § 50.54(x) and (y) to authorize a non-licensed operator called a ''Certified Fuel Handler,'' in addition to a licensed senior operator, to approve such protective actions in an emergency situation. In addressing the role of the CFH during emergencies in § 50.54(y),

the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37374; July 20, 1995) that it was proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. The Commission stated that a nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. The Commission noted that a certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the NRC added ''certified fuel handler'' to the definitions in § 50.2 and defined it to mean, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission. However, the decommissioning rule did not propose or make parallel changes to § 73.55(a), and did not discuss the role of a non-licensed CFH.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated the security suspension requirements from § 73.55(a) to § 73.55(p)(1)(i) and (ii). The role of a CFH was not discussed in this rulemaking; therefore, the suspension of security measures in accordance with § 73.55(p) continued to require approval as a minimum by a licensed senior operator, even for a facility that had permanently ceased operations and permanently defueled.

However, pursuant to § 73.5, the Commission may, upon application of any interested person or upon its own initiative, grant exemptions from the requirements of part 73, as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

A. The Exemption Is Authorized by Law

The requested exemption from § 73.55(p)(1)(i) and (ii) would allow, as a minimum, a CFH, in addition to a licensed senior operator, to approve the suspension of security measures for Palisades during certain emergency conditions or during severe weather after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted. The licensee's intent with the requested exemption is to align the requirements of § 73.55(p)(1)(i) and (ii) with the requirements of § 50.54(y).

Per § 73.5, the Commission may grant exemptions from the regulations in part 73, as are authorized by law. The NRC staff has determined that granting the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or other laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security

Relaxing the requirement to allow a CFH, in addition to a licensed senior operator, to approve the suspension of security measures for Palisades during certain emergency conditions or during severe weather after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted will not endanger life or property or the common defense and security for the reasons described in this section.

First, § 73.55(p)(2) will continue to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension for non-weather emergency conditions under § 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(i) to protect the public health and safety.

Third, the suspension for severe weather under § 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement to receive input from the security supervisor or manager will remain. Thus, the exemption would not prevent the licensee from meeting the underlying purpose of § 73.55(p)(1)(ii) to protect the health and safety of the security force.

Additionally, by letter dated August 21, 2017, the NRC approved Entergy's CFH Training and Retraining Program for Palisades. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, the safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because a CFH at Palisades will be sufficiently trained and qualified under an NRC-approved program, the NRC staff considers the CFH to have sufficient knowledge of operational and safety concerns, such that allowing the CFH to suspend security measures during emergencies or severe weather will not result in undue risk to the public health and safety.

Finally, the exemption does not reduce the overall effectiveness of the Palisades physical security plan and has no adverse impacts to Entergy's ability to physically secure the site or protect special nuclear material at Palisades, and thus would not have an effect on the common defense and security. The NRC staff has determined that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Instead, the exemption would align the requirements of § 73.55(p)(1)(i) and (ii) with the existing requirements of § 50.54(y).

For these reasons, the NRC staff concludes that relaxing the requirement to allow a CFH, in addition to a licensed senior operator, to approve the suspension of security measures for Palisades in an emergency or during severe weather after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted will not endanger life or property or the common defense and security.

C. The Exemption Is Otherwise in the Public Interest

Entergy's proposed exemption would relax the current requirements by allowing a CFH, in addition to a licensed senior operator, to approve the suspension of security measures for Palisades in an emergency when ''immediately needed to protect the public health and safety'' or during severe weather when ''immediately needed to protect the personal health and safety of security force personnel'' after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted. Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve the temporary suspension of security measures during an emergency or severe weather, comparable to the authority given to the CFH by the NRC when it promulgated § 50.54(y). Instead, the regulations would continue to

require that, as a minimum, a licensed senior operator be available to make these decisions even though, after the docketing of the certifications required by § 50.82(a)(1)(i) and (ii) and as a permanently shutdown and defueled plant, Palisades would no longer otherwise require licensed senior operators.

This exemption is in the public interest for two reasons. First, the exemption would allow the licensee to make decisions pursuant to § 73.55(p)(1)(i) and (ii) without having to maintain a staff of licensed senior operators at a nuclear power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel. The exemption would also allow the licensee to have an established procedure in place to allow a trained CFH to suspend security measures in the event of an emergency or severe weather after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the regulations in § 73.55(p) and § 50.54(y), and the requirements concerning licensed operators in 10 CFR part 55. The NRC staff has determined that granting the licensee's proposed exemption would allow the licensee to designate a CFH, with qualifications appropriate for a permanently shutdown and defueled reactor, to approve the suspension of security measures during an emergency to protect the public health and safety, and during severe weather to protect the personal health and safety of the security force, consistent with the similar authority provided by § 50.54(y) after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted. For these reasons, the exemption is in the public interest.

D. Environmental Considerations

The NRC's approval of the requested exemption belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the NRC's approval of the requested exemption is categorically excluded from further environmental analysis under § 51.22(c)(25).

Under § 51.22(c)(25), the granting of an exemption from the requirements of any regulation of Chapter I to 10 CFR is a categorical exclusion provided that: (i) There is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: Safeguard plans, and materials control and accounting inventory scheduling requirements; or involve other requirements of an administrative, managerial, or organizational nature.

The NRC staff has determined that the approval of the requested exemption involves no significant hazards consideration because allowing a CFH, in addition to a licensed senior operator, to approve the security suspension at a permanently shutdown and defueled power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The requested exemption is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite and no significant increase in individual or cumulative public or occupational radiation exposure. The requested exemption is not associated with construction, so there is no significant construction impact. The requested exemption does not concern the source term (*i.e.,* potential amount of radiation in an accident), nor mitigation. Thus, there is no significant increase in the potential for, or consequences from, radiological accidents. Finally, the requirement to have a licensed senior operator approve suspensions of security measures from which the exemption is sought involves either safeguards, materials control, or managerial/organizational matters.

Therefore, pursuant to § 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to § 73.5, the exemption is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of § 73.55(p)(1)(i) and (ii), to authorize, after the certifications required by § 50.82(a)(1)(i) and (ii) have been submitted, that the suspension of security measures for Palisades during certain emergency conditions or during severe weather must be approved as a minimum by either a licensed senior operator or a CFH before taking this action.

The exemption is effective upon receipt.

Dated at Rockville, Maryland, on October 11, 2017.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2017–22372 Filed 10–16–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0001]

Sunshine Act Meeting Notice

DATE: Weeks of October 16, 23, 30, November 6, 13, 20, 2017.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 16, 2017

Monday, October 16, 2017

10:30 a.m. Affirmation Session (Public Meeting) (Tentative)

Final Rule: Modified Small Quantities Protocol (RIN 3150–AJ70; NRC–2015–0263) (Tentative)

ADDITIONAL INFORMATION By a vote of 3–0 on October 10 and 11, 2017, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that the above referenced Affirmation Session be held with less than one week notice to the public. The meeting is scheduled on October 16, 2017

Week of October 23, 2017—Tentative

Tuesday, October 24, 2017

10:00 a.m. Strategic Programmatic Overview of the Operating Reactors Business Line (Public) (Contact: Trent Wertz: 301–415–1568)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of October 30, 2017—Tentative

There are no meetings scheduled for the week of October 30, 2017.

Week of November 6, 2017—Tentative

There are no meetings scheduled for the week of November 6, 2017.

Week of November 13, 2017—Tentative

There are no meetings scheduled for the week of November 13, 2017.

Week of November 20, 2017—Tentative

There are no meetings scheduled for the week of November 20, 2017.

* * * * *

The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: October 13, 2017.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2017–22555 Filed 10–13–17; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0263]

Information Collection: Material Control and Accounting of Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Material Control and Accounting of Special Nuclear Material.''

DATES: Submit comments by December 18, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (OMB approval number 3150–0123), 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–2016–0263 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–2016–0263.
- *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 supporting statement and burden spreadsheet for ''Material Control and Accounting of Special Nuclear Material,'' is available in ADAMS under Accession Nos. ML17249A549 and ML17249A580, 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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, David Cullison, Office of the Chief Information Office, 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 NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Material Control and Accounting of Special Nuclear Material.'' 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 June 21, 2017 (82 FR 28361).

1. *The title of the information collection:* 10 CFR part 74, ''Material Control and Accounting of Special Nuclear Material.''

2. *OMB approval number:* 3150–0123.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Submission of fundamental material control plans is a one-time requirement which has been completed by all current licensees as required. However, licensees may submit amendments or revisions to the plans as necessary. Reports are submitted as events occur.

6. *Who will be required or asked to respond:* Persons licensed under part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), who possess and use certain forms and quantities of special nuclear material (SNM).

7. *The estimated number of annual responses:* 173 (17 reporting responses + 156 recordkeepers).

8. *The estimated number of annual respondents:* 156.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 8,869 (669 hours reporting + 8,200 hours recordkeeping).

10. *Abstract:* Part 74 establishes requirements for material control and accounting of SNM, and specific performance-based regulations for licensees authorized to possess, use, and produce strategic SNM, and SNM of moderate strategic significance and low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material accounting of SNM and to satisfy obligations of the United States to the International Atomic Energy Agency. Submission or retention of the information is mandatory for persons subject to the requirements.

Dated at Rockville, Maryland, this 12th day of October 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–22486 Filed 10–16–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0133]

Information Collection: Nondiscrimination in Federally Assisted Commission Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Nondiscrimination in Federally Assisted Commission Programs.''

DATES: Submit comments by November 17, 2017.

ADDRESSES: Submit comments directly to the OMB reviewer at: Aaron Szabo, Desk Officer, Office of Information and Regulatory Affairs (NRC–2017–0133), 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–2017–0133 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0133.
- *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 Nos. ML17215A811 and ML17215A813, respectively. The supporting statement and Cumulative Occupational Exposure History is available in ADAMS under Accession No. ML17215A807.
- *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, and 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 request for renewal of an existing collection of information to OMB for review entitled, ''10 CFR part 4, Nondiscrimination in Federally Assisted Commission Programs.'' 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 June 14, 2017, (82 FR 27291).

1. *The title of the information collection:* ''Nondiscrimination in Federally Assisted Commission Programs.

2. *OMB approval number: 3150–0053.*

3. *Type of submission: Extension.*

4. *The form number if applicable:* NRC Form 781 and 782.

5. *How often the collection is required or requested:* Provisions for this

collection are covered in § 4.331 of title 10 of the *Code of Federal Regulations* (10 CFR) Compliance Reviews, which indicates that the NRC may conduct compliance reviews and Pre-Award reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the act and these regulations. The NRC may conduct these reviews even in absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

6. *Who will be required or asked to respond:* Recipients of Federal Financial Assistance provided by the NRC (including Educational Institutions, Other Nonprofit Organizations receiving Federal Assistance, and Agreement States).

7. *The estimated number of annual responses:* 600.

8. *The estimated number of annual respondents:* 200.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 3,600 (3,000 hrs. for reporting (5 hrs. per respondent) and 600 hrs. for recordkeeping (3 hrs. per record keeper).

10. *Abstract:* The regulations under 10 CFR part 4 implement the provisions of the Title VI of the Civil Rights of 1964, Public Law 88–352; (78 Stat. 241; 42 U.S.C. 2000a note), Title IV of the Energy Reorganization Act of 1974, Public Law 93–438, (88 stat. 1233; 42 U.S.C. 580 note), which relate to nondiscrimination with respect to race, color, national origin or sex in any program or activity receiving Federal Financial assistance from NRC; Section 504 or the Rehabilitation Act of 1973, as amended, Public Law 93–112 (87 Stat. 355; 29 U.S.C. 701 note), Public Law 95–602 (92 Stat. 2955; 29 U.S.C. 701 note, which relates to nondiscrimination with respect to disability in any program or activity receiving Federal financial assistance; and the Age Discrimination Act of 1975, as amended, Public Law 94–135 (89 Stat. 713; 42 U.S.C. 3001 note), Public Law 95–478 (92 Stat. 1513; 42 U.S.C. 3001 note), which relates to nondiscrimination on the basis of age in any program or activity receiving Federal financial assistance.

Dated at Rockville, Maryland, this 12th day of October 2017.

For the Nuclear Regulatory Commission.

David Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2017–22448 Filed 10–16–17; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0012]

RIN 3150–AI92

Low-Level Radioactive Waste Disposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory analysis; request for comment and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on the draft regulatory analysis, ''Draft Regulatory Analysis for Final Rule: Low-Level Radioactive Waste Disposal,'' and seeking specific cost and benefit information to better inform the updated draft regulatory analysis.

DATES: Submit comments by November 16, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0012. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6445; email: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2011–0012 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–2011–0012.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession Number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2011–0012 in your submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* and enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly

disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC's licensing requirements for the disposal of commercial low-level radioactive waste (LLRW) in near-surface disposal facilities can be found in part 61 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for Land Disposal of Radioactive Waste.'' The NRC originally adopted 10 CFR part 61 on December 27, 1982 (47 FR 57446). The existing LLRW disposal facilities are located in and licensed by Agreement States, and those Agreement States have incorporated many of the requirements in 10 CFR part 61 into their corresponding regulations and as license conditions for their licensees.

On March 26, 2015, the NRC published a proposed rule, ''Low-level Radioactive Waste Disposal,'' for an initial 120-day comment period in the **Federal Register** (80 FR 16082). The 2015 proposed rule would have implemented changes to require new and revised site specific technical analyses and other requirements that would have permitted the development of site-specific waste acceptance criteria (WAC) based on the results of these analyses. In the 2015 proposed rule, the NRC explained that the changes would better align the requirements with current health and safety standards (*i.e.,* 10 CFR part 20) and identify any additional measures that would be prudent to implement for continued disposal of radioactive LLRW at a particular land disposal facility. In summary, the 2015 proposed rule would have specified requirements for:

- Technical analyses for demonstrating compliance with the public dose limits;
- Technical analyses for demonstrating compliance with dose limits for protection of inadvertent intruders;
- Identification and description of defense-in-depth protections that, taken together with the technical analyses, constitute the safety case;
- Development of site-specific WAC; and
- Implementation of current dosimetry in the technical analyses.

As a result of the comments received on the proposed rule, the NRC staff drafted a final rule package for Commission review, ''SECY–16–0106, FINAL RULE: Low-Level Radioactive Waste Disposal (10 CFR part 61) (RIN 3150–AI92),'' dated September 15, 2016. The draft final rule package is available for review under ADAMS Accession No. ML16188A290 and includes a draft **Federal Register** notice (ADAMS Accession No. ML16188A371) and a draft final regulatory analysis (ADAMS Accession No. ML16189A050).

In response to SECY–16–0106, the Commission issued a staff requirements memorandum (SRM), SRM–SECY–16–0106 (ADAMS Accession No. ML17251B147), dated September 8, 2017, which directed the NRC staff to publish a supplemental proposed rule for public comment that is revised to include Commission-directed rule changes. The Commission directed changes that are pertinent to this public comment request are stated in table 1.

TABLE 1—RULE CHANGES

Draft final rule	SRM direction
Compliance period of: • 1,000 years or • 10,000 years (if significant quantities of long-lived radionuclides are present)	Compliance period of 1,000 years, independent of radionuclide content.
New requirements applicable to all currently operating and future LLRW disposal facilities.	• New requirements applicable to all future LLRW disposal facilities. • The regulator may use a case-by-case basis (i.e., ''grandfather provision'') for applying new requirements to only those sites that plan to accept large quantities of depleted uranium for disposal.

III. Discussion

In addition to specified rule language changes, the Commission, in SRM–SECY–16–0106, also directed the NRC staff to ''be informed by broader and more fully integrated, but reasonably foreseeable costs and benefits to the U.S. waste disposal system resulting from the proposed rule changes, including pass-through costs to waste generators and processors.'' To support development of the new supplemental proposed rule as directed by the Commission in SRM–SECY–16–0106, the NRC staff is seeking comment on how to improve the approach/methodology and actual cost data currently used in the draft final rule regulatory analysis to provide more accurate cost and benefit data in the final regulatory analysis. In particular, the NRC is seeking information on any cost changes that should be incorporated into the regulatory analysis in light of the Commission's changes to the draft final rule identified in table 1.

All comments provided will be considered in improving the regulatory analysis to ensure that it is sufficiently informed by broader and more fully integrated, but reasonably foreseeable, costs and benefits to the U.S. waste disposal system; however, the NRC staff does not plan to provide responses to these comments. In addition, the NRC staff is requesting that comments be limited to focus on the regulatory analysis itself—the NRC plans to issue a separate notice and comment period on the changes being proposed in the supplemental proposed rule in 2018. At that time, members of the public will also be provided another opportunity to provide comments on the revised regulatory analysis, which will be updated based on comments from this action.

During the comment period for this action, the NRC will conduct a public meeting at the NRC's Headquarters that will explain the cost and benefit information it is seeking in this notice and to address questions. Information regarding the public meeting is posted on the NRC's public meeting Web site. The NRC's public meeting Web site is located at *https://www.nrc.gov/public-involve.html.*

The NRC has also posted the meeting notice on the Federal rulemaking Web site at *http://www.regulations.gov* under Docket ID NRC–2011–0012. The NRC will post additional materials related to this document, including any public comments received, on the Federal rulemaking Web site. The Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–

2011–0012); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly).

IV. Requested Information and Comments

This section provides specific questions associated with the draft regulatory analysis (ADAMS Accession No. ML16189A050). These questions will also be discussed at the public meeting. The NRC staff will consider the responses to these questions as it revises the regulatory analysis.

Question 1: Is the NRC considering appropriate alternatives for the regulatory action described in the draft regulatory analysis?

Question 2: Are there additional factors that the NRC should consider in the regulatory action? What are these factors?

Question 3: Is there additional information concerning regulatory impacts that the NRC should include in its regulatory analysis for this rulemaking?

Question 4: Are all costs and benefits properly addressed to determine the economic impact of the rulemaking alternatives? What cost differences would be expected from moving from the discussed 1,000 year and 10,000 year compliance periods to a single 1,000 year compliance period? Are there any unintended consequences of making this revision?

Question 5: Are there any costs that should be assigned to those sites not planning to accept large quantities of depleted uranium for disposal in the future?

Question 6: Is NRC's assumption that only two existing LLRW sites (*i.e.,* EnergySolutions' Clive Utah disposal facility and Waste Control Specialists' Texas disposal facility) plan to accept large quantities of depleted uranium for disposal in the future reasonable?

Question 7: What additional costs or cost savings, not already considered in the draft regulatory analysis, will the supplemental proposed rulemaking or alternatives cause to society, industry, and government? What are the potential transfer (''pass-through'') costs to the waste generators and processors?

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./ **Federal Register** Citation
December 27, 1982 10 CFR part 61 Statement of Considerations ..	47 FR 57446
March 26, 2015, 10 CFR part 61 proposed rule	80 FR 16081
SECY–16–0106, FINAL RULE: Low-Level Radioactive Waste Disposal (10 CFR part 61) (RIN 3150–AI92)	ML16188A290
SECY–16–0106 draft **Federal Register** notice	ML16188A371
SECY–16–0106 draft regulatory analysis	ML16189A050
SRM–SECY–0106	ML17251B147

Dated at Rockville, Maryland, this 12th day of October 2017.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Director, Division of Material Safety, State, Tribal and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2017–22459 Filed 10–16–17; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2018–1; Order No. 4153]

Market Dominant Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with numerous proposed classification changes. The adjustments and other changes are scheduled to take effect January 21, 2018. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 26, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Overview

On October 6, 2017, the Postal Service filed a notice of inflation-based rate adjustments affecting market dominant domestic and international products and services, along with related product description changes to the Mail Classification Schedule (MCS).[1] The intended effective date is January 21, 2018. Notice at 2.

Contents of filing. The Postal Service's filing consists of the Notice, which the Postal Service represents addresses the data and information required under 39 CFR 3010.12; four attachments (Attachments A–D) to the Notice; and eight sets of workpapers filed as library references.

Attachment A presents the proposed price and related product description changes to the MCS. *Id.* Attachment A. Attachments B and C address workshare discounts and related information and the price cap calculation. Notice, Attachments B and C, respectively. Attachment D is a copy of Governors' Resolution No. 16–18. Notice, Attachment D.

Several library references present supporting financial documentation for the five classes of mail and for First-Class Mail International. Notice at 6 n.9. The First-Class Mail International library reference was filed under seal.[2] Library Reference USPS–LR–R2018–1/6 documents modifications to the cost avoidance models for USPS Marketing Mail and Periodicals.[3] The Postal Service states that these modifications reflect the elimination of Flats Sequencing System (FSS)-specific pricing in Docket No. R2017–1 and the proposed *Domestic Mail Manual* (DMM) changes related to 5-Digit pallets. *Id.* Library Reference USPS–LR–R2018–1/7 provides census data and volumes related to the Move Update assessment charge.[4]

Planned price adjustments. The Postal Service's planned percentage changes by class are, on average, as follows:

Market dominant class	Planned price adjustment (%)
First-Class Mail	1.905
USPS Marketing Mail	1.908
Periodicals	1.924
Package Services	1.960
Special Services	1.986

[1] Notice of Market Dominant Price Adjustment, October 6, 2017, at 3 (Notice).

[2] *See* Notice of the United States Postal Service of Filing USPS–LR–R2018–1/NP1, October 6, 2017.

[3] Library Reference USPS–LR–R2018–1/6, October 6, 2017, Preface at 1.

[4] Library Reference USPS–LR–R2018–1/7, October 6, 2017, Preface at 1.

Notice at 6.

Price adjustments for products within classes vary from the average. *See, e.g., id.* at 8 (Table 5 showing range for First-Class Mail products). Most of the planned adjustments entail increases to market dominant rates and fees; however, in a few instances, the Postal Service proposes no adjustment. *See id.* at 8, 27.

Close out of Calendar Year (CY) 2017 promotions. The Postal Service states that the new prices reflect the close out of the CY 2017 promotions for First-Class Mail and USPS Marketing Mail. *Id.* at 29.

Amendment to pallet preparation. The Postal Service proposes to amend the DMM to increase the preparation of USPS Marketing Mail and Periodicals Carrier Route bundles on 5-Digit Carrier Route pallets in non-FSS zones. *Id.* at 30. The Postal Service states that the billing determinants for USPS Marketing Mail and Periodicals have been adjusted to reflect this change. *Id.*

Proposed product description changes. Stating that there are no substantive classification changes associated with its request, the Postal Service displays the new prices and related product description changes to the market dominant section of the MCS in Attachment A. *Id.* at 33.

II. Initial Administrative Actions

The Commission hereby provides public notice of the Postal Service's filing and pursuant to 39 CFR 3010.11 establishes Docket No. R2018–1 to consider the planned price adjustments in rates and fees for market dominant postal products and services, as well as the related classification changes, identified in the Postal Service's October 6, 2017 Notice. The Commission invites comments from interested persons on whether the Notice is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than October 26, 2017.

The Commission has posted the public portions of the Postal Service's filing on its Web site at *http://www.prc.gov.* The Commission will post revisions to the filing (if any) or other documents the Postal Service submits in this docket on its Web site, along with related Commission documents, comments, or other submissions, unless such filings are the subject of an application for non-public treatment. The Commission's policy on access to documents filed under seal appears in 39 CFR part 3007.

Pursuant to 39 U.S.C. 505, the Commission appoints Lee McFarland to represent the interests of the general public (Public Representative) in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2018–1 to consider planned price adjustments in rates and fees for market dominant postal products and services and related changes identified in the Postal Service's October 6, 2017 Notice.

2. Comments on the planned price adjustments and related classification changes are due no later than October 26, 2017.

3. Pursuant to 39 U.S.C. 505, Lee McFarland is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–22370 Filed 10–16–17; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2018–8; Order No. 4154]

Competitive Price Adjustment

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently filed Postal Service notice of rate adjustments affecting competitive domestic and international products and services. The adjustments are scheduled to take effect January 21, 2018. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 24, 2017.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction and Overview

On October 6, 2017, the Postal Service filed notice with the Commission concerning changes in rates of general applicability for competitive products.[1] The Postal Service represents that, as required by 39 CFR 3015.2(b), the Notice includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. *See* Notice at 1. The changes are scheduled to take effect on January 21, 2018. *Id.*

Attached to the Notice are Governors' Decisions Nos. 16–10 and 16–8, which state the new prices are in accordance with 39 U.S.C. 3632 and 3633 and 39 CFR 3015.2.[2] The Governors' Decisions provide an analysis of the competitive products' price changes intended to demonstrate that the changes comply with 39 U.S.C. 3633 and 39 CFR part 3015.[3] The attachment to the Governors' Decisions sets forth the price changes and includes draft Mail Classification Schedule (MCS) language for competitive products of general applicability.

The Governors' Decisions include two additional attachments:

- A partially redacted table showing FY 2017 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming implementation of the new prices on January 21, 2018.
- A partially redacted table showing FY 2017 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, assuming a hypothetical implementation of the new prices on October 1, 2017.

The Notice also includes an application for non-public treatment of the attributable costs, contribution, and cost coverage data in the unredacted version of the annex to the Governors' Decisions, as well as the supporting materials for the data.

[1] Notice of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision Nos. 16–8 and 16–10, October 6, 2017 (Notice). Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decisions and record of proceedings in the **Federal Register** at least 30 days before the effective date of the new rates.

[2] Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 16–8), November 14, 2016 (Governors' Decision No. 16–8); Notice, Decision of the Governors of the United States Postal Service on Changes in Rates of General Applicability for Competitive Products (Governors' Decision No. 16–10), December 5, 2016 (Governors' Decision No. 16–10) (collectively, Governors' Decisions).

[3] Governors' Decision No. 16–8 at 1; Governors' Decision No. 16–10 at 1.

Planned price adjustments. The Governors' Decisions include an overview of the Postal Service's planned price changes, which is summarized in the table below.

TABLE I–1—PROPOSED PRICE CHANGES

Product name	Average price increase (percent)
Domestic Competitive Products	
Priority Mail Express	3.9
Retail	3.9
Commercial Base	3.7
Commercial Plus	3.7
Priority Mail	3.9
Retail	0.8
Commercial Base	6.2
Commercial Plus	6.1
Parcel Select	
Traditional	4.9
Lightweight	7.0
Parcel Return Service	4.9
Return Sectional Center Facility	5.2
Return Delivery Unit	4.6
First-Class Package Service	
Commercial	3.9
Retail	14.5
Retail Ground	3.9
Domestic Extra Services	
Premium Forwarding Service Enrollment Fee	3.9
Adult Signature Service	
Basic	3.4
Person-Specific	3.3
Competitive Post Office Box	6.5
Package Intercept Service	3.9
International Competitive Products	
Global Express Guaranteed	3.9
Priority Mail Express International	3.9
Priority Mail International	3.9
International Priority Airmail	3.9
International Priority Airmail M-Bags	3.9
International Surface Air Lift	3.9
International Surface Air Lift M-Bags	3.9
Airmail M-Bags	3.9
First-Class Package International Service	3.9
International Ancillary Services and Special Services	
International Ancillary Services	3.9

Source: See Governors' Decision No. 16–8 at 2–5; Governors' Decision No. 16–10 at 1; Mail Classification Schedule sections 2105.6, 2110.6, 2115.6, 2125.6, 2135.6, 2305.6, 2315.6, 2335.6, and 2510.9.6.

II. Initial Administrative Actions

The Commission establishes Docket No. CP2018–8 to consider the Postal Service's Notice. Interested persons may express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3015, and 39 CFR 3020 subparts B and E. Comments are due no later than October 24, 2017. For specific details of the planned price changes, interested persons are encouraged to review the Notice, which is available on the Commission's Web site, *www.prc.gov.*

Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as Public Representative to represent the interests of the general public in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2018–8 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with 39 U.S.C. 3632, 3633, and 3642, 39 CFR part 3015, and 39 CFR 3020 subparts B and E.

2. Comments are due no later than October 24, 2017.

3. The Commission appoints Curtis E. Kidd to serve as Public Representative to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2017–22373 Filed 10–16–17; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81854; File No. SR–DTC–2017–019]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate a Surcharge for Eligibility Requests Submitted to DTC Two Days Prior to Closing Date

October 11, 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 October 2, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] would revise the DTC Fee Schedule (''Fee Schedule'')[6] to eliminate a fee charged to Participants that submit an eligibility request or required offering documents for a new issue (''Issue'') of Securities two business days prior to the Closing Date (''Two-Day Surcharge''), as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The proposed rule change would revise the Fee Schedule[7] to eliminate the Two-Day Surcharge, as discussed below.

Participants[8] are required to provide an eligibility request for specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the ''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx,* and the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (''OA''), *available at http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf.*

[6] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/fee-guides/dtcfee guide.pdf?la=en.*

[7] *Supra* note 6.

[8] Only (i) Participants and (ii) underwriters with an approved correspondent relationship with a Participant, may request DTC eligibility for a new security being offered and distributed. It is therefore incumbent on an Issuer to have a relationship with an underwriter or other financial institution that is

Continued

Securities to DTC by the submission of all required ''Issuer'' [9] and securities data and all required offering documents,[10] at a minimum, through the online Securities Origination, Underwriting and Reliable Corporate Action Environment (''UW SOURCE'') system for the Security to be considered for full service eligibility at DTC.[11] In addition to meeting other requirements as set forth in the OA,[12] a Participant that seeks to make a new Issue eligible for Deposit at DTC must submit the eligibility request and offering documentation described above through UW SOURCE at least six business days prior to the Closing Date. If the Participant submits the eligibility request or the required offering documentation for a new Issue within two days or less prior to the Closing Date, it will be subject to fees, referred to in the Fee Schedule as surcharges (''Surcharges''), as outlined in the DTC Fee Schedule: (a) The Two-Day Surcharge is $2,000 per Issue (b) the Surcharge for submission of an eligibility request or the required offering documentation one day prior to the Closing Date is $5,000 per Issue (''One-Day Surcharge''), and (c) the Surcharge for submission of an eligibility request or required the offering documentation on the Closing Date is $10,000 per Issue (''Closing Date Surcharge'').[13] The Surcharges are designed to cover costs to DTC of providing expedited processing of the eligibility request.

Proposed Rule Change

After reviewing its cost structure relating to eligibility processing, DTC has determined that due to the development of enhanced systemic and processing efficiencies over time, the Two-Day Surcharge is no longer necessary to be charged in order to cover the cost of processing an eligibility request for a new Issue submitted two days prior to Closing Date. Therefore, DTC proposes to eliminate the Two-Day Surcharge and revise the Fee Schedule accordingly. The Closing Date and One-Day Surcharges would remain unchanged and continue to be charged to Participants to offset costs associated with more manually intensive processing associated with the timely processing of eligibility requests submitted on or one day before Closing Date, as applicable.

Effective Date of Proposed Rule Change

The proposed rule change would be effective on October 2, 2017.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act [14] requires, in part, that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. DTC believes that the proposed rule change provides for the equitable allocation of fees charged to Participants, because elimination of the Two-Day Surcharge would apply to all Participants. In addition, DTC believes that the proposed change is reasonable, because the Two-Day Surcharge is no longer necessary to balance DTC revenue with its costs associated with processing of the applicable eligibility requests, as discussed above. Therefore, DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act.[15]

The proposed rule change is also designed to be consistent with Rule 17Ad–22(e)(23) of the Act.[16] Rule 17Ad–22(e)(23) requires DTC, *inter alia,* to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed rule change, as described above, would update the Fee Schedule to reflect the proposed elimination of the Two-Day Surcharge. As such, DTC believes that the proposed change would promote disclosure of relevant rules and material procedures and provide sufficient information to enable participants and other users of DTC's services to evaluate fees and other material costs of utilizing DTC's services, in accordance with the requirements of Rule 17Ad–22(e)(23), promulgated under the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact on competition, because the Two-Day Surcharge is a minimal amount and its elimination should not have a material effect on (i) a determination by an underwriter on whether to submit an eligibility request for a new Issue or (ii) costs incurred by Participants in using DTC's eligibility services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 thereunder.[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.

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 Submissions

- 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–DTC–2017–019 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–DTC–2017–019. This file

a Participant or is directly associated with a Participant that is willing to sponsor the eligibility process for the Issuer's securities. See OA, *supra* note 5 at 1–2.

[9] ''Issuer'' is defined as an issuer of Securities deposited at DTC. See OA, *supra* note 5 at 1.

[10] The eligibility request must contain the (i) identity of the lead underwriter, (ii) CUSIP number(s), (iii) principal/share amount, as applicable per CUSIP, and interest rates and maturity dates, as applicable per CUSIP. The preliminary offering document must be submitted and (*e.g.,* official statement, prospectus, offering memorandum) provide relevant information necessary for DTC to process the Issue (*e.g.,* Issuer name, description of the Security, denominations, name of the trustee, paying agent, transfer agent, and if applicable, other features of the Security, such as an early redemption). *See* Exhibit B of OA, *supra* note 5.

[11] *See* OA, *supra* note 5 at 1–2.

[12] *See* Exhibit B of OA, *supra* note 5.

[13] *See* Fee Schedule, *supra* note 6 at 28.

[14] 15 U.S.C. 78q–1(b)(3)(D).

[15] *Id.*

[16] 17 CFR 240.17Ad–22(e)(23).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

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 20549–1090 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 DTC and on DTCC's Web site (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2017–019 and should be submitted on or before November 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22391 Filed 10–16–17; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81848; File No. SR–NYSEArca–2017–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade the Shares of the U.S. Equity Cumulative Dividends Fund—Series 2027 and the U.S. Equity Ex-Dividend Fund—Series 2027 Under NYSE Arca Equities Rule 8.200, Commentary .02

October 11, 2017.

On August 8, 2017, NYSE Arca, Inc. filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the U.S. Equity Cumulative Dividends Fund—Series 2027 and the U.S. Equity Ex-Dividend Fund—Series 2027 under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on August 28, 2017.[3] The Commission has received no comment letters on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 12, 2017. The Commission is extending this 45-day time period. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates November 26, 2017 as the date by which the Commission shall either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR–NYSEArca–2017–88).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22386 Filed 10–16–17; 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. 81453 (August 22, 2017), 82 FR 40816.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81849; File No. SR–BatsBYX–2017–19; SR–BatsBZX–2017–55; SR–BatsEDGA–2017–22; SR–BatsEDGX–2017–35]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes, as Modified by Amendments No. 1, To Harmonize the Corporate Governance Framework of Each Exchange With That of Chicago Board Options Exchange, Incorporated and C2 Options Exchange, Incorporated

October 11, 2017.

I. Introduction

On August 23, 2017, each of Bats BYX Exchange, Inc. (''BYX''), Bats BZX Exchange, Inc. (''BZX''), Bats EDGA Exchange, Inc. (''EDGA''), and Bats EDGX Exchange, Inc. (''EDGX'') (each, an ''Exchange'' and collectively, ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to align its corporate governance framework to the structure of other U.S. securities exchanges owned by its ultimate parent company, CBOE Holdings, Inc. (''CBOE Holdings''). On August 25, 2017, each of BYX, BZX, EDGA, and EDGX filed Amendment No. 1 to its respective proposed rule change. The proposed rule changes, as modified by Amendments No. 1, were published for comment in the **Federal Register** on September 6, 2017.[3] The Commission received no comments on the proposed rule changes. This order grants approval of the proposed rule changes, each as modified by its respective Amendment No. 1.

II. Background

On December 16, 2016, the Commission approved proposed rule changes relating to a corporate transaction (''Transaction'') in which CBOE Holdings became the ultimate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 81498 (August 30, 2017), 82 FR 42127 (September 6, 2017) (''BYX Notice''); 81497 (August 30, 2017), 82 FR 42181 (September 6, 2017) (''BZX Notice''); 81496 (August 30, 2017), 82 FR 42206 (September 6, 2017) (''EDGA Notice''); and 81503 (August 30, 2017), 82 FR 42153 (September 6, 2017) (''EDGX Notice,'' and together with the BYX Notice, BZX Notice, and EDGA Notice, ''Notices'').

parent of BYX, BZX, EDGA, and EDGX.[4] CBOE Holdings is also the parent of Chicago Board Options Exchange, Incorporated (''CBOE'') and C2 Options Exchange, Incorporated (''C2''). In connection with the Transaction, each of BYX, BZX, EDGA, and EDGX proposes to amend and restate its certificate of incorporation and bylaws [5] to conform to the certificates of incorporation and bylaws of CBOE and C2.[6] In addition, each Exchange proposes to amend its rules to reflect the Proposed Bylaws, as well as to address regulatory revenues in the rules (rather than the bylaws), similar to the treatment of this provision by CBOE.[7]

Each Exchange represents that its Proposed Certificate and Proposed Bylaws reflect the expectation that the Exchange will be operated with a governance structure similar to that of CBOE and C2.[8] Each Exchange states that aligning its governance documents with the governance documents of CBOE and C2 will preserve governance continuity across each of CBOE Holdings' six U.S. securities exchanges.[9] Each Exchange further states that it will continue to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the Exchange's rules, as required by Section 6(b)(1) of the Act.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as modified by Amendments No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(1) of the Act,[12] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule changes are consistent with Section 6(b)(3) of the Act,[13] which requires that the rules of a national securities exchange assure a fair representation of its members in the selection of its directors and the administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission further finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and 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 Commission notes that the Proposed Certificates and Proposed Bylaws are substantially similar to the CBOE Certificate and CBOE Bylaws, with limited exceptions as discussed below. The Commission further notes that it received no comments on the proposed rule changes.

A. Ownership

BYX's and BZX's Proposed Certificates each specify that Bats Global Markets Holdings, Inc. (''Bats Global Markets Holdings'') will be the sole owner of the common stock of the Exchange and that any sale, transfer, or assignment by Bats Global Markets Holdings of any shares of common stock of the Exchange will be subject to prior approval by the Commission pursuant to a rule filing.[15] EDGA's and EDGX's Proposed Certificates each include a similar provision reflecting Direct Edge LLC (''Direct Edge'') as sole owner of the common stock of the Exchange and prohibiting any sale, transfer, or assignment by Direct Edge of the Exchange's common stock without prior approval by the Commission pursuant to a rule filing.[16]

The Commission believes that specifying the sole owner of each Exchange as either Bats Global Markets Holdings or Direct Edge and the

[4] *See* Securities Exchange Act Release No. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68; SR–BatsBYX–2016–29; SR–BatsEDGA–2016–24; SR–BatsEDGX–2016–60) (''Transaction Order'').

[5] *See* BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42181–82; EDGA Notice, 82 FR at 42206–07; EDGX Notice, 82 FR at 42154. Specifically, BYX proposes to replace the certificate of incorporation of BYX (''BYX Current Certificate'') in its entirety with the Amended and Restated Certificate of Incorporation of BYX (''BYX Proposed Certificate'') and to replace the Fifth Amended and Restated Bylaws of BYX (''BYX Current Bylaws'') in its entirety with the Sixth Amended and Restated Bylaws of BYX (''BYX Proposed Bylaws''). *See* BYX Notice, 82 FR at 42128. BZX proposes to replace the certificate of incorporation of BZX (''BZX Current Certificate'') in its entirety with the Amended and Restated Certificate of Incorporation of BZX (''BZX Proposed Certificate'') and to replace the Fifth Amended and Restated Bylaws of BZX (''BZX Current Bylaws'') in its entirety with the Sixth Amended and Restated Bylaws of BZX (''BZX Proposed Bylaws''). *See* BZX Notice, 82 FR at 42181. EDGA proposes to replace the certificate of incorporation of EDGA (''EDGA Current Certificate'') in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGA (''EDGA Proposed Certificate'') and to replace the Sixth Amended and Restated Bylaws of EDGA (''EDGA Current Bylaws'') in its entirety with the Seventh Amended and Restated Bylaws of EDGA (''EDGA Proposed Bylaws''). *See* EDGA Notice, 82 FR at 42207. EDGX proposes to replace the certificate of incorporation of EDGX (''EDGX Current Certificate,'' and together with the BYX Current Certificate, BZX Current Certificate, and EDGA Current Certificate, ''Current Certificates'') in its entirety with the Second Amended and Restated Certificate of Incorporation of EDGX (''EDGX Proposed Certificate,'' and together with the BYX Proposed Certificate, BZX Proposed Certificate, and EDGA Proposed Certificate, ''Proposed Certificates'') and to replace the Sixth Amended and Restated Bylaws of EDGX (''EDGX Current Bylaws'' and together with the BYX Current Bylaws, BZX Current Bylaws, and EDGA Current Bylaws, ''Current Bylaws'') in its entirety with the Seventh Amended and Restated Bylaws of EDGX (''EDGX Proposed Bylaws,'' and together with the BYX Proposed Bylaws, BZX Proposed Bylaws, and EDGA Proposed Bylaws, ''Proposed Bylaws''). *See* EDGX Notice, 82 FR at 42154.

[6] The current certificates of incorporation of CBOE and C2 are the Third Amended and Restated Certificate of Incorporation of CBOE and the Fourth Amended and Restated Certificate of C2, respectively (collectively, ''CBOE Certificate''), and the Eighth Amended and Restated Bylaws of CBOE and the Eighth Amended and Restated Bylaws of C2, respectively (collectively, ''CBOE Bylaws''). *See* Notices, *supra* note 3.

[7] *See* BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192–93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165. For a further description of the proposed changes to the certificates of incorporation, bylaws, and rules of the Exchanges, *see* Notices, *supra* note 3.

[8] *See* BYX Notice, 82 FR at 42128; BZX Notice, 82 FR at 42182; EDGA Notice, 82 FR at 42207; EDGX Notice, 82 FR at 42154.

[9] *See* BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

[10] *See* BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

[11] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(1).

[13] 15 U.S.C. 78f(b)(3).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* BYX Proposed Certificate, Article Fourth; BZX Proposed Certificate, Article Fourth.

[16] *See* EDGA Proposed Certificate, Article Fourth; EDGX Proposed Certificate, Article Fourth. Bats Global Markets Holdings and Direct Edge are each wholly-owned subsidiaries of CBOE V, LLC (''CBOE V'') and CBOE V is a wholly-owned subsidiary of CBOE Holdings. Any change in CBOE V's status as sole stockholder of Bats Global Markets Holdings or sole member of Direct Edge, or of CBOE Holdings' status a sole member of CBOE V, must be approved by the Commission pursuant to a rule filing. *See* Transaction Order, 81 FR at 93990.

proposed restrictions on Bats Global Market Holdings and Direct Edge that prevent these entities from selling, transferring, or assigning their common stock in BYX and BZX, and EDGA and EDGX, respectively, without the Commission's approval, taken together with the voting restrictions and ownership limitations in the governing documents of CBOE Holdings and the restrictions on CBOE V previously approved by the Commission, are designed to minimize the potential that a person could improperly interfere with, or restrict the ability of, the Commission or the Exchanges to effectively carry out their regulatory oversight responsibilities under the Act.[17] The Commission also notes that the restrictions on transfer of ownership interest in the Exchanges will be similar to those currently in place.[18] In this regard, the Commission believes that the proposed rule changes are consistent with Section 6(b)(1) of the Act [19] in particular, which requires that an exchange be organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

B. Governance

In connection with the proposal to adopt the Proposed Certificates and Proposed Bylaws, each Exchange is proposing to replace certain provisions pertaining to governance of the Exchange with related provisions that are based on provisions currently in the CBOE Certificate and CBOE Bylaws. For each Exchange, these changes include, among others, provisions governing: The composition of the Exchange's board of directors (''Board'' and each member of the Board, a ''Director''); the process for nominating, electing, removing, and filling vacancies of Directors; the Board committee structure; the authorization to create an Advisory Board; and the regulatory independence of the Exchange.[20]

1. Board of Directors

Under the Proposed Bylaws, each Exchange's Board will consist of at least five Directors. Each Exchange's Board will determine, by resolution, the total number of Directors and the number of Non-Industry Directors and Industry Directors, if any.[21] The number of Non-Industry Directors will not constitute less than the number of Industry Directors, excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose. At all times at least 20% of the Directors will be Representative Directors as nominated or otherwise selected through the Representative Director Nominating Body, and the Board will determine the number of Representative Directors that are Non-Industry Directors and Industry Directors, if any.[22]

Directors will serve one-year terms ending on the annual meeting following the meeting at which such Directors were elected or at such time as their successors are elected or appointed and qualified, except in the event of earlier death, resignation, disqualification, or removal.[23] The Board will be the sole judge of whether an Industry Director or Non-Industry Director fails to maintain the requisite qualifications, in which event the Director will be terminated. A Representative Director may only be removed for cause by a vote of the stockholders.[24] A vacancy on the Board

[17] *See* Transaction Order, 81 FR at 93989–91. In addition to the restrictions on CBOE Holdings and CBOE V discussed above, *see supra* note 16, CBOE Holdings' governing documents place restrictions on the ability to own and vote shares of the capital stock of CBOE Holdings. Specifically, unless the CBOE Holdings Board of Directors waives such restrictions for a permissible reason, no person, alone or together with its related persons: (1) Shall be entitled to vote or cause the voting of shares of stock of CBOE Holdings to the extent that such shares represent more than 20% of the then outstanding votes entitled to be cast; (2) shall be party to any agreement, plan, or other arrangement under circumstances that would result in the shares of CBOE Holdings stock not being voted, or the withholding of any related proxy, where the effect of such agreement, plan, or other arrangement would be to enable any person, alone or together with its related persons, to vote, possess the right to vote, or cause the voting of shares of stock of CBOE Holdings that would exceed 20% of the then outstanding votes entitled to be cast; or (3) shall be permitted to beneficially own directly or indirectly shares of stock of CBOE Holdings representing more than 20% of the shares then outstanding. *See* Transaction Order, 81 FR at 93989–90. *See also* Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082, 30084–85 (May 28, 2010) (SR–CBOE–2008–88) (approving proposed rule change relating to demutualization of CBOE) (''CBOE Demutualization Order'').

[18] *See* BYX Current Bylaws, Article IV, Section 7; BZX Current Bylaws, Article IV, Section 7; EDGA Current Bylaws, Article IV, Section 7; and EDGX Current Bylaws, Article IV, Section 7 (providing that stockholder may not transfer or assign, in whole or in part, its ownership interest).

[19] 15 U.S.C. 78f(b)(1).

[20] *See* BYX Notice, 82 FR at 42128–39; BZX Notice, 82 FR at 42182–92; EDGA Notice, 82 FR at 42207–17; EDGX Notice, 82 FR at 42154–65.

[21] Under the Proposed Bylaws, an ''Industry Director'' is defined, subject to limited exclusions, as any director who (i) is an Exchange Member or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director or employee of a broker-dealer or has been in any such capacity within the prior three years; (iii) is, or was within the prior three years, associated with an entity that is affiliated with a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated; (iv) has a material ownership interest in a broker-dealer and has investments in broker-dealers that account for a material portion of the director's net worth; (v) has a consulting or employment relationship with or has provided professional services to the Exchange or any of its affiliates or has had such a relationship or has provided such services within the prior three years; or (vi) provides, or has provided within the prior three years, professional or consulting services to a broker-dealer, or to an entity with a 50% or greater ownership interest in a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, and the revenue from all such professional or consulting services accounts for a material portion of either the revenues received by the director or the revenues received by the director's firm or partnership. Under the Proposed Bylaws, a ''Non-Industry Director'' is defined as a person who is not an Industry Director. At all times, at least one Non-Industry Director will be a Non-Industry Director exclusive of the exceptions provided and will have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. *See* BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1. ''Exchange Member'' will have the same meaning as the term ''Member'' in the rules of the Exchange. *See* BYX Proposed Bylaws, Article I, Section 1.1(f); BZX Proposed Bylaws, Article I, Section 1.1(f); EDGA Proposed Bylaws, Article I, Section 1.1(f); EDGX Proposed Bylaws, Article I, Section 1.1(f). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* BYX Rule 1.5(n); BZX Rule 1.5(n); EDGA Rule 1.5(n); EDGX Rule 1.5(n).

[22] *See* BYX Proposed Bylaws, Article III, Sections 3.1 and 3.2; BZX Proposed Bylaws, Article III, Sections 3.1 and 3.2; EDGA Proposed Bylaws, Article III, Sections 3.1 and 3.2; EDGX Proposed Bylaws, Article III, Sections 3.1 and 3.2. Under the Proposed Bylaws, a ''Representative Director'' is defined as a director recommended by the Representative Director Nominating Body. *See* BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2. The ''Representative Director Nominating Body'' is defined as either (i) the Industry-Director Subcommittee of the Nominating and Governance Committee if there are at least two Industry Directors on the Nominating and Governance Committee, or (ii) if the Nominating and Governance Committee has less than two Industry Directors, then the Representative Director Nominating Body shall mean the Exchange Member Subcommittee of the Advisory Board. *See* BYX Proposed Bylaws, Article I, Section 1.1(j); BZX Proposed Bylaws, Article I, Section 1.1(j); EDGA Proposed Bylaws, Article I, Section 1.1(j); EDGX Proposed Bylaws, Article I, Section 1.1(j). Each Exchange represents that if there are less than two Industry Directors on the Nominating and Governance Committee, it would institute an Advisory Board, if not already established. *See* BYX Notice, 82 FR at 42130 n. 15; BZX Notice, 82 FR at 42184 n. 15; EDGA Notice, 82 FR at 42209 n. 15; EDGX Notice, 82 FR at 42156 n. 15. For a description of the proposed ''Advisory Board,'' *see infra* notes 60–62 and accompanying text.

[23] *See* BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1.

[24] *See* BYX Proposed Bylaws, Article III, Section 3.4; BZX Proposed Bylaws, Article III, Section 3.4; EDGA Proposed Bylaws; Article III, Section 3.4; EDGX Proposed Bylaws, Article III, Section 3.4.

may be filled by a vote of majority of the Directors then in office, or by the sole remaining Director, so long as the elected Director qualifies for the position. For vacancies of Representative Directors, the Representative Director Nominating Body will recommend an individual to be elected or provide a list of recommended individuals, and the position will be filled by the vote of a majority of the Directors.[25]

The Representative Director Nominating Body will provide a mechanism for Exchange Members to provide input with respect to nominees for the Representative Directors. The Representative Director Nominating Body will issue a circular to Exchange Members identifying nominees selected by the Representative Director Nominating Body. Exchange Members may nominate alternative candidates for election to be Representative Directors by submitting a petition signed by individuals representing not less than 10% of the Exchange Members at the time, with a run-off election held if one or more valid petitions are received.[26] In any run-off election, each Exchange Member will have one vote for each Representative Director position to be filled that year; provided, however, that no Exchange Member, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate.[27] Each Exchange's Nominating and Governance Committee will be bound to accept and nominate the Representative Director nominees recommended by the Representative Director Nominating Body or, in the case of a run-off election, the Representative Director nominees who receive the most votes.[28] Subject to the specific provisions pertaining to nomination of Representative Directors and filling of vacancies, each Exchange's Nominating and Governance Committee will have the authority to nominate individuals for election as Directors.[29]

The Commission believes that the proposed composition of each Exchange's Board satisfies the requirements in Section 6(b)(3) of the Act,[30] which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[31] In particular, at least one Non-Industry Director would be a Non-Industry Director exclusive of any exceptions and would have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest,[32] and that they can help to ensure that no single group of market participants has the ability to systematically disadvantage others through the exchange governance process.[33] As it has previously stated, the Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of each Exchange's Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.[34]

The Commission also believes that the proposed requirement that at least 20% of the Directors be Representative Directors, and the means by which they will be chosen by Exchange Members, is consistent with Section 6(b)(3) of the Act,[35] because it provides for the fair representation of members in the selection of directors and the administration of each Exchange. Section 6(b)(3) of the Act requires that ''the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.'' [36] As the Commission previously has noted, this statutory requirement helps to ensure that members of each Exchange have a voice in the Exchange's use of its self-regulatory authority, and that each Exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.[37]

2. Exchange Committees

Under the Proposed Bylaws, each Exchange will establish certain committees that consist solely of Directors. These Board committees will include an Executive Committee, a Regulatory Oversight Committee, a Nominating and Governance Committee, and such other standing and

[25] *See* BYX Proposed Bylaws, Article III, Section 3.5; BZX Proposed Bylaws, Article III, Section 3.5; EDGA Proposed Bylaws, Article III, Section 3.5; EDGX Proposed Bylaws, Article III, Section 3.5.

[26] *See* BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2.

[27] *See* BYX Proposed Bylaws, Article III, Section 3.2; BZX Proposed Bylaws, Article III, Section 3.2; EDGA Proposed Bylaws, Article III, Section 3.2; EDGX Proposed Bylaws, Article III, Section 3.2. The CBOE Bylaws provide that in any run-off election for Representative Directors, a holder of a trading permit will have one vote with respect to each trading permit held by such trading permit holder for each Representative Director position to be filled. *See* CBOE Bylaws, Article III, Section 3.2. The Exchanges note that because no ''trading permit'' or similar concept exists on the Exchanges, the Proposed Bylaws provide instead that each Exchange Member shall have one vote for each Representative Director position to be filled. *See* BYX Notice, 82 FR at 42131 n. 16; BZX Notice, 82 FR at 42184 n. 16; EDGA Notice, 82 FR at 42209 n. 16; EDGX Notice, 82 FR at 42157 n.16. The Exchanges state that they do not believe this deviation from the CBOE Bylaws is significant and note that other Exchanges have similar practices. *See* BYX Notice, 82 FR at 42131 n. 16; BZX Notice, 82 FR at 42184 n. 16; EDGA Notice, 82 FR at 42209 n. 16; and EDGX Notice, 82 FR at 42157 n. 16 (citing Amended and Restated Bylaws of Miami International Securities Exchange, LLC, Article II, Section 2.4(f)).

[28] *See* BYX Proposed Bylaws, Article III, Section 3.1; BZX Proposed Bylaws, Article III, Section 3.1; EDGA Proposed Bylaws, Article III, Section 3.1; EDGX Proposed Bylaws, Article III, Section 3.1.

[29] *See* BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3.

[30] 15 U.S.C. 78f(b)(3).

[31] The Commission also notes that it previously found the composition requirements for the Boards of Directors of CBOE and C2, upon which the proposed requirements are based, to be consistent with the Act. *See* CBOE Demutualization Order, 75 FR at 30087–88; Securities Exchange Act Release Nos. 80523 (April 25, 2017), 82 FR 20399, 20400 (May 1, 2017) (SR–CBOE–2017–017) (''CBOE 2017 Order''); 80522 (April 25, 2017), 82 FR 20409, 20410 (May 1, 2017) (SR–C2–2017–009) (''C2 2017 Order''); 68767 (January 30, 2013), 78 FR 8216, 8217 (February 5, 2013) (SR–C2–2012–039); 68766 (January 30, 2013), 78 FR 8203, 8204–05 (February 5, 2013) (SR–CBOE–2012–116); 65980 (December 15, 2011), 76 FR 79252, 79253–54 (December 21, 2011) (SR–CBOE–2011–099) (''CBOE December 2011 Order''); 65979 (December 15, 2011), 76 FR 79239, 79241 (December 21, 2011) (SR–C2–2011–031) (''C2 December 2011 Order''); 61152 (December 10, 2009), 74 FR 66699, 66700–02 (December 16, 2009) (File No. 10–191) (granting the exchange registration of C2) (''C2 Exchange Order'').

[32] *See, e.g.,* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70882 (December 22, 1998) (File No. S7–12–98) (Regulation of Exchanges and Alternative Trading Systems).

[33] *See, e.g.,* Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10–207) (granting the exchange registration of the Miami International Securities Exchange, LLC) (''MIAX Exchange Order'').

[34] *See, e.g.,* Securities Exchange Act Release Nos. 62716 (August 13, 2010), 75 FR 51295, 51298 (August 19, 2010) (File No. 10–198) (granting the exchange registration of BATS Y-Exchange, Inc.); 53382 (February 27, 2006), 71 FR 11251, 11261 (March 6, 2006) (SR–NYSE–2005–77) (approving the New York Stock Exchange Inc.'s business combination with Archipelago Holdings, Inc.); 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10–131) (granting the exchange registration of The Nasdaq Stock Market, LLC) (''Nasdaq Exchange Order'').

[35] 15 U.S.C. 78f(b)(3).

[36] *Id.*

[37] *See, e.g.,* Securities Exchange Act Release No. 81263 (July 31, 2017), 82 FR 36497, 36501 (SR–ISE–2017–32) (approving proposed rule change to harmonize corporate governance framework of Nasdaq ISE, LLC with that of other exchanges owned by Nasdaq, Inc.) (''ISE Order''); MIAX Exchange Order, 77 FR at 73067; Nasdaq Exchange Order, 71 FR at 3553.

special committees as may be approved by the Board. In addition, each Exchange will have committees that are not comprised solely of Directors that may be provided for in the Exchange's bylaws or rules or created by the Board.[38]

The Proposed Bylaws require that each Exchange maintain an Executive Committee.[39] The Executive Committee will include the Chairman of the Board; the Chief Executive Officer, if a Director; the Lead Director,[40] if any; at least one Representative Director; and such other number of Directors that the Board deems appropriate, provided that in no event shall the number of Non-Industry Directors constitute less than the number of Industry Directors, excluding the Chief Executive Officer from the calculation of Industry Directors for this purpose. Members of the Executive Committee, except for those specified above, will be recommended by the Nominating and Governance Committee for approval by the Board and committee members will not be subject to removal except by the Board. The Executive Committee will have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, with limited exceptions.[41]

Each Exchange proposes to eliminate its current Nominating and Member Nominating Committees and prescribe that their duties be performed by its newly formed Nominating and Governance Committee.[42] The Nominating and Governance Committee will consist of at least five Directors, with a majority of Directors that are Non-Industry Directors. Members of the committee will be recommended by the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Nominating and Governance Committee will have the authority to nominate individuals for election as Directors and have such other duties or exercise such other authority as may be prescribed by resolution of the Board. If the Nominating and Governance Committee has two or more Industry Directors, there shall be an Industry-Director Subcommittee consisting of all such Directors, which will act as the Representative Director Nominating Body.[43]

Each Exchange proposes to modify the required composition, appointment procedures, and duties of its Regulatory Oversight Committee.[44] Under the Proposed Bylaws, the Regulatory Oversight Committee of each Exchange will consist of at least three Directors, all of whom will be Non-Industry Directors. Members of the Regulatory Oversight Committee will be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board and will not be subject to removal except by the Board. The Regulatory Oversight Committee will have such duties and exercise such authority as may be prescribed by resolution of the Board, bylaws, or Exchange rules.[45]

Each Exchange proposes to eliminate its Compensation Committee. The Exchanges explain that the responsibilities of their Compensation Committees largely are duplicative of those of the Compensation Committee of their parent company, CBOE Holdings, other than to the extent that the Exchange Compensation Committees recommend the compensation of executive officers whose compensation is not already determined by the CBOE Holdings Compensation Committee.[46] The Exchanges represent that currently, each of the executive officers whose compensation would need to be determined by the Exchange-level Compensation Committee are officers of both the Exchange and CBOE Holdings, but should compensation need to be determined in the future for any Exchange officer who is not also a CBOE Holdings officer, the Exchange Board or senior management will perform such action without the use of a compensation committee, as provided for in Article V, Section 5.11 of the Proposed Bylaws.[47]

Each Exchange also proposes to eliminate its Audit Committee because the Audit Committees' functions are duplicative of the functions of the Audit Committee of CBOE Holdings. The Exchanges state that CBOE Holdings' Audit Committee is composed of at least three CBOE Holdings Directors, all of whom must be independent within the meaning given to that term in the CBOE Holdings Bylaws and Corporate Governance Guidelines and Rule 10A–3 under the Act.[48] The Exchanges also state that the CBOE Holdings Audit Committee has broad authority to assist the CBOE Holdings Board in fulfilling its oversight responsibilities in assessing controls that mitigate the regulatory and operational risks associated with operating each Exchange and to assist the CBOE Holdings Board in discharging its responsibilities relating to, among other things, CBOE Holdings' financial statements and disclosure matters, internal controls, and oversight and risk management.[49] The Exchanges

[38] *See* BYX Proposed Bylaws, Article IV, Section 4.1; BZX Proposed Bylaws, Article IV, Section 4.1; EDGA Proposed Bylaws, Article IV, Section 4.1; EDGX Proposed Bylaws, Article IV, Section 4.1.

[39] *See* BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42188–89; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42161. *See also* BYX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; BZX Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGA Proposed Bylaws, Article IV, Sections 4.1 and 4.2; EDGX Proposed Bylaws, Article IV, Sections 4.1 and 4.2.

[40] Under the Proposed Bylaws, the Board of each Exchange may appoint one of the Non-Industry Directors to serve as the Lead Director and perform such duties and possess such powers as the Board prescribes. *See* BYX Proposed Bylaws, Article III, Section 3.7; BZX Proposed Bylaws, Article III, Section 3.7; EDGA Proposed Bylaws, Article III, Section 3.7; EDGX Proposed Bylaws, Article III, Section 3.7.

[41] *See* BYX Proposed Bylaws, Article IV, Section 4.2; BZX Proposed Bylaws, Article IV, Section 4.2; EDGA Proposed Bylaws, Article IV, Section 4.2; EDGX Proposed Bylaws, Article IV, Section 4.2.

[42] *See* BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42161.

[43] *See* BYX Proposed Bylaws, Article IV, Section 4.3; BZX Proposed Bylaws, Article IV, Section 4.3; EDGA Proposed Bylaws, Article IV, Section 4.3; EDGX Proposed Bylaws, Article IV, Section 4.3. *See also supra* note 22.

[44] *See* BYX Notice, 82 FR at 42134–35; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160–61.

[45] *See* BYX Proposed Bylaws, Article IV, Section 4.4; BZX Proposed Bylaws, Article IV, Section 4.4; EDGA Proposed Bylaws, Article IV, Section 4.4; EDGX Proposed Bylaws, Article IV, Section 4.4. Unlike the Proposed Bylaws, the Current Bylaws explicitly delineate particular responsibilities of the Regulatory Oversight Committee. *See* BYX Current Bylaws, Article V, Section 6(c); BZX Current Bylaws, Article V, Section 6(c); EDGA Current Bylaws, Article V, Section 6(c); EDGX Current Bylaws, Article V, Section 6(c). The Exchanges state that, under the Proposed Bylaws, the Regulatory Oversight Committee will continue to have the duties and authority delineated in the Current Bylaws, with the exception that the Regulatory Oversight Committee will no longer consult the Chief Executive Officer with respect to establishing the goals, assessing the performance, and fixing compensation of the Chief Regulatory Officer. The Exchanges state that this change is consistent with the Exchanges' desire to maintain the independence of the regulatory functions of the Exchanges. *See* BYX Notice, 82 FR at 42135; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42161. In addition, the Proposed Bylaws eliminate the requirement in the Current Bylaws that the Chief Regulatory Officer is a designated officer of the Exchange. *See* BYX Current Bylaws, Article VII, Section 9; BZX Current Bylaws, Article VII, Section 9; EDGA Current Bylaws, Article VII, Section 9; EDGX Current Bylaws, Article VII, Section 9. The Exchanges represent that notwithstanding the proposed elimination of this provision, the Exchange have no intention to eliminate the role of the Chief Regulatory Officer. *See* BYX Notice, 82 FR at 42137; BZX Notice, 82 FR at 42190; EDGA Notice, 82 FR at 42215–16; EDGX Notice, 82 FR at 42163.

[46] *See* BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.

[47] *See* BYX Notice, 82 FR at 42133; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42159.

[48] 17 CFR 240.10A–3.

[49] *See* BYX Notice, 82 FR at 42133–34; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212–13; EDGX Notice, 82 FR at 42159–60.

further state that CBOE Holdings' financial statements are prepared on a consolidated basis that includes the financial results of CBOE Holdings' subsidiaries, including each Exchange, and therefore the CBOE Holdings Audit Committee's purview necessarily includes each Exchange.[50] Finally, the Exchanges note that despite the elimination of Exchange-level Audit Committees, unconsolidated financial statements of each Exchange will still be prepared for each fiscal year.[51]

Each Exchange proposes to eliminate its Appeals Committee, which is a Board-level committee that presides over all appeals related to disciplinary and adverse action determinations in accordance with Exchange rules. The Exchanges state that while they are proposing to eliminate the Appeals Committee as a specified Board-level committee, each Exchange would have the ability to appoint a Board-level or an Exchange-level Appeals Committee pursuant to Article IV, Section 4.1 of the Proposed Bylaws. According to the Exchanges, they would prefer not to have to maintain and staff a standing Appeals Committee, but rather would like to provide their Boards with the flexibility to determine whether to establish a Board-level or Exchange-level Appeals Committee.[52] The Exchanges note that CBOE and C2 maintain an exchange-level Appeals Committee rather than a Board-level Appeals Committee and that other exchanges do not require standing Appeals Committees.[53]

Further, each Exchange proposes to eliminate a provision of its Current Bylaws that allows the Chairman, with approval of the Board, to appoint a Finance Committee to advise the Board with respect to the oversight of the financial operations and conditions of the Exchange.[54] The Exchanges note that they do not currently maintain, and have no intention of establishing, Finance Committees and that CBOE and C2 do not have exchange-level Finance Committees. The Exchanges state that they will retain the authority, under Article IV, Section 4.1 of the Proposed Bylaws, to establish a Finance Committee in the future if so desired.[55]

The Commission believes that each Exchange's proposed committees, which are similar to the committees maintained by CBOE and C2,[56] are designed to help enable the Exchange to carry out its responsibilities under the Act and are consistent with the Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[57] The Commission further believes that each Exchange's proposed committees, including their composition and the means by which committee members will be chosen, are consistent with Section 6(b)(3) of the Act because relevant committees provide for the fair representation of members in the administration of that Exchange's affairs.[58]

With respect to the proposal to eliminate each Exchange's Compensation Committee and Audit Committee, the Commission notes that this change is comparable to the governing structures of other exchanges, including CBOE and C2, which the Commission has previously approved.[59] As more fully set forth in the Notices, the Exchanges state that their respective Compensation Committees' and Audit Committees' responsibilities largely are duplicative of those of the Compensation Committee and Audit Committee of CBOE Holdings. With respect to the proposal to eliminate each Exchange's Appeals Committee and the specific provision permitting a Finance Committee, the Commission notes that the Act does not require the Exchanges to maintain such committees and each Exchange will have the ability, under the Proposed Bylaws, to establish an Appeals Committee or Finance Committee in the future, if desired.

3. Advisory Board

Each Exchange proposes to adopt Article VI, Section 6.1 of the Proposed Bylaws, which provides that the Board may establish an Advisory Board which will advise the Board and management regarding matters of interest to Exchange Members. If established, the Board would set the number of members of the Advisory Board, and at least two members would be Exchange Members or persons associated with Exchange Members. The Nominating and Governance Committee would recommend members of the Advisory Board for approval by the Board.[60] Each Exchange states that it believes an Advisory Board could provide a vehicle for Exchange management to receive advice from the perspective of Exchange Members and regarding matters that impact Exchange Members.[61] Each Exchange further explains that an Advisory Board would be completely advisory in nature and would not be vested with any Exchange decision-making authority or other authority to act on behalf of the Exchange. The Exchanges note that while under the CBOE Bylaws an Advisory Board is mandatory, the Exchanges would like the flexibility to determine if an Advisory Board should be established in the future.[62]

The Commission believes that each Exchange's proposal to authorize an Advisory Board to advise the Board and management with respect to matters of interest to Exchange Members is consistent with the Act. The Commission notes that the Advisory Board will be advisory in nature and will not be vested with decision-making authority or the authority to act on behalf of the Exchange. Nevertheless, if established, the Advisory Board could serve as a supplementary adjunct advisory body that can provide an additional forum for Exchange Members to be heard and provide input to Exchange management above and beyond the formal role played by Representative Directors, as discussed

[50] *See* BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.

[51] *See* BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42187; EDGA Notice, 82 FR at 42212; EDGX Notice, 82 FR at 42160.

[52] *See* BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160.

[53] *See* BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160. For example, BOX Options Exchange, LLC does not mandate an Appeals Committee under its bylaws or exchange rules. *See* bylaws of BOX Options Exchange, LLC; rules of BOX Options Exchange, LLC.

[54] *See* BYX Notice, 82 FR at 42134 (citing BYX Current Bylaws, Article V, Section 6(f)); BZX Notice, 82 FR at 42188 (citing BZX Current Bylaws, Article V, Section 6(f)); EDGA Notice, 82 FR at 42213 (citing EDGA Current Bylaws, Article V, Section 6(f)); EDGX Notice, 82 FR at 42160 (citing EDGX Current Bylaws, Article V, Section 6(f)).

[55] *See* BYX Notice, 82 FR at 42134; BZX Notice, 82 FR at 42188; EDGA Notice, 82 FR at 42213; EDGX Notice, 82 FR at 42160.

[56] *See* CBOE Bylaws, Article IV, Sections 4.1–4.4; C2 Bylaws, Article IV, Sections 4.1–4.4.

[57] 15 U.S.C. 78f(b)(1).

[58] *See* 15 U.S.C. 78f(b)(3).

[59] *See* CBOE 2017 Order, 82 FR at 20400; C2 2017 Order, 82 FR at 20410; Securities Exchange Act Release Nos. 64127 (March 25, 2011), 76 FR 17974, 17976 (March 31, 2011) (SR–CBOE–2011–010) (''CBOE March 2011 Order''); 64128 (March 25, 2011), 76 FR 17973, 17974 (March 31, 2011) (SR–C2–2011–003) (''C2 March 2011 Order''); 62304 (June 16, 2010), 75 FR 36136, 36137 (June 24, 2010) (SR–NYSEArca–2010–31); 60276 (July 9, 2009), 74 FR 34840, 34841 (July 17, 2009) (SR–NASDAQ–2009–042).

[60] *See* BYX Proposed Bylaws, Article VI, Section 6.1; BZX Proposed Bylaws, Article VI, Section 6.1; EDGA Proposed Bylaws, Article VI, Section 6.1; EDGX Proposed Bylaws, Article VI, Section 6.1.

[61] *See* BYX Notice, 82 FR at 42136; BZX Notice, 82 FR at 42189; EDGA Notice, 82 FR at 42214; EDGX Notice, 82 FR at 42162.

[62] The Exchanges further note that there is no statutory requirement to maintain an Advisory Board and the Current Bylaws do not require the Exchanges to establish an Advisory Board. *See* BYX Notice, 82 FR at 42136; BZX Notice, 82 FR at 42189–90; EDGA Notice, 82 FR at 42215; EDGX Notice, 82 FR at 42162.

above. The Commission further notes that the composition and function of the Advisory Board is the same as that for CBOE and C2, and that, while the CBOE Bylaws currently mandate the establishment of an Advisory Board, the Commission previously approved a proposal for a permissive Advisory Board by CBOE and C2.[63]

4. Regulatory Independence

The Proposed Certificates and Proposed Bylaws, as well as proposed Exchange rules, include provisions designed to help maintain the independence of the regulatory functions of each Exchange,[64] which provisions are substantially similar to those included in the governing documents of other exchanges.[65] Specifically:

• In discharging his or her responsibilities as a member of the Board, each Director shall take into consideration the effect that his or her actions would have on the ability of the Exchange to carry out the Exchange's responsibilities under the Act and on the ability of the Exchange: To engage in conduct that fosters and does not interfere with the Exchange's ability to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. In discharging his or her responsibilities as a member of the Board or as an officer or employee of the Exchange, each Director, officer or employee shall comply with the federal securities laws and the rules and regulations thereunder and shall cooperate with the Commission, and the Exchange pursuant to its regulatory authority.[66]

• All confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of the Exchange shall: (1) Not be made available to any persons other than to those officers, Directors, employees, and agents of the Exchange that have a reasonable need to know the contents thereof; (2) be retained in confidence by the Exchange and its officers, Directors, employees, and agents; and (3) not be used for any commercial purposes.[67]

• Under the Proposed Bylaws, as is the case under the Current Bylaws, the books and records of each Exchange must be maintained in the United States.[68]

• Under the Proposed Certificates and Proposed Bylaws, any amendments to those documents will not become effective until filed with, or filed with and approved by, the Commission, as required under Section 19 of the Act and the rules promulgated thereunder.[69]

• Additionally, each Exchange proposes a rule that would prohibit the Exchange from using any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines for non-regulatory purposes or to make distributions to the stockholder.[70]

The Commission believes that the provisions discussed in this section, which are designed to help ensure the independence of each Exchange's regulatory function and facilitate the ability of each Exchange to carry out its responsibility and operate in a manner consistent with the Act, are appropriate and consistent with the requirements of the Act, particularly with Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.[71]

The Commission believes that the proposed provisions relating to the books and records of each Exchange are designed to maintain the independence of the Exchanges' self-regulatory function, and are consistent with the Act. The Commission notes that these provisions are substantially similar to those the Commission has previously found to be consistent with the Act in the context of the corporate governance structures of other exchanges.[72] The Commission also notes that the governing documents of CBOE Holdings and CBOE V previously approved by the Commission provide that all books and records of the Exchanges reflecting confidential information pertaining to the self-regulatory function of the

[63] *See* CBOE December 2011 Order, 76 FR at 79254; C2 December 2011 Order, 76 FR at 79241–42; CBOE March 2011 Order, 76 FR at 17976; C2 March 2011 Order, 76 FR at 17974.

[64] *See* BYX Notice, 82 FR at 42140; BZX Notice, 82 FR at 42193; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42166.

[65] *See, e.g.,* ISE Order, 82 FR at 36503–05; CBOE Demutualization Order, 75 FR at 30089; C2 Exchange Order, 74 FR at 66704–05.

[66] *See* BYX Proposed Certificate, Article Fifth(d); BZX Proposed Certificate, Article Fifth(d); EDGA Proposed Certificate, Article Fifth(d); EDGX Proposed Certificate, Article Fifth(d). The Exchanges note that this provision contains language similar to that in the Current Bylaws. *See* BYX Notice, 82 FR at 42128 and n. 4 (citing BYX Current Bylaws, Article III, Sections 1(d) and (e)); BZX Notice, 82 FR at 42182 and n. 4 (citing BZX Current Bylaws, Article III, Sections 1(d) and (e)); EDGA Notice, 82 FR at 42207 and n. 4 (citing EDGA Current Bylaws, Article III, Sections 1(d) and (e)); EDGX Notice, 82 FR at 42154 and n. 4 (citing EDGX Current Bylaws, Article III, Sections 1(d) and (e)).

[67] *See* BYX Proposed Certificate, Article Eleventh; BZX Proposed Certificate, Article Eleventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. The Commission notes that, as is currently the case, the requirement to keep information confidential will not be interpreted as to limit or impede the rights of the Commission to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or limit or impede the ability of any officers, Directors, employees, or agents of the Exchange to disclose such confidential information to the Commission. *See* BYX Proposed Certificate, Article Eleventh; BZX Proposed Certificate, Article Eleventh; EDGA Proposed Certificate, Article Eleventh; EDGX Proposed Certificate, Article Eleventh. *See also* BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3.

[68] *See* BYX Proposed Bylaws, Article VIII, Section 8.12; BZX Proposed Bylaws, Article VIII, Section 8.12; EDGA Proposed Bylaws, Article VIII, Section 8.12; EDGX Proposed Bylaws, Article VIII, Section 8.12. *See also* BYX Current Bylaws, Article XI, Section 3; BZX Current Bylaws, Article XI, Section 3; EDGA Current Bylaws, Article XI, Section 3; EDGX Current Bylaws, Article XI, Section 3. The Commission notes that such books and records would be subject to examination by the Commission pursuant to the federal securities laws and the rules and regulations thereunder.

[69] *See* BYX Proposed Certificate, Article Seventh; BZX Proposed Certificate, Article Seventh; EDGA Proposed Certificate, Article Seventh; EDGX Proposed Certificate, Article Seventh; BYX Proposed Bylaws, Article IX, Section 9.3; BZX Proposed Bylaws, Article IX, Section 9.3; EDGA Proposed Bylaws, Article IX, Section 9.3; EDGX Proposed Bylaws, Article IX, Section 9.3. The Commission notes that, although the Current Certificates and Current Bylaws do not include a similar, explicit requirement regarding the filing of amendments pursuant to Section 19 of the Act, the Current Certificates and Current Bylaws, as rules of the Exchange, are nonetheless subject to the requirements of Section 19 of the Act and the rules and regulations thereunder.

[70] *See* proposed BYX Rule 15.2; proposed BZX Rule 15.2; proposed EDGA Rule 15.2; proposed EDGX Rule 15.2. The proposed rule further provides that such regulatory revenues will be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, will be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, in which case Bats Global Markets Holdings, with respect to BYX and BZX, and Direct Edge, with respect to EDGA and EDGX, will be entitled to the distribution of the remaining assets of the Exchange). The Exchanges state that this provision is similar to a provision in the Current Bylaws and also to CBOE Rule 2.51, except that, unlike CBOE Rule 2.51, the proposed rule explicitly states that regulatory funds may not be distributed to the stockholder. *See* BYX Notice, 82 FR at 42138–39; BZX Notice, 82 FR at 42192; EDGA Notice, 82 FR at 42217; and EDGX Notice, 82 FR at 42164. *See also* BYX Current Bylaws, Article X, Section 4; BZX Current Bylaws Article X, Section 4; EDGA Current Bylaws, Article X, Section 4; EDGX Current Bylaws, Article X, Section 4.

[71] 15 U.S.C. 78f(b)(1).

[72] *See, e.g.,* MIAX Exchange Order, 77 FR at 73071.

Exchanges will be subject to confidentiality restrictions.[73]

The Commission finds that the proposed process regarding amendments to the Proposed Certificates and Proposed Bylaws is consistent with Section 6(b)(1) of the Act, because it reflects the obligation of the Board to ensure compliance with the rule filing requirements under the Act. Additionally, the Commission finds these changes to be consistent with Section 19(b)(1) of the Act and Rule 19b–4 thereunder,[74] which require that a self-regulatory organization file with the Commission all proposed rules, as well as all proposed changes in, additions to, and deletions of its existing rules. These provisions clarify that amendments to the Proposed Certificates and Proposed Bylaws constitute proposed rule changes within the meaning of Section 19(b)(2) of the Act and Rule 19b–4 thereunder, and are subject to the filing requirements of Section 19 of the Act and the rules and regulations thereunder.

The Commission also finds that the prohibition on the use of regulatory fees or fines to fund non-regulatory purposes or to make distributions to the stockholder is consistent with Section 6(b)(1) of the Act,[75] because it is designed to further each Exchange's ability to effectively comply with its statutory obligations and is designed to ensure that the regulatory authority of the Exchange is not improperly used.[76] This restriction on the use of regulatory funds is intended to preclude each Exchange from using its authority to raise regulatory funds for the purpose of benefiting its stockholder.[77]

C. Related Rule Amendments

Each Exchange proposes to amend its rules in conjunction with the changes in the Proposed Bylaws.[78] Specifically, each Exchange proposes to update certain cross-references to the bylaws in its rules and to move certain definitions from the bylaws to the rules.[79]

The Commission finds that these proposed rule changes are consistent with the Act in that they are necessary to update cross-references and certain defined terms in the rules and would assist Exchange Members and the public in understanding the Exchanges' rules.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[80] that the proposed rule changes (SR–BatsBYX–2017–19; SR–BatsBZX–2017–55; SR–BatsEDGA–2017–22; and SR–BatsEDGX–2017–35), each as modified by its respective Amendment No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[81]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22387 Filed 10–16–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81856; File No. SR–NYSE–2017–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts

October 11, 2017.

I. Introduction

On June 26, 2017, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Listed Company Manual (''Manual'') to adopt initial and continued listing standards for Subscription Receipts. The proposed rule change was published for comment in the **Federal Register** on July 13, 2017.[3] On October 3, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice of Amendment No. 1 and approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange has proposed to adopt initial and continued listing standards for the listing of Subscription Receipts. In its proposal, NYSE generally described the structure of Subscription Receipts and noted that Subscriptions Receipts have been used as a financing technique by Canadian public companies.[5] According to the Exchange, Canadian companies typically use Subscription Receipts as a means of providing cash consideration in merger or acquisition transactions.[6] Subscription Receipts are sold in a public offering that occurs after the execution of an acquisition agreement. The proceeds of the Subscription Receipt offering are held in a custody account and, if the related acquisition closes, the Subscription Receipt holders will have their Subscription Receipts converted into a specified number of shares of the primary listed class of common stock of the issuer.[7] If the acquisition does not close, the Subscription Receipts are redeemed for their original purchase price plus any interest accrued on the custody account.

The Exchange stated in its proposal that Subscription Receipts provide a contingent form of financing for an issuer that only becomes permanent if the specified acquisition is completed.[8] In contrast, the Exchange noted that a company financing the cash consideration for an acquisition by means of a traditional equity or debt

[73] *See* Transaction Order, 81 FR at 93991–92.

[74] 15 U.S.C. 78f(b)(1); 17 CFR 240.19b–4.

[75] 15 U.S.C. 78f(b)(1).

[76] *See, e.g.,* ISE Order, 82 FR at 36505 (approving a prohibition on the use of regulatory fines, fees, or penalties to pay dividends). *See also* CBOE Demutualization Order, 75 FR at 30089 (approving CBOE Rule 2.51).

[77] *See* BYX Notice, 82 FR at 42138; BZX Notice, 82 FR at 42192; EDGA Notice, 82 FR at 42217; EDGX Notice, 82 FR at 42164.

[78] *See* BYX Notice, 82 FR at 42139; BZX Notice, 82 FR at 42192–93; EDGA Notice, 82 FR at 42218; EDGX Notice, 82 FR at 42165.

[79] *See* proposed BYX Rules 1.1, 2.10, and 8.6; proposed BZX Rules 1.1, 2.10, and 8.6; proposed EDGA Rules 1.1, 2.10, and 8.6; proposed EDGX Rules 1.1, 2.10, and 8.6. The Exchanges also propose to move the prohibition on the use of regulatory revenues for non-regulatory purposes from the Current Bylaws to the rules. *See supra* note 70 and accompanying text.

[80] 15 U.S.C. 78s(b)(2).

[81] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81102 (July 7, 2017), 82 FR 32413 (''Notice'').

[4] Amendment No. 1 amends the original filing to: (1) Correct a reference in the purpose section of the filing from a reference to Section 802.01 of the Manual to a reference to Sections 802.02 and 802.03 of the Manual; (2) change the proposed continued listing holder requirement from 100 total holders to 100 public holders; (3) provide that Subscription Receipts will be subject to immediate suspension and delisting proceedings (with no eligibility with respect to the procedures set forth in Sections 802.02 and 802.03 of the Manual) in the event that at any time there are fewer than 100,000 publicly-held shares or 100 public holders of the Subscription Receipts; and (4) make clear that Subscription Receipts convert into primary common stock of the listed company. When the Exchange filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 to the public comment file for SR–NYSE–2017–31 (available at: *https://www.sec.gov/comments/sr-nyse-2017-31/nyse201731.htm*).

[5] *See* Notice, *supra* note 3, at 32413.

[6] *See id.*

[7] *See* Amendment No. 1.

[8] *See* Notice, *supra* note 3, at 32413.

offering is at risk of having incurred unnecessary dilution of its shareholders or indebtedness if the related acquisition fails to close.[9] The Exchange further noted that Subscription Receipts provide investors with flexibility to elect to invest in the post-merger company and not in the company in its pre-merger form.

The Exchange has proposed the following initial listing standards for Subscription Receipts: [10]

(a) At the time of initial listing, the Subscription Receipts must have a price per share of at least $4.00, a minimum total market value of publicly-held shares of $100 million, 1,100,000 publicly-held shares,[11] and 400 holders of round lots (*i.e.,* 100 securities).

(b) The issuer must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard.

(c) The proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a specified acquisition that is the subject of a binding acquisition agreement (the ''Specified Acquisition'').

(d) The proceeds of the Subscription Receipts offering must be held in an interest-bearing custody account by an independent custodian.

(e) The Subscription Receipts must promptly be redeemable for cash (i) at any time the Specified Acquisition is terminated, or (ii) if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts, or such earlier time as is specified in the operative agreements. If the Subscription Receipts are redeemed, the holders must receive cash payments equal to their proportionate share of the funds in the custody account, including any interest earned on those funds.

(f) If the Specified Acquisition is consummated, the holders of the Subscription Receipts must receive the shares of common stock for which their Subscription Receipts are exchangeable.

(g) The sale of the Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act of 1933.[12]

The Exchange has also proposed to amend Section 802.01B of the Manual to include continued listing standards applicable to Subscription Receipts listed under proposed Section 102.08 of the Manual. In its filing, as modified by Amendment No. 1, the Exchange proposed to immediately initiate suspension and delisting procedures when: (i) The number of publicly-held shares is less than 100,000; (ii) the number of public holders is less than 100; [13] (iii) the total market capitalization of the Subscription Receipts is below $15 million over 30 consecutive trading days; (iv) the related common equity security ceases to be listed; or (v) the issuer announces that the Specified Acquisition has been terminated.

An issuer of Subscription Receipts will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to these criteria,[14] and any such security will be subject to delisting procedures as set forth in Section 804 of the Manual.[15] The Exchange also stated that Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies under Section 802.01 of the Manual.[16] The Exchange further noted in its proposal that an issuer of Subscription Receipts may be subject to delisting at the time of closing of the related acquisition pursuant to the ''backdoor listing'' provisions of Section 703.08(E) of the Manual.[17] Further, if the Specified Acquisition is consummated, as noted above, the Subscription Receipts convert into the primary listed class of common stock of the issuer, which will thereafter be subject to all of the continued listing requirements applicable to a primary class of common stock listed on NYSE.[18]

The Exchange also has proposed to amend Section 202.06 of the Manual to provide that whenever it halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, the Exchange will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.[19]

The Exchange represented that it will monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible.[20] Additionally, the Exchange states that it will rely on its existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities law.

Finally, the Exchange has proposed to apply the listing fees for ''short-term'' securities (*i.e.,* securities with a life of seven years or less), set forth in Section 902.06 of the Manual, to Subscription Receipts because these securities, as noted above, will be short-term securities that have a maximum term of twelve months.[21] The Exchange has therefore proposed to amend Section 902.06 of the Manual to make it explicit that it will apply to Subscription Receipts. Finally, the Exchange proposes to amend Section 902.06 of the Manual to remove a reference to the annual fees charged prior to January 1, 2017, as that reference is now irrelevant.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act and the rules and regulations

[9] *See id.*

[10] *See id.*

[11] For purposes of the initial and continued listing requirements for Subscription Receipts, shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. *See* proposed Sections 102.08 and 802.01B of the Manual.

[12] *See* 15 U.S.C. 77a *et seq.*

[13] In adopting a continued listing requirement of 100 public holders, the Exchange notes that this is similar to other exchange continued listing standards. *See, e.g.,* NASDAQ Marketplace Rule 5460(a)(4). *See also* Section 802.01D (providing continued listing standards for warrants, among other specialized securities). For purposes of the continued listing requirements for Subscription Receipts, ''public holders'' exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. *See* proposed Section 802.01B of the Manual.

[14] Sections 802.02 and 802.03 of the Manual set forth procedures for listed companies to submit a plan, which must be approved by the Exchange, to bring the listed company into conformity with a continued listing standard within eighteen months of receiving a letter of non-compliance. As noted above, an issuer of Subscription Receipts will not be eligible to utilize the procedures in Sections 802.02 or 802.03 of the Manual to submit a plan of compliance and instead will be subject to the procedures in Section 804 of the Manual.

[15] Section 804 of the Manual sets forth the applicable due process procedures, including appeal rights, for the suspension and delisting of the securities of a listed company.

[16] *See* Notice, *supra* note 3, at 32414.

[17] *See id.*

[18] *See* Amendment No. 1. *See also* Section 802.01 of the Manual (providing the continued listing criteria for capital or common stock listed on NYSE).

[19] *See* Notice, *supra* note 3, at 32414.

[20] *See id.*

[21] *See id.*

thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[22] which requires that an exchange have rules designed to, among other things, promote just and equitable principles of trade, remove impediments to an perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest, and not permit unfair discrimination between customers, issuers, brokers, or dealers.[23]

The development and enforcement of adequate standards governing the initial and continued listing of securities on an exchange is an activity of critical importance to financial markets and the investing public. Listing standards, among other things, serve as a means for an exchange to screen issuers and to provide listed status only to bona fide companies that have or will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets. Adequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market. Once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

Subscription Receipts, as discussed by the Exchange in its proposal, are a financing technique to fund a Specified Acquisition. As NYSE noted in its filing, an issuer could sell equity securities to fund an acquisition, but if the acquisition doesn't close, investors will still experience dilution in their holdings. Subscription Receipts allow investors the right to invest in the common stock of the listed company upon consummation of a Specified Acquisition. If the deal is not consummated within a short time frame of 12 months or less, the Subscription Receipt holders receive their pro rata share of the offering proceeds plus interest. In this sense, Subscription Receipts could be viewed as a security with characteristics of both equity and debt and are similar, but not identical to, other contingent securities with a right to receive common stock, such as warrants. At the time investors purchase a Subscription Receipt they will also have information about the Specified Acquisition and are making a decision to purchase stock in the listed post-acquisition company.

To address these unique characteristics, as discussed in more detail below, the Exchange has proposed to adopt new Section 102.08 to list Subscription Receipts, and specified continued listing standards. The proposed standards would permit NYSE to list, and continue to list, Subscription Receipts that meet specific criteria, including market value, distribution, and price requirements, which should help to ensure that the Subscription Receipts have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, issuers of Subscription Receipts would have to comply with other investor protection criteria in order to list Subscription Receipts, such as, among others, holding proceeds in a custodial account controlled by an independent custodian and providing shareholders with cash redemption rights should the Specified Acquisition be terminated or not close within 12 months.

The Commission believes that the proposed initial and continued listing standards for Subscription Receipts are consistent with the requirements of the Act, including the protection of investors and the promotion of fair and orderly markets.

At the time of initial listing, the Subscription Receipts must have a price per share of at least $4.00, a minimum total market value of publicly-held shares of $100 million, 1,100,000 publicly-held shares,[24] and 400 holders of round lots (*i.e.,* 100 securities). The Commission notes that the distribution criteria is the same that currently applies to the listing of common stock in connection with an initial public offering under NYSE listing rules and that the $100 million market value of publicly-held shares requirement is similar to the requirements for other initial listing of securities on the Exchange.[25] The Commission believes that these standards should help ensure that a sufficient market, with adequate depth and liquidity, exists for the initial listing of Subscription Receipts.[26]

Similarly, the Commission believes the Exchange's proposed continued listing standards for Subscription Receipts are consistent with the requirements of the Act and the protection of investors. Under the amended proposal, the Exchange will immediately initiate suspension and delisting procedures when (i) the number of publicly-held shares is less than 100,000, (ii) the number of public holders is less than 100,[27] (iii) the total market capitalization of the Subscription Receipts is below $15 million over 30 consecutive trading days, (iv) the related common equity security ceases to be listed, or (v) the issuer announces that the Specified Acquisition has been terminated.[28] In addition, Subscription Receipts will be subject to potential delisting for all of the reasons generally applicable to operating companies, including those outlined in Section 802.01D of the Manual, which discusses the factors and criteria that may result in delisting, and may also be subject to delisting at the time of closing of the related acquisition pursuant to the backdoor listing provisions of Section 703.08 of the Manual. The Commission notes the application of the backdoor listing provision will help to ensure that companies that would not otherwise qualify for original listing on the Exchange could not list, for example, by merging with a listed company.

The Commission believes that these standards, taken together, should help ensure that a sufficient market, with adequate depth and liquidity, exists for the continued listing of Subscription Receipts and are similar to the continued listing standards for other securities that have similar characteristics.[29] The Commission also notes that once the Specified

[22] 15 U.S.C. 78f(b)(5).

[23] In approving this proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] For purposes of the initial and continued listing requirements for Subscription Receipts, shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. *See* proposed Sections 102.08 and 802.01B of the Manual.

[25] *See* Sections 102.01A and 102.01B of the Manual.

[26] Because the issuer of the Subscription Receipt is already listing its primary common stock on the Exchange, it must comply with the continued listing standards for capital and common stock as well as the corporate governance requirements applicable to listed companies.

[27] For purposes of the continued listing requirements for Subscription Receipts, ''public holders'' exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. *See* proposed Section 802.01B of the Manual.

[28] The Commission notes that an issuer of Subscription Receipts will not be eligible to follow the evaluation and follow-up procedures outlined in Sections 802.02 and 802.03 of the Manual with respect to these criteria, and any such security will be subject to delisting procedures as set forth in Section 804 of the Manual.

[29] *See, e.g.,* Section 802.01D of the Manual (providing the continued listing standards for certain types of specialized securities, including warrants).

Acquisition has occurred and a Subscription Receipt is converted to common stock, that common stock is subject to the continued listing requirements for capital or common stock in Section 802.01of the Manual.[30]

In addition to the quantitative listing requirements proposed for Subscription Receipts, the proposed initial and continued listing standards also include additional protections for Subscription Receipt holders. For example, the issuer of Subscription Receipts must be an NYSE listed company that is not currently non-compliant with any applicable continued listing standard and must continue to be listed on the Exchange throughout the time the Subscription Receipts are traded on the Exchange. The proposed rules also provide that whenever the Exchange halts trading in a security of a listed company pending dissemination of material news or implements any other required regulatory trading halt, the Exchange will also halt trading in any listed Subscription Receipt that is exchangeable by its terms into the common stock of such company.

The Commission believes that these additional requirements should protect investors and the public interest, consistent with Section 6(b)(5) of the Act, by assuring that information with respect to the listed company issuing the Subscription Receipts is publicly available and that the issuing company is meeting all continued listing standards, including corporate governance requirements, of the Exchange. In addition, these requirements should help assure that the Exchange has a listing relationship with, and direct access to information from, the issuer of the Subscription Receipts. Among other things, this direct relationship the Exchange has with the listed company issuing the Subscription Receipts will help to ensure that the Exchange will receive information in a timely manner to halt trading in the Subscription Receipts when there is a material news, or other regulatory, trading halt imposed on the common stock, and other securities, of the listed company.

There are additional protections for investors in the proposed standards. These include that all the proceeds of the Subscription Receipts offering must be designated solely for use in connection with the consummation of a Specified Acquisition pursuant to a definitive acquisition agreement, the material terms of which would be subject to disclosure. Additionally, the proceeds of the Subscription Receipts offering must also be held in an interest-bearing custody account by an independent custodian and holders will promptly redeem the Subscription Receipts for cash, equal to the holder's proportionate share of the funds in the custody account plus any interest earned, at any time the Specified Acquisition is terminated or if the Specified Acquisition does not close within twelve months from the date of issuance of the Subscription Receipts (or such earlier time as specified in the operative agreements). If the Specified Acquisition is consummated, the holders of the Subscription Receipts will receive the shares of common stock for which their Subscription Receipts are exchangeable. Finally, the listing standards specifically state and remind issuers that the sale of Subscription Receipts and the issuance of the common stock of the issuer in exchange for the Subscription Receipts must both be registered under the Securities Act of 1933.[31] This is important because shareholders, at the time they purchase a Subscription Receipt, are making an investment decision to also purchase the common stock of the merged listed company should the Specified Acquisition be consummated, within twelve months or such shorter specified time period. Therefore, it is important to have registration and disclosure under the Securities Act of both the Subscription Receipt and the related common stock. Based on the above, the Commission believes that specifically setting forth the Securities Act registration requirements in the NYSE rules for listing Subscription Receipts is consistent with the requirements of Section 6(b)(5) of the Act to further investor protection and the public interest.

The Exchange will also monitor activity in Subscription Receipts to identify and deter any potential improper trading activity in such securities and will adopt enhanced surveillance procedures to enable it to monitor Subscription Receipts alongside the common equity securities into which they are convertible. Since the Subscription Receipts are related to, and represent an interest in, the common stock of the post-acquisition listed company, this enhanced surveillance should help to monitor the trading activity in both the issuer's listed common stock and the Subscription Receipts.[32]

The Commission believes that these safeguards and standards should help to ensure that the listing, and continued listing, of any Subscription Receipts on NYSE will be consistent with investor protection, the public interest, and the maintenance of fair and orderly markets. In this regard, the Commission expects NYSE to thoroughly review any potential listing of Subscription Receipts to ensure that its listing standards have been met and continue to be met, as well as to monitor trading in the Subscription Receipts and related common stock of the issuer. Based on the foregoing, the Commission finds that the proposed initial and continued listing standards are consistent with the Act.

Finally, the Commission believes that the proposed fees set forth in Section 902.06 of the Manual are consistent with Section 6(b)(4) of the Act,[33] in particular, in that they are designed to provide for the equitable allocation of reasonable dues, fees, and other charges, and are not designed to permit unfair discrimination among the Exchange's members, issuers, and other persons using its facilities. The Commission notes that the proposed fees are the same as the fees applicable to similar short term securities under Rule 902.06 of the Manual.

Based on the above, the Commission believes the proposed rule change, as amended, is reasonable and should provide for the listing of Subscription Receipts, with baseline investor protection and other standards. The Commission believes, as discussed above, that NYSE has developed sufficient standards to allow the listing of Subscription Receipts on the Exchange, and finds the proposal consistent with the requirements set forth under the Act, and in particular, Sections (6)(b)(4) and 6(b)(5).[34]

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 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

[30] *See* Section 802.01 of the Manual. *See also* Amendment No. 1.

[31] *See* 15 U.S.C. 77a *et seq.*

[32] As noted above, the Exchange will also rely on its existing trading surveillances, administered by the Exchange or FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

[33] 15 U.S.C. 78f(b)(4).

[34] 15 U.S.C. 78s(b)(4) and (b)(5).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–31 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–NYSE–2017–31. 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 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 publicly available. All submissions should refer to File Number SR–NYSE–2017–31 and should be submitted on or before November 7, 2017.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of the notice of Amendment No. 1 in the **Federal Register**. As noted above, in Amendment No. 1, the Exchange amended the original filing to correct an incorrect reference to the Manual in the purpose section of the filing, replace the proposed continued listing standard of 100 total holders with 100 public holders, add two additional continued listing standards—the 100,000 publicly-held shares requirement and the 100 public holder requirement—to the immediate suspension and delisting proceeding provisions of Section 804 of the Manual, and provide a clarification that all Subscription Receipts convert into primary common stock of the issuer.

The Commission notes that the revisions in Amendment No. 1 provide additional clarity and specificity to the proposal and do not raise any novel regulatory concerns. In addition, the changes to the continued listing standards strengthen the proposal and are consistent with investor protection. Finally, the Commission notes that the majority of the original proposal was not modified and was subject to a full notice-and-comment period, and no comments were received. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.[35]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSE–2017–31), as modified by Amendment No. 1 thereto, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22408 Filed 10–16–17; 8:45 am]

BILLING CODE 8011–01–P

[35] 15 U.S.C. 78s(b)(2).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81853; File No. SR–CBOE–2017–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend Interpretation and Policy .07 of Exchange Rule 4.11, Position Limits, To Increase the Position Limits for Options on Certain ETFs

October 11, 2017.

On August 15, 2017, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 4.11, Position Limits, to increase the position limits for options on the following exchange traded funds and exchange traded notes: iShares China Large-Cap ETF, iShares MSCI EAFE ETF, iShares MSCI Emerging Markets ETF, iShares Russell 2000 ETF, iShares MSCI Brazil Capped ETF, iShares 20+ Year Treasury Bond Fund ETF, iPath S&P 500 VIX Short-Term Futures ETN, PowerShares QQQ Trust, and iShares MSCI Japan ETF. The proposed rule change was published for comment in the **Federal Register** on August 31, 2017.[3] The Commission received no comments regarding the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is October 15, 2017.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act [5] and for the reasons stated above, the Commission designates November 29, 2017, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2017–057).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22390 Filed 10–16–17; 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. 81483 (August 25, 2017), 82 FR 41457.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81855; File No. SR–NASDAQ–2017–103]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Postpone Implementation of a New Attribute for Designated Retail Orders

October 11, 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 29, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to postpone implementation of a new attribute for designated retail orders

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

On July 7, 2017, the Commission approved the Exchange's new Extended Life Priority Order Attribute (''ELO'').[3] ELO will allow certain Displayed Orders[4] that are committed to a one-second or longer resting period to receive higher priority than other Displayed Orders of the same price on the Nasdaq Book. Currently, Nasdaq's System[5] places a time-stamp on each Order entered by a member, which determines the time ranking of the Order for purposes of processing the Order.[6] The System presents resting Orders on the Nasdaq Book for execution against incoming Orders in accordance with a price/display/time algorithm.[7] Price means that better priced Orders will be presented for execution first. The Exchange proposed ELO to promote Displayed Orders with longer time horizons, thereby enhancing the market so that it works for a wider array of market participants. Implementation of ELO requires the Exchange to make an exception to the general priority rules[8] so that Displayed Orders with an Extended Life Priority Attribute are allowed to earn queue priority on the Nasdaq Book at any given price level ahead of all other Displayed Orders without the Extended Life Priority Attribute.[9]

In proposing ELO, the Exchange anticipated a progressive rollout of the ELO functionality, beginning with a small set of symbols and gradually expanding further. The Exchange also committed to publish the symbols eligible for ELO on its Web site. The Exchange noted that it intended to implement the initial set of symbols for ELO in the third quarter of 2017, with the exact implementation date being reliant on several factors, such as the results of extensive testing and industry events and initiatives.

The Exchange has encountered unforeseen issues in developing ELO, which have delayed its implementation. These issues concern the complexity of programming the System to account for ELO priority over other Orders on the Nasdaq Book. The issues will require additional thoughtful and methodical development efforts to ensure that risks are adequately addressed, and the System will accurately account for the new ELO priority. As a consequence, the Exchange is proposing to implement ELO in the second half of 2018. As it originally committed to do, the Exchange will notify market participants via an Equity Trader Alert once a specific date for the initial rollout is determined.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, because it will allow the Exchange to adequately address complex unforeseen issues that introduce risk to the development and functioning of ELO. The Exchange believes that, to address these issues in a thorough and thoughtful manner, additional time is needed for it to solve these issues before it can implement ELO. As a consequence, the proposed delay will serve to protect investors by decreasing the likelihood of potential disruption to the market caused by the implementation of ELO.

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. Delaying the implementation of ELO will allow the Exchange to adequately analyze issues, as well as to further develop and test Nasdaq systems to ensure that ELO functions as proposed. Ensuring that the Exchange has adequate time to do so does not place a burden on competition whatsoever, since ELO has not been implemented and market participants have not yet begun to program their systems to accept ELO. Thus market participants will not be affected by the delay in its implementation.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 81097 (July 7, 2017), 82 FR 32386 (July 13, 2017) (SR–NASDAQ–2016–161) (approving the proposal as modified by Amendment No. 1).

[4] Only Designated Retail Orders, as defined by Rule 7018, are available for ELO.

[5] As defined by Rule 4701(a).

[6] *See* Rule 4756(a)(2).

[7] *See* Rule 4757. To implement ELO's exception to the price/display/time algorithm the Exchange proposed amending Rule 4757. *See supra* note 3.

[8] *Id.*

[9] The Exchange proposed to designate orders with the ELO attribute with a new, unique identifier or they may alternatively be entered through an order port that has been set to designate, by default, all orders with the new identifier. Orders marked with the new identifier—whether on an order-by-order basis or via a designated port—would be disseminated via Nasdaq's TotalView ITCH data feed.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] 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 may immediately extend the ELO implementation date. The Exchange stated that it will not be able to implement ELO by the end of the third quarter of 2017. According to the Exchange, it has encountered unforeseen issues in developing ELO, and these issues will require additional thoughtful and methodical development efforts to ensure that risks are adequately addressed and the System will accurately account for the new ELO priority. The Exchange also stated that waiving the operative delay will allow it to implement the proposed implementation delay and provide notice to market participants thereof.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[16]

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–NASDAQ–2017–103 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–2017–103. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NASDAQ–2017–103, and should be submitted on or before November 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22392 Filed 10–16–17; 8:45 am]

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[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] The Exchange stated that, as it originally committed to do, it will notify market participants via an Equity Trader Alert once a specific date for the initial rollout is determined and will publish the symbols that are eligible for ELO on its Web site.

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81852; File No. SR–BOX–2017–32]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Adopt a Strategy QOO Order Fee Cap

October 11, 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 29, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule on the BOX Market LLC (''BOX'') options facility. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 2, 2017. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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 the Fee Schedule for trading on BOX to establish monthly and daily fee caps for certain manual transactions fees on the BOX open-outcry Trading Floor (''Trading Floor''). Manual transactions consist of Qualified Open Outcry (''QOO'') Orders.[5] A QOO Order must be entered as a two-sided order, an initiating side and a contra-side, and the QOO Order fees, rebates and applicable fee and rebate caps will apply to both sides of the order.

Specifically, the Exchange proposes to add Section II.D ''Strategy QOO Fee Cap'' where manual transactions fees will be capped at $700 for all reversal, conversion, jelly roll, and box spread strategies[6] executed on the same trading day in the same option class. QOO Order fees in these combined Strategies will further be capped at $25,000 per month per Participant. The Exchange then proposes to specify that executions subject to the Strategy QOO Order Fee Cap will not be subject to the Broker Dealer manual transaction fee cap of $75,000 per month in Section II.A, and the QOO Order Rebate outlined in Section II.C.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed Strategy QOO Order fee cap is reasonable and appropriate. The proposed fee cap of $700 per day for certain strategies executed on the same trading day in the same option class; and $25,000 per month per Participant are the same amount strategy fee caps at a competing exchanges with an open outcry trading floor.[8] Further, the Exchange believes that this proposed fee cap is equitable and not unfairly discriminatory because it provides incentives for all Participants to submit certain strategy orders to the BOX Trading Floor, which brings increased liquidity and order flow to the floor for the benefit of all market participants. Finally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to exempt all transactions subject to the Strategy QOO Fee Cap from the Broker Dealer monthly QOO fee cap and the QOO Order Rebate as additional incentives for these orders will no longer be necessary.

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. Further, the Exchange does not believe that capping the fees for certain Strategy QOO Orders will impose an undue burned on intra-market competition because all Floor Participants are eligible for the fee cap. Further, the Exchange believes that the fee cap will promote competition by allowing the Exchange to remain competitive with other exchanges with open outcry trading floors.

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 Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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

[5] *See* BOX Rule 7600. The QOO Order must be entered as a two-sided order when it is submitted to the Exchange for execution through the BOX Order Gateway (''BOG'').

[6] A ''reversal strategy'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion strategy'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration. A ''jelly roll strategy'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position. A ''box spread strategy'' is a strategy that synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike is combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively. These definitions are identical to the terms defined in the Chicago Board Options Exchange, Inc. (''CBOE'') Fee Schedule; NYSE American Options Fee Schedule ''(''NYSE'') and Phlx Pricing Schedule (''PHLX''), Strategy Caps on Multiply Listed Options Fees.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* CBOE Fee Schedule Footnote 13; NYSE Fee Schedule, Limit of Fees on Options Strategy Executions on page 18; and Phlx Pricing Schedule, Strategy Caps on Multiply Listed Options Fees.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2017–32 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–BOX–2017–32. 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–BOX–2017–32, and should be submitted on or before November 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22389 Filed 10–16–17; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81850; File No. SR–BOX–2017–31]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Update Certain Fees Assessed Under Section VI.A (Connectivity Fees)

October 11, 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 29, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Fee Schedule [sic] to amend the Fee Schedule to update certain fees assessed under Section VI.A (Connectivity Fees). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on October 2, 2017. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

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 the Fee Schedule for trading on BOX to update the connectivity fees that are assessed on market participants.

Section VI.A. of the BOX Fee Schedule ''Connectivity Fees'', was created to detail the fees applicable to market participants who connect to the BOX market network at Point of Presence (''PoP'') sites. These sites are owned and operated by third-party external vendors, and the fees listed in this section are meant to encompass the fees that could be charged based on each market participant's particular configuration. BOX does not assess Connectivity Fees; these fees are assessed by the datacenters and are billed directly to the market participant. Connectivity fees can include one-time set-up fees and monthly fees charged by the third-party vendor in exchange for the services provided to the market participant.

The Exchange proposes to update the fees applicable for the datacenters where market participants may connect to the BOX network: NY4, owned and operated by Equinix; and 65 Broadway, owned and operated by 365 Main; and the connectivity fees applicable, depending upon connection type. Market participants are currently assessed the following fees when connecting to the BOX network:

Connection Type	NY4		65 Broadway	
	One-time set-up	Monthly	One-time set-up	Monthly
POTS	$100	$25	$50	$25
Ethernet	N/A	N/A	250	175

[11] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Connection Type	NY4		65 Broadway	
	One-time set-up	Monthly	One-time set-up	Monthly
T1	500	100	250	175
Cat 5/6	500	245	250	175
COAX	500	245	250	200
Single & Multi Mode Fiber	500	350	500	250
Extended Cross Connect	1,000	750	500	400
Intra-Customer Cross Connect	500	0	N/A	N/A

The Exchange proposes to remove the Extended Cross Connection Type for NY4 datacenter. Additionally, the Exchange proposes to amend the T1 monthly fee at NY4 from $100 to $245. As such, the fees will be as follows:

Connection Type	NY4		65 Broadway	
	One-time set-up	Monthly	One-time set-up	Monthly
POTS	$100	$25	$50	$25
Ethernet	N/A	N/A	250	175
T1	500	245	250	175
Cat 5/6	500	245	250	175
COAX	500	245	250	200
Single & Multi Mode Fiber	500	350	500	250
Extended Cross Connect	N/A	N/A	500	400
Intra-Customer Cross Connect	500	0	N/A	N/A

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5)of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to state that connectivity fees are assessed on all market participants that establish connections to BOX through a third-party and that these fees will be billed directly to the market participant. The Exchange believes that the proposed amendments to Section VI.A. of the Fee Schedule are reasonable as they simply reflect the fee changes made by the datacenters, changes which the Exchange has no control over.

Further, the Exchange believes that the proposed Connectivity Fees constitute an equitable allocation of fees, and are not unfairly discriminatory, as all similarly situated market participants are charged the same amount depending on the services they receive.

[5] 15 U.S.C. 78f(b)(4) and (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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments to the Fee Schedule will not impose a burden on competition among various Exchange Participants. The proposed change is designed to provide greater specificity and clarity within the Fee Schedule and does not place any Participants at a disadvantage compared to other Participants. Further, the Exchange does not believe this rule change will have an impact on intermarket competition.

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 Exchange Act[6] and Rule 19b–4(f)(2) thereunder,[7] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

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–BOX–2017–31 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–BOX–2017–31. 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–BOX–2017–31, and should be submitted on or before November 7, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–22388 Filed 10–16–17; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Svoboda Capital Fund IV SBIC, L.P.; License No. 05/05–0327; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Svoboda Capital Fund IV SBIC, L.P., One North Franklin Street, Suite 1500, Chicago, IL 60606, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Svoboda Capital Fund IV SBIC, L.P. proposes to provide equity security financing to Estate Cheese Group, LLC (d/b/a Sonoma Creamery), 21750th Street East, Sonoma, CA 95476 (''Sonoma'').

The financing is brought within the purview of § 107.730(a) and (d) of the Regulations because Svoboda Capital Fund IV, L.P., an Associate of Svoboda Capital Fund IV SBIC, L.P., owns more than ten percent of Sonoma, and therefore this transaction is considered a financing of an Associate requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: September 6, 2017.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2017–22397 Filed 10–16–17; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15340 and #15341; South Carolina Disaster Number SC–00050]

Administrative Declaration of a Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of South Carolina dated 10/05/2017.

Incident: Hurricane Irma.

Incident Period: 09/06/2017 through 09/13/2017.

DATES: Issued on 10/05/2017.

Physical Loan Application Deadline Date: 12/04/2017.

Economic Injury (EIDL) Loan Application Deadline Date: 07/05/2018.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Beaufort, Jasper.

Contiguous Counties:

South Carolina: Colleton, Hampton.

Georgia: Chatham, Effingham.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	6.610
Businesses without Credit Available Elsewhere	3.305
Non-Profit Organizations with Credit Available Elsewhere	2.500
Non-Profit Organizations without Credit Available Elsewhere	2.500
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.500

The number assigned to this disaster for physical damage is 15340 8 and for economic injury is 15341 0.

The States which received an EIDL Declaration # are South Carolina, Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

Linda E. McMahon,

Administrator.

[FR Doc. 2017–22396 Filed 10–16–17; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 10165]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''The Arch of Titus—From Jerusalem to Rome, and Back'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''The Arch of Titus—from Jerusalem to Rome, and Back,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Yeshiva University Museum, New York, New York, from on

[8] 17 CFR 200.30–3(a)(12).

or about October 27, 2017, until on or about January 14, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–22409 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10169]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Painted in Mexico, 1700–1790: Pinxit Mexici'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Painted in Mexico, 1700–1790: Pinxit Mexici,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about November 19, 2017, until on or about March 18, 2018, at The Metropolitan Museum of Art, New York, New York, from on or about April 24, 2018, until on or about July 22, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–22455 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10172]

Notice of Public Meeting

SUMMARY: As required by the Federal Advisory Committee Act, Public Law 92–463, the Department of State gives notice of a meeting of the Advisory Committee on International Postal and Delivery Services. This Committee will meet on Wednesday, November 1, 2017, from 1:00 p.m. to 5:00 p.m. Eastern Time in the American Institute of Architects Board Room at 1735 New York Avenue NW., Washington, DC 20006.

Any member of the public interested in providing input to the meeting should contact Ms. Shereece Robinson, whose contact information is listed below (see the ''for further information'' section of this notice). Each individual providing oral input is requested to limit his or her comments to five minutes. Requests to be added to the speakers list must be received in writing (letter or email) prior to the close of business on Wednesday, October 25, 2017; written comments from members of the public for distribution at this meeting must reach Ms. Robinson by letter or email on this same date. A member of the public requesting reasonable accommodation should also make his/her request to Ms. Robinson by October 25. Requests received after that date will be considered but might not be able to be fulfilled.

The agenda of the meeting will include Universal Postal Union Postal Operations Council and Council of Administration fall session outcomes and implementation of the Integrated Product Plan to modernize and integrate the UPU's international mail product categories and associated remuneration systems.

FOR FURTHER INFORMATION CONTACT: Please contact Ms. Shereece Robinson of the Office of Specialized and Technical Agencies (IO/STA), Bureau of International Organization Affairs, U.S. Department of State, at tel. (202) 663–2649, by email at *RobinsonSA2@state.gov,* or by mail at IO/STA, Suite L–409 SA–1; U.S. Department of State; Washington, DC 20522.

Joseph P. Murphy,

Designated Federal Officer, Advisory Committee on International Postal and Delivery Services, Office of Specialized and Technical Agencies, Bureau of International Organization Affairs, Department of State.

[FR Doc. 2017–22488 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice: 10158]

30-Day Notice of Proposed Information Collection: Individual, Corporate or Foundation, and Government Donor Letter Applications

AGENCY: Department of State.

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 16, 2017.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

• *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Chanel Wallace, who may be reached on (202) 647–7730 or at *WallaceCR2@state.gov.*

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Individual, Corporate or Foundation and Government Donor Letter Applications.

• *OMB Control Number:* 1405–0218.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Office of Emergencies in the Diplomatic and Consular Service (M/EDCS).

• *Form Number:* Individual (DS–4273), Donor Form—Corporate or Foundation (DS–4272), and Donor Form—Government (DS–4271).

• *Respondents:* Individuals, Corporations, or Foundations that make donations to the Department.

• *Estimated Number of Respondents:* 4,333.

• *Estimated Number of Responses:* 4,333.

• *Average Time per Response:* 5 minutes.

• *Total Estimated Burden Time:* 361 hours.

• *Frequency:* On occasion.

• *Obligation To Respond:* Mandatory.

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 Office of Emergencies in the Diplomatic and Consular Service (EDCS) manages the solicitation and acceptance of gifts to the U.S. Department of State. The information requested via donor letters is a necessary first step to accepting donations. The information is sought pursuant to 22 U.S.C. 2697, 5 U.S.C. 7324 and 22 CFR, Part 3) and will be used by EDCS's Gift Fund Coordinator to demonstrate the donor's intention to donate either an in-kind or monetary gift to the Department. This information is mandatory and must be completed before the gift is received by the Department.

Methodology:

The information collection forms are available upon request. Donors can complete hard copies of the form, and mail to EDCS.

Frances Gidez,

Gift Funds Coordinator, M/EDCS, Department of State.

[FR Doc. 2017–22418 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF STATE

[Public Notice: 10167]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Murillo: The Self-Portraits'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Murillo: The Self-Portraits,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about November 1, 2017, until on or about February 4, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–22492 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10170]

Notice of Determinations; Culturally Significant Object Imported for Exhibition Determinations: ''Laura Owens'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Laura Owens,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Whitney Museum of American Art, New York, New York, from on or about November 10, 2017, until on or about February 4, 2018, at the Dallas Museum of Art, Dallas, Texas, from on or about March 25, 2018, until on or about July 29, 2018, at the Museum of Contemporary Art, Los Angeles, in Los Angeles, California, from on or about November 1, 2018, until on or about March 31, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including information identifying the object, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat.

985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–22456 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10163]

Notice of Availability of the Draft Environmental Assessment and Preliminary Finding of No Significant Impact for the Borrego Pipeline Presidential Permit Application Review, Webb County, Texas

AGENCY: Department of State.

ACTION: Notice of availability; solicitation of comments.

SUMMARY: The U.S. Department of State (Department) announces availability for public review and comment of the *Draft Environmental Assessment* (Draft EA) and the *Preliminary Finding of No Significant Impact for the Borrego Pipeline Presidential Permit Application* (Preliminary FONSI). These documents evaluate the potential environmental impacts of the construction, connection, operation, and maintenance of a proposed new pipeline at the U.S.-Mexico border in Webb County, Texas, by Borrego Crossing Pipeline, LLC (Borrego), a subsidiary of Howard Midstream Energy Partners, LLC (Howard Midstream).

DATES: The public comment period starts on October 13, 2017, and will end November 13, 2017.

ADDRESSES: Comments on the Draft EA and Preliminary FONSI may be submitted at *www.regulations.gov* by entering [DOS–2017–0039] or the title of this Notice into the search field and following the prompts. Comments may also be submitted by mail, addressed to: Jill Reilly, Office of Environmental Quality and Transboundary Issues (OES/EQT): Suite 2726, U.S. Department of State, 2201 C Street NW., Washington, DC 20520. All comments from agencies or organizations should indicate a contact person for the agency or organization.

The Department invites the public, governmental agencies, tribal governments, and all other interested parties to provide comments on the Draft EA and Preliminary FONSI during the 30-day public comment period. All comments received during the review period may be made public, no matter how initially submitted. Comments are not private and will not be edited to remove identifying or contact information. Commenters are cautioned against including any information that they would not want publicly disclosed.

Any party soliciting or aggregating comments from other persons is further requested to direct those persons not to include any identifying or contact information, or information they would not want publicly disclosed, in their comments.

FOR FURTHER INFORMATION CONTACT: Jill Reilly, (202) 647–9798, *ReillyJE@state.gov.* Project details for the Borrego Pipeline and copies of the Presidential permit application, as well as information on the Presidential permit process are available at the following: *https://www.state.gov/e/enr/applicant/applicants/borregopipeline/index.htm.* Please refer to this Web site or contact the Department at the address listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION: The Department reviews Presidential permit applications under Executive Order (E.O.) 13337 and E.O. 14432. E.O. 13337 delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels (except for natural gas), at the borders of the United States, and to issue or deny such Presidential permits upon a national interest determination.

On August 12, 2016, Borrego submitted an application to the Department. The application requests a new Presidential permit that would authorize the construction, connection, operation and maintenance of facilities at the United States-Mexico border (border facilities) for the export to Mexico of refined petroleum products (including gasoline, premium gasoline, ultra-low sulfur diesel [ULSD] and jet fuels). The petroleum products would be transported through the new pipeline between a terminal in Laredo, Texas, and the existing Nuevo Laredo Terminal in Tamaulipas, Mexico.

The Draft EA and Preliminary FONSI were prepared consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500–1508), and the Department's implementing regulations (22 CFR part 161).

Availability of the Draft EA and Preliminary FONSI: Copies of the Draft EA and Preliminary FONSI have been distributed to state and Federal agencies, tribal governments and other interested parties. Printed copies of the document may be obtained by visiting the Main Laredo Public Library, 1120 E. Calton Road, Laredo, Texas, 78041, or by contacting the Borrego Project Manager at the above address. They are also available at *https://www.state.gov/e/enr/applicant/applicants/borregopipeline/index.htm.*

Sezaneh Seymour,

Acting Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2017–22411 Filed 10–13–17; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 10166]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: ''Caravaggio: Masterpieces From the Galleria Borghese'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that three objects to be included in the exhibition ''Caravaggio: Masterpieces from the Galleria Borghese,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about November 21, 2017, until on or about February 18, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made

pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–22410 Filed 10–16–17; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1247; Docket No. AB 1248]

Buckeye East Chicago Railroad LLC—Abandonment Exemption—in Lake County, Ind.; Landisville Railroad, LLC—Discontinuance Exemption—in Lake County, Ind.

On September 27, 2017, Buckeye East Chicago Railroad LLC (BECR) and Landisville Railroad, LLC (Landisville) (collectively, Petitioners) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon and discontinue, respectively, approximately 1.34 miles of rail line located within the East Chicago Transload Facility (Facility) at or near 400 East Columbus Drive in East Chicago, Lake County, Ind. (the Line). The Line traverses United States Postal Service ZIP Code 46312. Petitioners state the Line does not include stations other than the Facility and does not have milepost designations.

According to Petitioners, Landisville exclusively provides transloading and interchange services on behalf of BECR to a connection with the Indiana Harbor Belt Railroad (IHBR). Petitioners state that Buckeye Terminals, LLC, the operator of the Facility, is the only shipper on the Line. Upon consummation of the proposed transaction, Petitioners state that IHBR would continue to pick up and deliver traffic to the Facility as a common carrier. Petitioners also state that Buckeye Terminals, which will be BECR's successor as owner of the Line, or Landisville, as a private contract operator to Buckeye Terminals, will move cars around the Facility and provide the transload services, but would do so over private track that would no longer be subject to the Board's jurisdiction. Petitioners state that no other customers have requested common carrier service from either BECR or Landisville.

The parties state that Buckeye Partners, as the parent of both BECR and Buckeye Terminals, has consented to and supports the proposed abandonment and discontinuance. Petitioners state that Landisville is also willing to accommodate the abandonment of the Line by seeking discontinuance of its common carrier operating right over the Line.

According to the Petitioners, the Line is stub-ended and therefore may not accommodate overhead traffic. The Petitioners state that, based on information in BECR's and Buckeye Terminals' possession, the Line does not contain federally granted rights-of-way. Any documentation in their possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 12, 2018.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,800 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following discontinuance and abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than November 6, 2017. Each interim trail use request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket Nos. AB 1247 and AB 1248 and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; (2) Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue NW., Suite 800, Washington, DC 20036; and (3) Eric M. Hocky, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19102. Replies to the petition are due on or before November 6, 2017.

Persons seeking further information concerning abandonment or discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Decided: October 12, 2017.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2017–22465 Filed 10–16–17; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1249]

Buckeye Hammond Railroad LLC—Abandonment Exemption—in Lake County, Ind.

On September 27, 2017, Buckeye Hammond Railroad LLC (BHRR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 1.29 miles of rail line located within the Hammond Transload Facility (Facility) in Hammond, Lake County, Ind., traversing United States Postal Service Zip Codes 46320 and 46312 (the Line). BHRR states that the Line does not include stations other than the Facility and does not have milepost designations.

According to BHRR, Buckeye Terminals, LLC, is the only shipper on the Line, which is used exclusively for

transloading and interchange with the Indiana Harbor Belt Railroad (IHBR). Upon consummation of the proposed transaction, BHRR states that IHBR would continue to pick up and deliver traffic to the Facility as a common carrier. BHRR states that, Buckeye Terminals, which will be BHRR's successor as owner of the Line, or a contractor for Buckeye Terminals, would move cars around the Facility for its own internal use. According to BHRR, Buckeye Terminals would continue to receive and deliver traffic to IBHR at the property, but would do so over private track that would no longer be subject to this Board's jurisdiction. BHRR states that no other customers have requested common carrier service from BHRR.

According to BHRR, the Line is stub-ended and therefore may not accommodate overhead traffic. BHRR states that, based on information in its and Buckeye Terminals' possession, the Line does not contain federally granted rights-of-way. Any documentation in their possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 12, 2018.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,800 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for interim trail use/rail banking under 49 CFR 1152.29 will be due no later than November 6, 2017. Each interim trail use request must be accompanied by a $300 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1249 and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Charles A. Spitulnik, Kaplan Kirsch & Rockwell LLP, 1001 Connecticut Avenue NW., Suite 800, Washington, DC 20036. Replies to the petition are due on or before November 6, 2017.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: October 12, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2017–22477 Filed 10–16–17; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2017–79]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before October 27, 2017.

ADDRESSES: Send comments identified by docket number FAA–2017–0968 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lynette Mitterer, AIR–673, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *Lynette.Mitterer@faa.gov,* phone (425) 227–1047; or Alphonso Pendergrass, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *alphonso.pendergrass@faa.gov,* phone (202) 267–4713.

This notice is published pursuant to 14 CFR 11.85.

Victor Wicklund,

Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2017–0968.

Petitioner: Boeing.

Sections of 14 CFR Affected: §§ 25.959 and 25.1322(d)(1).

Description of Relief Sought: To fully comply with the regulations for unusable fuel supply and flightcrew altering, a design improvement is needed to prevent an erroneous ''Center Fuel Low'' advisory message. A software update is required to correct the erroneous display of the message of the center fuel quantities above the level where center fuel pumps should be selected off. A time-limited exemption is sought to correct the issue without delay to the Boeing Model 767–2C certification. The exemption would be limited to a period ending on December 31, 2019.

[FR Doc. 2017–22407 Filed 10–16–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting.

TIME AND DATE: The meeting will be held on October 26, 2017, from 12:00 Noon to 3:00 p.m. Eastern Daylight Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–422–1931, passcode 2855443940, to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and, to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: October 12, 2017.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2017–22580 Filed 10–13–17; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2017–0086]

Automated Driving Systems: Voluntary Safety Self-Assessments; Public Workshop

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice of public workshop.

SUMMARY: On September 12, 2017, NHTSA published *Automated Driving Systems 2.0: A Vision for Safety.* This voluntary guidance encourages entities involved in the testing and deployment of Automated Driving Systems on public roads to document for themselves how they are addressing safety. Further, the Guidance recommends that these same entities summarize their assessments and make it available to the public via Voluntary Safety Self-Assessments. NHTSA is announcing a public workshop to support entities that wish to make their self-assessment publicly available. The Agency emphasizes that the workshop is not intended to be a tutorial for a prescriptive document. NHTSA hopes to hear from entities if there are any challenges that would make it difficult for an entity to publicly disclose any portion of a Voluntary Safety Self-Assessment in a summary document, and discuss how those challenges might be overcome or mitigated. To provide the most benefit, this workshop will encourage active, focused participation.

DATES: NHTSA will hold the public workshop on October 20, 2017, from 10 a.m. to 3 p.m., Eastern Standard Time. Check-in will begin at 9 a.m. Attendees should arrive early enough to enable them to go through security by 9:50 a.m. The formal docket comment period will close on December 18, 2017, but the Agency will continue to accept comments to the docket.

ADDRESSES: The public workshop will be held at DOT Headquarters, located at 1200 New Jersey Avenue SE., Washington, DC 20590 (Green Line Metro station at Navy Yard) in the [Oklahoma City Conference Room]. This facility is accessible to individuals with disabilities.

FOR FURTHER INFORMATION CONTACT: If you have questions about the public workshop, please contact NHTSA staff at *av_info_nhtsa@dot.gov* or Debbie Sweet at 202–366–7179.

SUPPLEMENTARY INFORMATION: Registration is necessary for all attendees. Attendees should register online at *https://docs.google.com/forms/d/e/1FAIpQLSeLcUn2Dw2fNWEa8f9zWh7NkleQgNv5GreVaP_I_Rv_sb6X8w/viewform?usp=sf_link* by October 17, 2017. Please provide your name, email address, and affiliation. Also indicate whether you plan to participate actively in the workshop (speaking would be limited to 5 minutes per agenda topic), and whether you require accommodations such as a sign language interpreter. Space is limited, so advanced registration is highly encouraged.

Docket: Docket NHTSA–2017–0086 is available for members of the public to submit written comments regarding the Voluntary Safety Self-Assessment as laid out in *Automated Driving Systems 2.0: A Vision for Safety.* The formal docket comment period will close on December 18, 2017, but the Agency will continue to accept comments to the docket. For access to the docket, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: 202–366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), by visiting *http://www.dot.gov/privacy.html.*

Background

On September 20, 2016, NHTSA released and published for comment the *Federal Automated Vehicles Policy.* The comment period officially closed on November 22, 2016, but comments were considered through February 16, 2017. NHTSA analyzed the docket comments, public meeting proceedings and other stakeholder discussions, Congressional hearings, and State activities and published on September 12, 2017, *Automated Driving Systems 2.0: A Vision for Safety.*[1] This notice focuses on Section I of that document.

Section 1: Voluntary Guidance for Automated Driving Systems (Voluntary Guidance) provides recommendations and suggestions for industry's

[1] Available at *https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/13069a-ads2.0_090617_v9a_tag.pdf.*

consideration and discussion. This Voluntary Guidance includes no compliance requirement or enforcement mechanism. The purpose of this Voluntary Guidance is to support the industry as it develops best practices in the design, development, testing, and deployment of automated vehicle technologies. It is a non-regulatory approach to the safety of Automated Driving Systems (ADS) (SAE International automation Levels 3 through 5—Conditional, High, and Full Automation Systems).

NHTSA offers the Voluntary Guidance to help designers of ADSs analyze, identify, and resolve safety considerations prior to deployment using their own industry and other best practices. The Voluntary Guidance outlines 12 safety elements which the Agency believes represent the consensus across the industry, that are generally considered to be the most salient design aspects to consider and address when developing, testing, and deploying ADSs on public roadways. Among these elements are vehicle cybersecurity, human machine interface, crashworthiness, consumer education and training, and post-crash ADS behavior. Within each safety design element, entities are encouraged to consider and document their use of industry standards, best practices, company policies, or other methods they have employed to provide for increased system safety in real-world conditions.

In addition, the Voluntary Guidance encourages entities engaged in testing and deployment to prepare and publicly disclose Voluntary Safety Self-Assessments of their systems demonstrating their varied approaches to achieving safety. The Voluntary Safety Self-Assessment is intended to communicate to the public (particularly States and consumers) that entities are:

(1) Considering the safety aspects of ADSs;

(2) communicating and collaborating with DOT;

(3) encouraging the self-establishment of industry safety norms for ADSs; and

(4) building public trust, acceptance, and confidence through transparent testing and deployment of ADSs.

It also allows companies an opportunity to showcase their approach to safety, without needing to reveal proprietary intellectual property. NHTSA expects much of the work associated with the consideration of the 12 safety elements in the Voluntary Guidance to be an extension of good and safe engineering practices already in place within an entity, therefore entities will have access to all the information needed to craft a Voluntary Safety Self-Assessment if they so choose. NHTSA envisions the Voluntary Safety Self-Assessments would contain concise summary information on these practices.

Public Workshop Details

With new information in the safety elements and a new means for disclosing an assessment summary to the public provided in *Automated Driving Systems 2.0: A Vision for Safety,* NHTSA is holding a public workshop to engage stakeholders and assist entities as they develop a Voluntary Safety Self-Assessment as well as clarify and address concerns for those entities looking to disclose such information to the public.

The public workshop will include representatives from entities developing a Voluntary Safety Self-Assessment, States looking to review Voluntary Safety Self-Assessments, members of the public interested in reading the Voluntary Safety Self-Assessments to understand the steps taken to address the safety of ADSs, and other Voluntary Safety Self-Assessment users. The open discussion among these interested parties will serve to assist in the development of the most broadly beneficial Voluntary Safety Self-Assessment. Discussion at the workshop will include:

(1) How entities might summarize efforts they already undertake in addressing the safety elements provided in the *Voluntary Guidance;*

(2) challenges entities face in developing their summary statements for the Voluntary Safety Self-Assessment and the means to overcome them;

(3) information helpful to stakeholders looking to use the Voluntary Safety Self-Assessment; and

(4) methods by which an entity may publicly disclose the Voluntary Safety Self-Assessment.

A template of the types of summary information an entity might provide in a Voluntary Safety Self-Assessment is provided below. The example is being provided as an effort to offer assistance in the development of a Voluntary Safety Self-Assessment and to guide discussion during the public workshop. This template illustrates the type of summary information that may be provided for the safety element of Crashworthiness, just one of the 12 safety elements presented in the Voluntary Guidance. The details in the template are based on a fictitious vehicle and provided for illustration, guidance, and discussion purposes only. This fictitious vehicle is one that has received necessary exemptions from NHTSA. It is a Level 4 ride-share vehicle with four seats and two large doors. We are providing one safety element example for the template, however all safety elements are open for discussion at the public workshop. Stakeholders are encouraged to review this information and determine how this aligns with their ideas regarding the development of a Voluntary Safety Self-Assessment.

Crashworthiness

Structural Integrity

- Summary of crash simulation scenarios, component testing, and physical tests.
- Summary of bench marks for testing.

Protection of Occupants in the Vehicle

- Summary information about how the vehicle design leverages industry best practices and internal standards for crashworthiness.
- If the vehicle contains a non-traditional seating configuration, include summary information related to the following:
  - Protection for the occupants expected to use the vehicle.
  - Testing and countermeasures related to crash impact protection and the impact directions considered.
  - If appropriate, discussion of methods related to rollover protection.
- If the vehicle will transport children (those under age 12), a summary of child passenger safety measures to address:
  - Child occupant detection and accommodations;
  - Car seat use: Anchors, tethers, designated seat locations; and
  - Booster seat use and designated seat locations.

Protection of Other Road Users

- Summary information of how the vehicle considers crash forces from other road vehicles or the infrastructure.
- Summary information of how the vehicle seeks to mitigate injuries to pedestrians and other vulnerable road users.

The public workshop is formatted for active participation and open discussion. The intention is to seek input from stakeholders to provide the greatest assistance to entities to develop a Voluntary Safety Self-Assessment. NHTSA will begin the workshop with a presentation of the safety elements included in the *Automated Driving Systems 2.0: A Vision for Safety,* the Voluntary Safety Self-Assessment and its content, and the template provided

in this notice. Participants should be prepared to discuss their reaction to the template. Further discussion at the public workshop may include other safety elements as well as public disclosure of the Voluntary Assessment.

NHTSA will conduct the public workshop informally; thus, technical rules of evidence will not apply. We will arrange for a written transcript of the workshop. You may make arrangements for copies of the transcripts directly with the court reporter. The transcript will also be posted in the docket when it becomes available.

Should it be necessary to cancel the workshop due to inclement weather or other emergency, NHTSA will take all available measures to notify registered participants.

Draft Workshop Agenda

9–10 a.m. Arrival/Check-In through Security
10–10:10 a.m. Welcome/Important Notices
10:10–10:30 a.m. NHTSA Presentation
10:30–12 a.m. Presentation by Stakeholder Representatives
12 a.m.–1 p.m. Lunch (not provided)
1–1:45 p.m. Open Discussion Regarding Challenges to Disclosure
1:45–2:30 p.m. Open Discussion Regarding Approaches to Public Disclosure
2:30–2:50 p.m. Open Discussion
2:50–3 p.m. Closing Remarks/Adjourn

Issued in Washington, DC, under authority delegated by 49 CFR 1.95.

Nathaniel Beuse,

Associate Administrator for Vehicle Safety Research.

[FR Doc. 2017–22058 Filed 10–16–17; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

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 continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before December 18, 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, or at *Elaine.H.Christophe@irs.gov.*

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment. Requests for additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on these continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has 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 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 the requested information. The IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

1. *Title:* Request for Change in Plan/Trust Year.

OMB Number: 1545–0201.

Form Number: 5308.

Abstract: Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

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.

Estimated Number of Respondents: 480.

Estimated Time per Respondent: 42 minutes.

Estimated Total Annual Burden Hours: 339.

2. *Title:* Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews, Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer.

OMB Number: 1545–1209.

Regulation Project Number: TD 8383 (Final).

Abstract: These regulations govern the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews, and disclosures that are necessary because of the tax return preparer's death or incapacity.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 250,000.

3. *Title:* Limitations on Credit or Refund.

OMB Number: 1545–1649.

Revenue Procedure Number: Revenue Procedure 99–21.

Abstract: Generally, under section 6511(a), a taxpayer must file a claim for credit or refund of tax within three years after the date of filing a tax return or within two years after the date of payment of the tax, whichever period expires later. Under section 6511(h), the statute of limitations on claims for credit or refund is suspended for any period of an individual taxpayer's life during which the taxpayer is unable to manage his or her financial affairs because of a medically determinable mental or physical impairment, if the impairment can be expected to result in death, or has lasted (or can be expected to last) for a continuous period of not less than 12 months.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 48,200.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 24,100.

4. *Title:* Discharge of Liens.

OMB Number: 1545–0854.

Regulation Project Number: T.D. 9410; Form 14497; Form 14498.

Abstract: The Internal Revenue Service needs this information in processing a request to sell property subject to a tax lien to determine if the taxpayer has equity in the property. This information will be used to determine the amount, if any, to which the tax lien attaches.

Current Actions: There is no change to this existing regulation. There is no change to Forms 14497 or 14498.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 3,833.

5. *Title:* Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revision of Information Reporting Regulations.

OMB Number: 1545–1484.

Regulation Project Number: REG–242282–97 (TD 8881-final).

Abstract: This regulation prescribes collections of information for foreign persons that received payments subject to withholding under sections 1441, 1442, 1443, or 6114 of the Internal Revenue Code. This information is used to claim foreign person status and, in appropriate cases, to claim residence in a country with which the United States has an income tax treaty in effect, so that withholding at a reduced rate of tax may be obtained at source. The regulation also prescribes collections of information for withholding agents. This information is used by withholding agents to report to the IRS income paid to a foreign person that is subject to withholding under Code sections 1441, 1442, and 1443. The regulation also requires that a foreign taxpayer claiming a reduced amount of withholding tax under the provisions of an income tax treaty must disclose its reliance upon a treaty provision by filing Form 8833 with its U.S. income tax return. The burden for Form 8833 is reported under 1545–1354.

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, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

The burden for the reporting requirements is reflected in the burden of Forms W–8BEN, W–8ECI, W–8EXP, W–8IMY, 1042, 1042S, 8233, 8833, and the income tax return of a foreign person filed for purposes of claiming a refund of tax.

6. *Title:* Private Foundation Disclosure Rules.

OMB Number: 1545–1655.

Regulation Project Number: T.D. 8861.

Abstract: The regulations relate to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. These final regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. These final regulations provide guidance for private foundations required to make copies of applications for recognition of exemption and annual information return available for public inspection and to comply with requests for copies of those documents.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 65,065.

Estimated total annual reporting burden: 32,596 hours.

7. *Title:* Revenue Procedure 2002–32, Waiver of 60-Month Bar on Reconsolidation after Disaffiliation; Revenue Procedure 2006–21, to Eliminate Impediments to E-Filing Consolidated Returns and Reduce Reporting Requirements.

OMB Number: 1545–1784.

Revenue Procedure Numbers: 2002–32.

Abstract: Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation; Revenue Procedure 2006–21 modifies Rev. Proc. 89–56, 1989–2 C.B. 643, Rev. Proc. 90–39, 1990–2 C.B. 365, and Rev. Proc. 2002–32, 2002–20 IRB p.959, to eliminate impediments to the electronic filing of Federal income tax returns (e-filing) and to reduce the reporting requirements in each of these revenue procedures.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated number of respondents: 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated total annual reporting burden: 100 hours.

8. *Title:* Revision of Income Tax Regulations under Section 897, 1445, and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445 regulations.

OMB Number: 1545–1797.

Regulation Project Number: REG–106876–00 (TD 9082).

Abstract: The collection of information relates to applications for withholding certificates under Treas. Reg-1.1445–3 to be filed with the IRS with respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principal residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for nonrecognition under section 1031.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Business or other for-profit.

Estimated Number of Respondents: 150.

Estimated Total Annual Reporting Burden: 600 hours.

Estimated Average Annual Burden per Respondent: 4 hours.

9. *Title:* Guidance Regarding Qualified Intellectual Property Contributions.

OMB Number: 1545–1937.

Notice Number: Notice 2005–41.

Abstract: Notice 2005–41 explains new rules governing charitable contributions of intellectual property made after June 3, 2004. The notice explains the method by which a donor

of qualified intellectual property may notify the donee that the donor intends to treat the contribution as a qualified donation under section 170(m). Donors of qualified intellectual property will use the required notification as evidence that they have satisfied the section 170(m) notification requirement.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 30.

Estimated Average Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 30.

10. *Title:* Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f).

OMB Number: 1545–2183.

Regulation Project Number: TD 9614 and TD 9615.

Abstract: Section 367(a)(5) now provides that a transfer of assets to a foreign corporation in an exchange described in section 361 is subject to section 367(a)(1), unless certain ownership requirements and other conditions are met. The regulations provide guidance regarding the application of this section.

Current Actions: TD 9615 went final as TD 9760.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 305.

Estimated Time per Respondent: 10.69 hours.

Estimated Total Annual Burden Hours: 3260.

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.

Approved: October 10, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–22404 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee.

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, November 17, 2017.

FOR FURTHER INFORMATION CONTACT: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Friday, November 17, 2017, at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Gretchen Swayzer at 1–888–912–1227 or 469–801–0769, TAP Office, 4050 Alpha Rd., Farmers Branch, TX 75244, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. The public input is welcomed.

Dated: October 11, 2017.

Antoinette Ross,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2017–22403 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement

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 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. Currently, the IRS is soliciting comments concerning the methods to determine taxable income in connection with a cost sharing arrangement, IRC section 482.

DATES: Written comments should be received on or before December 18, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6141, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Methods to Determine Taxable Income in connection with a Cost Sharing Arrangement—IRC section 482.

OMB Number: 1545–1364.

Regulation Project Number: TD 9568.

Abstract: This document contains final regulations regarding methods to determine taxable income in connection with a cost sharing arrangement under section 482 of the Internal Revenue Code (Code). The final regulations address issues that have arisen in administering the current cost sharing regulations. The final regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the final regulations.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 18 hrs., 42 min.

Estimated Total Annual Burden Hours: 9,350.

The following paragraph applies to all 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 if 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.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 10, 2017.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2017–22406 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Application for Determination of Employee Stock Ownership Plan

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. Currently, the IRS is soliciting comments concerning the application process for determination of employee stock ownership plans.

DATES: Written comments should be received on or before December 18, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6141, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination of Employee Stock Ownership Plan.

OMB Number: 1545–0284.

Regulation Project Number: Form 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 10 hours, 47 minutes.

Estimated Total Annual Burden Hours: 26,975.

The following paragraph applies to all 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 if 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.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 10, 2017.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2017–22437 Filed 10–16–17; 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the monthly tax return for wagers.

DATES: Written comments should be received on or before December 18, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the form should be directed to Kerry Dennis, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Monthly Tax Return for Wagers.

OMB Number: 1545–0235.

Regulation Project Number: Form 730.

Abstract: Form 730 is used to identify taxable wagers under Internal Revenue Code section 4401 and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Current Actions: There is no change to this existing form.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 51,082.

Estimated Time Per Respondent: 8 hours, 11 minutes.

Estimated Total Annual Burden Hours: 418,362.

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: October 11, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–22405 Filed 10–16–17; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Mortgage Credit Certificates (MCCs)

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 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. Currently, the IRS is soliciting comments concerning the application process for determination of employee stock ownership plans.

DATES: Written comments should be received on or before December 18, 2017 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6141, 1111 Constitution Avenue NW., Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Mortgage Credit Certificates (MCCs).

OMB Number: 1545–0922.

Regulation Project Number: Form 8329 and Form 8330.

Abstract: Mortgage Credit Certificates provide qualified holders of the certificates with a credit against income tax liability. In general, an Issuer elects to establish a mortgage credit certificate program in lieu of issuing qualified mortgage revenue bonds. Section 25 of the Code permits states and political subdivisions to elect to issue Mortgage Credit Certificates in lieu of qualified mortgage revenue bonds. Form 8329 is used by lending institutions and Form 8330 is used by state and local governments to provide the IRS with information on the issuance of mortgage credit certificates (MCCs) authorized under Internal Revenue Code section 25. IRS matches the information supplied by lenders and issuers to ensure that the credit is computed properly.

Current Actions: There is no change to the burden previously approved.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: Form 8329—10,000; Form 8330—2,000

Estimated Time per Respondent: Form 8329—5 hrs. 53 min.; Form 8330—7 hrs. 28 min.

Estimated Total Annual Burden Hours: Form 8329—58,800; Form 8330—14,920.

The following paragraph applies to all 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 if 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.

Desired Focus of Comments: The Internal Revenue Service (IRS) 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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: October 10, 2017.

R. Joseph Durbala,

IRS Tax Analyst.

[FR Doc. 2017–22438 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: 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 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 Passive Activity Loss Limitations.

DATES: Written comments should be received on or before December 18, 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 Taquesha Cain, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Taquesha.R.Cain@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Loss Limitations.

OMB Number: 1545–1008.

Form Number: 8582.

Abstract: Internal Revenue Code section 469 limits the passive activity losses that a taxpayer may deduct. The passive activity losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the actual loss to be reported on the tax returns.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, estates, and trusts.

Estimated Number of Respondents: 250,000.

Estimated Time per Respondent: 3 hours, 30 minutes.

Estimated Total Annual Burden Hours: 875,000.

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: October 12, 2017.

L. Brimmer,

Senior Tax Analyst.

[FR Doc. 2017–22402 Filed 10–16–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activity Under OMB Review: Statement of Dependency of Parent(s)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 16, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Office of Quality, Privacy and Risk, Department of Veterans Affairs, 811 Vermont Avenue, Floor 5, Area 368, Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0089'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 102, 38 U.S.C. 1315.

Title: Statement of Dependency of Parent(s) VA Form 21P–509.

OMB Control Number: 2900–0089.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: 38 U.S.C. 102 requires that income and dependency must be determined before benefits may be paid to, or for, a dependent parent. Regulatory authority is found in 38 CFR 3.4 and 38 CFR 3.250. Information is requested by this form under the authority of 38 U.S.C. 501(a)(2).

VA Form 21P–509 is used by VBA to gather income and dependency information from claimants who are seeking payment of benefits as, or for, a dependent parent. This information is necessary to determine dependency of the parent and make determinations which affect the payment of monetary benefits. The form is used by a veteran seeking to establish his/her parent(s) as dependent(s), and by a surviving parent seeking death compensation.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 37168 on August 8, 2017.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,000.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: Once, ad hoc.

Estimated Number of Respondents: 8,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–22383 Filed 10–16–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Agency Information Collection Activity Under OMB Review: Accelerated Payment Verification of Completion

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 16, 2017.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor, Department Clearance Officer (005R1B), Department of Veterans Affairs, 811 Vermont Avenue NW., (Floor 5, area 368), Washington, DC 20420, (202) 461–5870 or email *Cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 107–103 and Public Law 110–181; 44 U.S.C. 3501–3521.

Title: Accelerated Payment Verification of Completion, (VA Form 22–0840).

OMB Control Number: 2900–0636.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–0840 allows VA claimants to certify that they received an accelerated payment and how such payment was used.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 82 FR 151 on August 8, 2017, page 37168.

Affected Public: Individuals and households.

Estimated Annual Burden: 1.17 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 14.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Department Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2017–22384 Filed 10–16–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA New Hampshire Vision 2025 Task Force; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the VA New Hampshire Vision 2025 Task Force, which is a subcommittee of the Special Medical Advisory Group (SMAG), will meet October 31, 2017 from 8:00 a.m.–5:00 p.m. ET and November 1, 2017 from 8:00 a.m.–12:30 p.m. ET at the Department of Veterans Affairs, Manchester VA Medical Center, 718 Smyth Road Manchester, NH 03104, Building 1, 1st Floor, Training & Education Room. The meeting is open to the public. No video or audio recording will be authorized without prior permission from the Designated Federal Officer.

The purpose of the Subcommittee is to develop a comprehensive set of options and recommendations to develop a future vision of what VA must do to best meet the needs of New Hampshire Veterans. The recommendations will be reviewed by the SMAG and then those final recommendations will be forwarded to the Secretary and Under Secretary for Health for decision and action.

The agenda may include updates regarding focus groups, data review, and health care delivery research for various service lines and greater New Hampshire health care market. No time will be allocated at this meeting for receiving oral presentations from the public. However, the public may submit written statements for the Subcommittee's review to Brenda Faas, Designated Federal Officer, Department of Veterans Affairs at *Brenda.Faas@va.gov,* or Thomas Pasakarnis, Alternate Designated Federal Officer, Department of Veterans Affairs at *Thomas.Pasakarnis@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Mr. Pasakarnis.

Because the meeting will be held in a federal government building, anyone attending must be prepared to show a valid photo government issued ID. Please allow 15 minutes before the meeting begins for this process.

Dated: October 11, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–22375 Filed 10–16–17; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Rural Health Advisory Committee; (Amended) Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Veterans' Rural Health Advisory Committee will meet on November 1–2, 2017. The meeting will be held at 333 John Carlyle St., 4th Floor Conference Room, in Alexandria, VA 22314 on November 1–2; both meeting sessions will begin at 8:30 a.m. (EST) each day and adjourn at 5:00 p.m. (EST). The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on rural health care issues affecting Veterans. The Committee examines Programs and policies that impact the delivery of VA rural health care to Veterans and discusses ways to improve and enhance VA access to rural health care services for Veterans.

The agenda will include updates from Department leadership, the Assistant Deputy Under Secretary for Health for Policy and Services, Director Office of Rural Health and Committee Chairman, as well as presentations on general health care access.

Public comments will be received at 4:30 p.m. on November 1, 2017. Interested parties should contact Ms. Judy Bowie, via email at *VRHAC@va.gov,* via fax at (202) 632–8615, or by mail at 810 Vermont Avenue NW.

(10P1R), Washington, DC 20420. Individuals wishing to speak are invited to submit a 1–2 page summary of their comment for inclusion in the official meeting record. Any member of the public seeking additional information should contact Ms. Bowie at the phone number or email address noted above.

Dated: October 4, 2017.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2017–22449 Filed 10–16–17; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 82 Tuesday,
No. 199 October 17, 2017

Part II

Environmental Protection Agency

40 CFR Parts 52 and 97
Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R06–OAR–2016–0611; FRL–9969–07–Region 6]

Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or Act), the Environmental Protection Agency (EPA) is finalizing a partial approval of the 2009 Texas Regional Haze State Implementation Plan (SIP) submission and a Federal Implementation Plan (FIP) for Texas to address certain outstanding requirements. Specifically, the EPA is finalizing determinations regarding best available retrofit technology (BART) for electric generating units (EGUs) in the State of Texas. To address the BART requirement for sulfur dioxide (SO_2), the EPA is finalizing an alternative to BART that consists of an intrastate trading program addressing the SO_2 emissions from certain EGUs. To address the BART requirement for oxides of nitrogen (NO_X), we are finalizing our proposed determination that Texas' participation in the Cross-State Air Pollution Rule's (CSAPR) trading program for ozone-season NO_X qualifies as an alternative to BART. We are approving Texas' determination that its EGUs are not subject to BART for particulate matter (PM). Finally, we are disapproving portions of several SIP revisions submitted to satisfy the CAA requirement to address interstate visibility transport for six national ambient air quality standards (NAAQS): 1997 8-hour ozone, 1997 fine particulate matter ($PM_{2.5}$) (annual and 24-hour), 2006 $PM_{2.5}$ (24-hour), 2008 8-hour ozone, 2010 1-hour nitrogen dioxide (NO_2) and 2010 1-hour SO_2. We are finding that the BART alternatives to address SO_2 and NO_X BART at Texas' EGUs meet the interstate visibility transport requirements for these NAAQS.

DATES: This final rule is effective on November 16, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2016–0611. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute therefore is not posted to *regulations.gov.* Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Michael Feldman at *Feldman.Michael@epa.gov* or 214–665–9793

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

Table of Contents

I. Background

A. Regional Haze

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit $PM_{2.5}$ (*e.g.,* sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and its precursors (*e.g.,* SO_2, NO_X, and, in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form $PM_{2.5}$, which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that can be seen. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects, such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks and wilderness areas. In 1999, the average visual range [1] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States was 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range was less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions.[2] CAA programs have reduced some haze-causing pollution, lessening some visibility impairment and resulting in partially improved average visual ranges.[3]

CAA requirements to address the problem of visibility impairment are continuing to be addressed and implemented. In Section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the prevention of any future, and the remedying of any

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] 64 FR 35715 (July 1, 1999).

[3] An interactive ''story map'' depicting efforts and recent progress by EPA and states to improve visibility at national parks and wilderness areas may be visited at: *http://arcg.is/29tAbS3.*

existing man-made impairment of visibility in 156 national parks and wilderness areas designated as mandatory Class I Federal areas.[4] On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment.'' [5] These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues, and we promulgated regulations addressing regional haze in 1999.[6] The Regional Haze Rule revised the existing visibility regulations to integrate into the regulations provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in our visibility protection regulations at 40 CFR 51.300–51.309. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands. States were required to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.[7]

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often under-controlled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal, including a requirement that certain categories of existing major stationary sources [8] built between 1962 and 1977 procure, install and operate the ''Best Available Retrofit Technology'' (BART). Larger ''fossil-fuel fired steam electric plants'' are included among the BART source categories. Under the Regional Haze Rule, states are directed to conduct BART determinations for ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. The evaluation of BART for EGUs that are located at fossil-fuel-fired power plants having a generating capacity in excess of 750 megawatts must follow the ''Guidelines for BART Determinations Under the Regional Haze Rule'' at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines''). Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART. 40 CFR 51.308(e)(2) specifies how a state must conduct the demonstration to show that an alternative program will achieve greater reasonable progress than the installation and operation of BART. 40 CFR 51.308(e)(2)(i)(E) requires a determination under 40 CFR 51.308 (e)(3) or otherwise based on the clear weight of evidence that the trading program or other alternative measure achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources. Specific criteria for determining if an alternative measure achieves greater reasonable progress than source-specific BART are set out in 40 CFR 51.308(e)(3). Finally, 40 CFR 51.308(e)(4) states that states participating in CSAPR need not require BART-eligible fossil fuel-fired steam electric plants to install, operate, and maintain BART for the pollutant covered by CSAPR.

Under section 110(c) of the CAA, whenever we disapprove a mandatory SIP submission in whole or in part, we are required to promulgate a FIP within two years unless the state corrects the deficiency and we approve the new SIP submittal.

B. Interstate Transport of Pollutants That Affect Visibility

Section 110(a) of the CAA directs states to submit a SIP that provides for the implementation, maintenance, and enforcement of each NAAQS, which is commonly referred to as an infrastructure SIP. Among other things, CAA section 110(a)(2)(D)(i)(II) requires that SIPs contain adequate provisions to prohibit interference with measures required to protect visibility in other states. This is referred to as ''interstate visibility transport.'' SIPs addressing interstate visibility transport are due to the EPA within three years after the promulgation of a new or revised NAAQS (or within such shorter period as we may prescribe). A state's failure to submit a complete, approvable SIP for interstate visibility transport creates an obligation for the EPA to promulgate a FIP to address this requirement.

C. Previous Actions Related to Texas Regional Haze

On March 31, 2009, Texas submitted a regional haze SIP to the EPA that included reliance on Texas' participation in the Clean Air Interstate Rule (CAIR) as an alternative to BART for SO_2 and NO_X emissions from EGUs.[9] This reliance was consistent with the EPA's regulations at the time that Texas developed its regional haze plan,[10] but at the time that Texas submitted this SIP to the EPA, the D.C. Circuit had remanded CAIR (without vacatur).[11] The court left CAIR and our CAIR FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until we could, by rulemaking, replace CAIR consistent with the court's opinion. The EPA promulgated CSAPR, a revised multi-state trading program to replace CAIR, in 2011 [12] (and revised it in 2012 [13]). CSAPR established FIP requirements for a number of states, including Texas, to address the states' interstate transport obligation under CAA section 110(a)(2)(D)(i)(I). CSAPR requires affected EGUs in these states to

[4] Areas designated as mandatory Class I Federal areas consist of National Parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

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

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

[7] *See* 40 CFR 51.308(b). EPA's regional haze regulations require subsequent updates to the regional haze SIPs. 40 CFR 51.308(g)–(i).

[8] *See* 42 U.S.C. 7491(g)(7) (listing the set of ''major stationary sources'' potentially subject-to-BART).

[9] CAIR required certain states, including Texas, to reduce emissions of SO_2 and NO_X that significantly contribute to downwind nonattainment of the 1997 NAAQS for fine particulate matter and ozone. See 70 FR 25152 (May 12, 2005).

[10] *See* 70 FR 39104 (July 6, 2005).

[11] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified,* 550 F.3d 1176 (D.C. Cir. 2008).

[12] 76 FR 48207 (Aug. 8, 2011).

[13] 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).

participate in the CSAPR trading programs and establishes emissions budgets that apply to the EGUs' collective annual emissions of SO_2 and NO_X, as well as seasonal emissions of NO_X. Following issuance of CSAPR, the EPA determined that CSAPR would achieve greater reasonable progress towards improving visibility than would source-specific BART in CSAPR states.[14] We revised the Regional Haze Rule to allow states that participate in CSAPR to rely on participation in the trading programs in lieu of requiring EGUs in the state to install BART controls.

In the same action that EPA determined that states could rely on CSAPR to address the BART requirements for EGUs, EPA issued a limited disapproval of a number of states' regional haze SIPs, including the 2009 SIP submittal from Texas, due to the states' reliance on CAIR, which had been replaced by CSAPR.[15] The EPA did not immediately promulgate a FIP to address the limited disapproval of Texas' regional haze SIP in order to allow more time for the EPA to assess the remaining elements of the 2009 Texas SIP submittal. In December 2014, we proposed an action to address the remaining regional haze obligations for Texas.[16] In that action, we proposed, among other things, to rely on CSAPR to satisfy the NO_X and SO_2 BART requirements for Texas' EGUs; we also proposed to approve the portions of the SIP addressing PM BART requirements for the state's EGUs. Before that rule was finalized, however, the D.C. Circuit issued a decision on a number of challenges to CSAPR, denying most claims, but remanding the CSAPR emissions budgets of several states to the EPA for reconsideration, including the Phase 2 SO_2 and seasonal NO_X budget for Texas.[17] Due to potential impacts of the remanded budgets on the EPA's 2012 determination that CSAPR would provide for greater reasonable progress than BART, we did not finalize our decision to rely on CSAPR to satisfy the SO_2 and NO_X BART requirements for Texas EGUs.[18] Additionally, because our proposed action on the PM BART provisions for EGUs was dependent on how SO_2 and NO_X BART were satisfied, we did not take final action on the PM BART elements of Texas' regional haze SIP. In January 2016, we finalized action on the remaining aspects of the December 2014 proposal. That rulemaking was challenged, however, and in December 2016, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety.[19]

On October 26, 2016, the EPA finalized an update to CSAPR to address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS (CSAPR Update).[20] The EPA also responded to the D.C. Circuit's remand of certain CSAPR seasonal NO_X budgets in that action. As to Texas, the EPA withdrew Texas's seasonal NO_X budget finalized in CSAPR to address the 1997 ozone NAAQS. However, in that same action, the EPA promulgated a FIP with a revised seasonal NO_X budget for Texas to address the 2008 ozone NAAQS.[21] Accordingly, Texas remains subject to the CSAPR seasonal NO_X requirements.

On November 10, 2016, in response to the D.C. Circuit's remand of Texas's CSAPR SO_2 budget, we proposed to withdraw the FIP provisions requiring EGUs in Texas to participate in the CSAPR trading programs for annual emissions of SO_2 and NO_X.[22] We also proposed to reaffirm that CSAPR continues to provide for greater reasonable progress than BART following our actions taken to address the D.C. Circuit's remand of several CSAPR emissions budgets. On September 21, 2017, we finalized the withdrawal of the FIP provisions for annual emissions of SO_2 and NO_X for EGUs in Texas[23] and affirmed our proposed finding that the EPA's 2012 analytical demonstration remains valid and that participation in CSAPR as it now exists meets the Regional Haze Rule's criteria for an alternative to BART.

II. Our Proposed Actions

A. Regional Haze

On January 4, 2017, we proposed a FIP to address the BART requirements for Texas' EGUs. In that action, we proposed to replace Texas' reliance on CAIR with reliance on CSAPR to address the NO_X BART requirements for EGUs.[24] This portion of our proposal was based on the CSAPR Update and our separate November 10, 2016 proposed finding that the EPA's actions in response to the D.C. Circuit's remand would not adversely impact our 2012 demonstration that participation in CSAPR meets the Regional Haze Rule's criteria for alternatives to BART.[25] We noted that we could not finalize this portion of our proposed FIP unless and until we finalized our proposed finding that the set of actions taken by the EPA in response to the D.C. Circuit's remand of certain CSAPR budgets would not adversely impact our prior determination that CSAPR provides for greater reasonable progress than BART. As noted in section I.C, on September 21, 2017, we finalized our proposed finding that EPA's 2012 analytical demonstration remains valid and that participation in CSAPR as it now exists meets the Regional Haze Rule's criteria for an alternative to BART.

Also as noted in section I.C, as part of our November 10, 2016 proposed action in response to the D.C. Circuit's remand of Texas' SO_2 CSAPR budget, we also proposed to withdraw the FIP provisions requiring EGUs in Texas to participate in the CSAPR trading programs for annual emissions of SO_2 and NO_X.[26] In our January 4, 2017 proposed action on BART requirements for Texas EGUs, we accordingly proposed that because Texas would no longer be participating in the CSAPR program for SO_2, and thus would no longer be eligible to rely on participation in CSAPR as an alternative to source-specific EGU BART for SO_2 under 40 CFR 51.308(e)(4), our regional haze FIP would need to include the identification of BART-eligible EGU sources, screening of sources to identify subject-to-BART sources, and source-by-source determinations of SO_2 BART controls as appropriate. For those EGU sources we proposed to find subject to BART, we proposed to promulgate source-specific SO_2 requirements. We also proposed to disapprove Texas' BART determinations for PM from EGUs. In place of these determinations, we proposed to promulgate source-specific PM BART requirements for EGUs that we proposed to find subject to BART. Previously, we proposed to approve the EGU BART determinations for PM in the Texas regional haze SIP and this proposal has never been withdrawn.[27] At that time, CSAPR was an appropriate alternative for SO_2 and NO_X BART for EGUs. The Texas Regional Haze SIP included a pollutant-specific screening analysis for PM to

[14] 77 FR 33641 (June 7, 2012).

[15] *Id.*

[16] 79 FR 74818 (Dec. 16, 2014).

[17] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 132 (D.C. Cir. 2015).

[18] 81 FR 296 (Jan. 5, 2016).

[19] *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[20] 81 FR 74504 (Oct. 26, 2016).

[21] 81 FR 74504, 74524–25.

[22] 81 FR 78954.

[23] Texas continues to participate in CSAPR for ozone season NO_X. See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

[24] 82 FR 912, 914–15 (Jan. 4, 2017).

[25] 81 FR 74504 (Nov. 10, 2016).

[26] 81 FR 78954.

[27] 79 FR 74817, 74853–54 (Dec. 16, 2014).

demonstrate that Texas EGUs were not subject to BART for PM. In a 2006 guidance document,[28] the EPA stated that pollutant-specific screening can be appropriate where a state is relying on a BART alternative to address both NO_X and SO_2 BART.

B. Interstate Transport of Pollutants That Affect Visibility

In our January 5, 2016 final action [29] we disapproved the portion of Texas' SIP revisions intended to address interstate visibility transport for six NAAQS, including the 1997 8-hour ozone and 1997 $PM_{2.5}$.[30] That rulemaking was challenged, however, and in December 2016, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety without vacatur.[31] In our January 4, 2017 proposed action we proposed to reconsider the basis of our prior disapproval of Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. We proposed that Texas' SIP submittals addressing interstate visibility transport for the six NAAQS were not approvable because they relied solely on Texas' 2009 Regional Haze SIP to ensure that emissions from Texas did not interfere with required measures in other states. Texas' Regional Haze SIP, in turn, relied on the implementation of CAIR as an alternative to EGU BART for SO_2 and NO_X.[32] We proposed a FIP to fully address Texas' interstate visibility transport obligations for: (1) 1997 8-hour ozone, (2) 1997 $PM_{2.5}$ (annual and 24-hour), (3) 2006 $PM_{2.5}$ (24-hour), (4) 2008 8-hour ozone, (5) 2010 1-hour NO_2 and (6) 2010 1-hour SO_2. The proposed FIP was based on our finding that our proposed action to fully address the BART requirements for Texas EGUs was adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states in accordance with CAA section 110(a)(2)(D)(i)(II).

III. Summary of Our Final Decisions

A. Regional Haze

When we finalized a limited disapproval of Texas' 2009 regional haze SIP for its reliance on CAIR participation as a BART alternative, we did not immediately finalize a CSAPR-better-than-BART FIP for Texas, as we had proposed for Texas and ultimately finalized for twelve other states. Instead of finalizing a CSAPR-better-than-BART FIP for Texas, the EPA acknowledged that we needed more time to assess the Texas regional haze SIP in regard to aspects other than its reliance on CAIR as an alternative to BART.[33] As the EPA has continued to assess how best to address the regional haze obligations for Texas, Texas has not submitted a SIP revision to address the prior disapproval, so the EPA has a remaining obligation to address BART requirements for Texas EGUs.

After assessing how we should address BART for Texas EGUs, we believe that our initial 2011 proposal, to treat Texas like other similarly situated CSAPR states, was an appropriate and regionally consistent approach. As discussed above, in 2014, we proposed that CSAPR would satisfy the NO_X and SO_2 BART requirements for Texas EGUs.[34] However, we did not finalize this part of the 2014 proposal in the action taken on January 5, 2016.[35] Given EPA's response to the D.C. Circuit remand of certain CSAPR emission budgets, we can no longer rely on CSAPR for Texas' SO_2 BART requirements. Based on comments we received in response to our January 2017 proposal, and giving particular weight to the views expressed by Texas, we are finalizing various determinations to ensure satisfaction of the BART requirement for EGUs in Texas. Of particular note, in making our final decision for the SO_2 BART requirement for EGUs, we centered our focus on a timely comment letter received from the Texas Commission on Environmental Quality (TCEQ) and the Public Utility Commission of Texas (PUC). This comment urged us to consider as a BART alternative the concept of emission caps using CSAPR allocations. We also received similar comments from Luminant and American Electric Power (AEP). Based upon the comments, we are proceeding to address the SO_2 BART requirement for EGUs under a BART alternative. The EPA finds that, because this BART alternative will result in SO_2 emissions from Texas EGUs that will be similar to emissions anticipated under CSAPR, the alternative is an appropriate approach for addressing Texas' SO_2 BART obligations.

Specifically, the BART alternative is justified ''based on the clear weight of the evidence'' that the alternative achieves greater reasonable progress than would be achieved through BART. *See* 40 CFR 51.308(e)(2)(i)(E). The program is designed to accomplish environmental and visibility results by achieving emission levels that will be the same as or better than the emission levels that would have been obtained by state participation in the interstate CSAPR program as finalized and amended in 2011 and 2012, which EPA first deemed to be better than BART for NO_X and SO_2 in a 2012 regulatory action.[36] The TCEQ and EPA recently signed a memorandum of agreement (MOA) to work together to develop a SIP revision addressing interstate visibility transport requirements and BART requirements for EGUs with a BART alternative trading program starting from CSAPR as allowed under the Regional Haze Rule (40 CFR 51.308(e)).[37] Texas envisions that the FIP measures that serve to satisfy this BART requirement will be replaced by a future SIP submission following the approach described in the MOA that may be approved as meeting the requirements of the CAA and the Regional Haze Rule. EPA policy consistently favors that states will exercise their SIP authority to avoid need for promulgation and continued implementation of measures under FIP authority. In the absence of a SIP to address the SO_2 BART requirement for Texas EGUs, however, EPA finds it necessary to address the requirement under its FIP authority, and the details of how this is addressed and the accompanying justification are further discussed below under Section III.A.3, ''SO_2 BART.''

[28] *See* discussion in Memorandum from Joseph Paisie to Kay Prince, ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,'' July 19, 2006.

[29] 81 FR 296 (Jan. 5, 2016).

[30] Specifically, we previously disapproved the relevant portion of these Texas' SIP submittals: April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS). 79 FR 74818, 74821; 81 FR 296, 302.

[31] *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[32] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 133–34 (D.C. Cir. 2015) (holding that SIPs based on CAIR were unapprovable to fulfill good neighbor obligations).

[33] 77 FR 33641, 33654 (June 7, 2012).

[34] 79 FR 74817, 74823 (December 16, 2014) (''We propose to replace Texas' reliance on CAIR to satisfy the BART requirement for EGUs with reliance on CSAPR.''). This part of the 2014 proposal was not finalized in the action taken on January 5, 2016, that has since been remanded by the Fifth Circuit Court of Appeals. 81 FR 295.

[35] Final action taken on January 5, 2016, that has since been remanded by the Fifth Circuit Court of Appeals. 81 FR 295.

[36] 77 FR 33641 (June 7, 2012).

[37] See Memorandum of Agreement Between the Texas Commission on Environmental Quality and the Environmental Protection Agency Regarding a State Implementation Plan to Address Certain Regional Haze and Interstate Visibility Transport Requirements Pursuant to Sections 110 and 169A of the Clean Air Act, Signed August 14, 2017.

The Regional Haze Rule requires that SIP or FIP measures be in place to ensure that BART is satisfied for all subject-to-BART EGUs and all haze-causing pollutants. For ease of summarization, we will detail the relevant final decisions for each of the haze-causing pollutants: PM, NO_X, and SO_2.[38] In our final decisions today, the relevant BART requirement for all BART-eligible coal-fired units and a number of BART-eligible gas- or gas/fuel oil-fired units will be encompassed by BART alternatives for NO_X and SO_2 such that we do not deem it necessary to finalize subject-to-BART findings for these EGUs for these pollutants. The remaining BART-eligible EGUs not covered by the SO_2 BART alternative have been determined to be not subject to BART based on the methodologies utilizing model plants and CALPUFF modeling as described in our proposed rule and BART Screening technical support document (TSD). Therefore, we are approving the portion of the Texas Regional Haze SIP that addresses the BART requirement for EGUs for PM, we are relying upon Texas EGUs' continued participation in the CSAPR program to serve as a BART alternative for NO_X, and we are promulgating an intrastate trading FIP to address the SO_2 BART requirements for EGUs.

1. BART-Eligible Units

BART-eligible sources are those sources which have the potential to emit 250 tons per year or more of a visibility-impairing air pollutant, which were ''in existence'' on August 7, 1977 but not ''in operation'' before August 7, 1962, and whose operations fall within one or more of 26 specifically listed source categories.[39] As discussed in detail in our proposal and the BART FIP TSD, our analysis of BART-eligible EGUs started with the list of BART-eligible sources provided by TCEQ in the 2009 Texas Regional Haze SIP. Based on additional information from potential BART-eligible sources and the U.S. Energy Information Administration (EIA), we converted Texas' facility-specific BART-eligible EGU list to a unit-specific BART-eligible EGU list, eliminated those units that have retired, and verified the BART-eligibility of each remaining unit. We noted in our proposal that Texas' list omitted some sources that we had identified as BART-eligible. We are finalizing the identification of BART-eligible units as proposed. A ''BART-eligible source'' is the collection of BART-eligible units at a facility. Table 1 shows the list of EGUs in Texas that are BART-eligible:

TABLE 1—SUMMARY OF BART-ELIGIBLE UNITS

Facility	Unit
Barney M. Davis (Talen/Topaz)	1.
Big Brown (Luminant)	1.
Big Brown (Luminant)	2.
Cedar Bayou (NRG)	CBY1.
Cedar Bayou (NRG)	CBY2.
Coleto Creek (Dynegy[40])	1.
Dansby (City of Bryan)	1.
Decker Creek (Austin Energy)	1.
Decker Creek (Austin Energy)	2.
Fayette (LCRA)	1.
Fayette (LCRA)	2.
Graham (Luminant)	2.
Greens Bayou (NRG)	5.
Handley (Exelon)	3.
Handley (Exelon)	4.
Handley (Exelon)	5.
Harrington Station (Xcel)	061B.
Harrington Station (Xcel)	062B.
J T Deely (CPS Energy)	1.
J T Deely (CPS Energy)	2.
Jones Station (Xcel)	151B.
Jones Station (Xcel)	152B.
Knox Lee Power Plant (AEP)	5.
Lake Hubbard (Luminant)	1.
Lake Hubbard (Luminant)	2.
Lewis Creek (Entergy)	1.
Lewis Creek (Entergy)	2.
Martin Lake (Luminant)	1.
Martin Lake (Luminant)	2.
Martin Lake (Luminant)	3.
Monticello (Luminant)	1.
Monticello (Luminant)	2.
Monticello (Luminant)	3.
Newman (El Paso Electric)	2.
Newman (El Paso Electric)	3.
Newman (El Paso Electric)	4.
Nichols Station (Xcel)	143B.
O W Sommers (CPS Energy)	1.
O W Sommers (CPS Energy)	2.
Plant X (Xcel)	4.
Powerlane (City of Greenville)	ST1.
Powerlane (City of Greenville)	ST2.
Powerlane (City of Greenville)	ST3.
R W Miller (Brazos Elec. Coop)	1.
R W Miller (Brazos Elec. Coop)	2.
R W Miller (Brazos Elec. Coop)	3.
Sabine (Entergy)	2.
Sabine (Entergy)	3.
Sabine (Entergy)	4.
Sabine (Entergy)	5.
Sim Gideon (LCRA)	1.
Sim Gideon (LCRA)	2.
Sim Gideon (LCRA)	3.
Spencer (City of Garland)	4.
Spencer (City of Garland)	5.
Stryker Creek (Luminant)	ST2.
Trinidad (Luminant)	6.
Ty Cooke (City of Lubbock)	1.
Ty Cooke (City of Lubbock)	2.
V H Braunig (CPS Energy)	1.
V H Braunig (CPS Energy)	2.
V H Braunig (CPS Energy)	3.
WA Parish (NRG)	WAP4.
WA Parish (NRG)	WAP5.
WA Parish (NRG)	WAP6.
Welsh Power Plant (AEP)	1.
Welsh Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	1.
Wilkes Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	3.

2. Subject-to-BART Sources

As discussed elsewhere, it is unnecessary to finalize the subject-to-BART determinations for BART-eligible sources that are covered by the BART alternatives for SO_2 and NO_X. The BART alternatives cover both BART-eligible and non-BART eligible sources. This combination provides for greater reasonable progress than source-specific BART. Even if a unit were individually found to not be subject to BART, its participation in the BART alternative contributes to the finding that the program provides greater reasonable progress than BART. We note that all BART-eligible EGUs in Texas are either covered by the BART alternative or have screened out of being subject to BART. The section below that discusses our final SO_2 BART determination lists those units covered by the BART alternative program and identifies which of those units are BART-eligible. As discussed in section III.A.4 below, we are approving the portion of the 2009 Texas Regional Haze SIP that determined that no PM BART determinations are needed for BART-eligible EGUs in Texas.

For those BART-eligible EGUs that are not covered by the BART alternative for SO_2, we are finalizing determinations that those EGUs are not subject-to-BART for NO_X, SO_2 and PM as proposed, based on the methodologies utilizing model plants and CALPUFF modeling as described in our proposed rule and BART Screening TSD.

The following sources are determined to be BART-eligible, but not subject-to-BART:

TABLE 2—SOURCES DETERMINED TO BE BART-ELIGIBLE BUT NOT SUBJECT-TO-BART FOR NO_X, SO_2, AND PM

Facility	Units
Barney M. Davis (Talen/Topaz).	1.
Cedar Bayou (NRG)	CBY1 & CBY2.
Dansby (City of Bryan)	1.

[38] In this action, we did not consider VOCs and ammonia among visibility-impairing pollutants for several reasons, as discussed in the TSD.

[39] 40 CFR 51.301.

[40] Dynegy purchased the Coleto Creek power plant from Engie in February, 2017. Note that Coleto Creek may still be listed as being owned by Engie in some of our supporting documentation which was prepared before that sale.

TABLE 2—SOURCES DETERMINED TO BE BART-ELIGIBLE BUT NOT SUBJECT-TO-BART FOR NO_X, SO_2, AND PM—Continued

Facility	Units
Decker Creek (Austin Energy).	1 & 2.
Greens Bayou (NRG)	5.
Handley (Exelon)	3, 4 & 5.
Jones (Xcel)	151B & 152B.
Knox Lee (AEP)	5.
Lake Hubbard (Luminant)	1 & 2.
Lewis Creek (Entergy)	1 & 2.
Nichols Station (Xcel)	143B.
Plant X (Xcel)	4.
Powerlane (City of Greenville).	ST1, ST2 & ST3.
R W Miller (Brazos Elec. Coop).	1, 2 & 3.
Sabine (Entergy)	2, 3, 4 & 5.
Sim Gideon (LCRA)	1, 2 & 3.
Spencer (City of Garland)	4 & 5.
Trinidad (Luminant)	6.
Ty Cooke (City of Lubbock)	1 & 2.
V H Braunig (CPS Energy)	1, 2 & 3.

3. SO_2 BART

The BART alternative will achieve SO_2 emission levels that are functionally equivalent to those projected for Texas' participation in the original CSAPR program. The BART alternative applies the CSAPR allowance allocations for SO_2 to all BART-eligible coal-fired EGUs, several additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs. In addition to being a sufficient alternative to BART, it secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.

The combination of the source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions from EGUs not covered by the program will result in future EGU emissions in Texas that are similar to the SO_2 emission levels forecast in the 2012 better-than-BART demonstration for Texas EGU emissions assuming CSAPR participation. In line with the comment from the TCEQ/PUC, we are finalizing a BART alternative that will encompass the SO_2 BART requirements for coal-fired EGUs and a number of gas- and gas/fuel oil-fired EGUs under a program that will include the sources in the following table. See Section V.B for a discussion on identification of participating sources.

TABLE 3—TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/operator	Units	BART-eligible
AEP	Welsh Power Plant Unit 1	Yes.
	Welsh Power Plant Unit 2	Yes.
	Welsh Power Plant Unit 3	No.
	H W Pirkey Power Plant Unit 1	No.
	Wilkes Unit 1*	Yes.
	Wilkes Unit 2*	Yes.
	Wilkes Unit 3*	Yes.
CPS Energy	JT Deely Unit 1	Yes.
	JT Deely Unit 2	Yes.
	Sommers Unit 1*	Yes.
	Sommers Unit 2*	Yes.
Dynegy	Coleto Creek Unit 1	Yes.
LCRA	Fayette/Sam Seymour Unit 1	Yes.
	Fayette/Sam Seymour Unit 2	Yes.
Luminant	Big Brown Unit 1	Yes.
	Big Brown Unit 2	Yes.
	Martin Lake Unit 1	Yes.
	Martin Lake Unit 2	Yes.
	Martin Lake Unit 3	Yes.
	Monticello Unit 1	Yes.
	Monticello Unit 2	Yes.
	Monticello Unit 3	Yes.
	Sandow Unit 4	No.
	Stryker ST2*	Yes.
	Graham Unit 2*	Yes.
NRG	Limestone Unit 1	No.
	Limestone Unit 2	No.
	WA Parish Unit WAP4*	Yes.
	WA Parish Unit WAP5	Yes.
	WA Parish Unit WAP6	Yes.
	WA Parish Unit WAP7	No.
Xcel	Tolk Station Unit 171B	No.
	Tolk Station Unit 172B	No.
	Harrington Unit 061B	Yes.
	Harrington Unit 062B	Yes.
	Harrington Unit 063B	No.
El Paso Electric	Newman Unit 2*	Yes.
	Newman Unit 3*	Yes.
	Newman Unit 4*	Yes.

* Gas-fired or gas/fuel oil-fired units.

This BART alternative includes all BART-eligible coal-fired units in Texas, additional coal-fired EGUs, and some additional BART-eligible gas and gas/fuel oil-fired units. Moreover, we believe that the differences in source coverage between CSAPR and this BART alternative are either not significant or, in fact, work to demonstrate the relative stringency of the BART alternative as compared to CSAPR (See Section V of this preamble for detailed information). This relative stringency can be understood in reference to the following points:

A. Covered sources under the BART alternative in this FIP represent 89% [41] of all SO_2 emissions from all Texas EGUs in 2016, and approximately 85% of CSAPR allocations for existing units in Texas.

B. The remaining 11% (100 minus 89) of 2016 emissions from sources not covered by the BART alternative come from gas units that rarely burn fuel oil or coal-fired units that on average are better controlled for SO_2 than the covered sources and generally are less relevant to visibility impairment. (A fuller discussion of this point is provided in Section V of this preamble.) As such, any shifting of generation to non-covered sources, as might occur if a covered source reduces its operation in order to remain within its SO_2 emissions allowance allocation, would result in less emissions to generate the same amount of electricity.

C. Furthermore, the non-inclusion of a large number of gas-fired units that rarely burn fuel oil reduces the amount of available allowances for units that would typically and collectively be expected to use only a fraction of CSAPR emissions allowances. Many of these sources typically emit at levels much lower than their allocation level. Sources not participating in the program may choose to opt in, thereby increasing the number of available allowances. This will serve to make the program more closely resemble CSAPR.

D. The BART alternative does not allow purchasing of allowances from out-of-state sources. Emission projections under CAIR and CSAPR showed that Texas sources were anticipated to purchase allowances from out-of-state sources.[42]

Based on these points, and borrowing to the greatest extent possible from the rules and program design of CSAPR, but applying them for Texas only, we are proceeding with the commenters', including the State of Texas', suggested consideration for SO_2 BART coverage for EGUs by means of a BART alternative under an intrastate trading program. As with any FIP, we also would welcome Texas submitting a future SIP, as discussed in the MOA, that meets the Regional Haze Rule and the Act's requirements so as to enable future withdrawal of this FIP-based BART alternative.[43]

In 2014 we had originally proposed that CSAPR would satisfy the SO_2 BART requirement for Texas EGUs.[44] Although we never finalized that proposal, functionally, the final decision relies on substantially the same technical elements. In contrast to the 2014 proposal, however, we are not finalizing this SO_2 BART alternative as meeting the terms of 40 CFR 51.308(e)(4), as amended, because that regulatory provision, by its terms, provides BART coverage for pollutants covered by the CSAPR trading program in the State but on September 21, 2017, EPA finalized its proposed action to remove Texas from the CSAPR SO_2 trading program.[45] Instead we are relying on the BART alternative option provided under 40 CFR 51.308(e)(2). The BART alternative being finalized today is supported by our determination that the clear weight of the evidence is that the trading program achieves greater reasonable progress than BART. The BART alternative is designed to achieve SO_2 emission levels from Texas sources similar to the SO_2 emission levels that would have been achieved under CSAPR. By a quantitative and qualitative assessment of the operation of the BART alternative, we are able to conclude that emission levels will be on average no greater than the emission levels from Texas EGUs that would have been realized from the SO_2 trading program under CSAPR. (See Section V of this preamble for detailed information). Accordingly, by the measure of CSAPR better than BART, the SO_2 BART FIP for Texas' BART-eligible EGUs participating in the trading program will achieve greater reasonable progress than BART with respect to SO_2. BART-eligible EGUs not participating in the program are demonstrated to not cause or contribute to visibility impairment, and we are finalizing our determination in this action that these units are not subject to BART.

The Regional Haze Rule at 40 CFR 51.308(e)(2)(iii) requires that the emission reductions from BART alternatives occur ''during the period of the first long-term strategy for regional haze.'' The SO_2 BART alternative that EPA is finalizing here will be implemented beginning in January 2019, and thus emission reductions needed to meet the allowance allocations must take place by the end of 2019. For the purpose of evaluating Texas's BART alternative, the end of the first planning period of the first long-term strategy for Texas is 2021. This is a result of recent changes to the regional haze regulation, revising the requirement for states to submit revisions to their long-term strategy from 2018 to 2021.[46] Therefore, the emission reductions from the Texas SO_2 trading program will be realized prior to that date and within the period of Texas' first long-term strategy for regional haze.

In promulgating the regulatory terms and rules for implementing the BART alternative, we are mindful of the minimally required elements for a BART alternative emissions trading program that are specified in the provisions of 40 CFR 51.308(e)(2)(vi)(A)–(L). In general, these types of provisions are foundational, in a generic sense, to the establishment of allowance markets. CSAPR is a prominent example of such an allowance market, and by transferring and generally incorporating program rules and terms from the well-tested provisions of CSAPR we have ensured that the BART alternative will conform in detail and coverage to the breadth of provisions that are needed for an emissions trading program covered by a cap (See Section V of this preamble for additional discussion). To the extent that Texas would submit a future SIP revision under its SIP authority to implement SO_2 BART or an SO_2 BART alternative for its EGUs as described in the MOA to meet the Regional Haze Rule and CAA requirements, it may look to the provisions promulgated under FIP authority or it may examine its flexibilities and the extent of its

[41] In 2016, 218,291 tons of SO_2 were emitted from sources included in the program and 27,446 tons from other EGUs (11.1%).

[42] See CAIR 2018 emission projections of approximately 350,000 tons SO_2 emitted from Texas EGUs compared to CAIR budget for Texas of 225,000 tons. See section 10 of the 2009 Texas Regional Haze SIP.

[43] See Memorandum of Agreement Between the Texas Commission on Environmental Quality and the Environmental Protection Agency Regarding a State Implementation Plan to Address Certain Regional Haze and Interstate Visibility Transport Requirements Pursuant to Sections 110 and 169A of the Clean Air Act, signed August 14, 2017.

[44] 79 FR 74817, 74823 (December 16, 2014) (''We propose to replace Texas' reliance on CAIR to satisfy the BART requirement for EGUs with reliance on CSAPR.''). This part of the 2014 proposal was not finalized in the action taken on January 5, 2016, that has since been remanded by the Fifth Circuit Court of Appeals. 81 FR 295.

[45] See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

[46] 82 FR 3078 (Jan. 10, 2017).

discretion regarding essential provisions detailed at 40 CFR 51.308(e)(2)(vi).

4. PM BART

In our January 2017 proposal, we proposed to disapprove Texas' technical evaluation and determination that PM BART emission limits are not required for any of Texas' EGUs. The Texas Regional Haze SIP included a pollutant-specific screening analysis for PM to demonstrate that Texas EGUs were not subject to BART for PM. This approach was consistent with a 2006 guidance document [47] in which the EPA stated that pollutant-specific screening can be appropriate where a state is relying on a BART alternative to address both NO_X and SO_2 BART. Because we proposed to address SO_2 BART on a source-specific basis, however, Texas' pollutant-specific screening was not appropriate and we proposed source-specific PM BART emission limits consistent with existing practices and controls. In this final action, we are not finalizing source-specific SO_2 BART determinations. Instead, for the majority of Texas' BART-eligible EGUs, we are relying on BART alternatives for both SO_2 and NO_X emissions. Therefore, we now conclude that Texas' pollutant-specific screening analysis was appropriate. All of the BART-eligible sources participating in the intrastate trading program have visibility impacts from PM alone below the subject-to-BART threshold of 0.5 deciviews (dv).[48] Furthermore, the BART-eligible sources not participating in the intrastate trading program screened out of BART for all visibility impairing pollutants. As such, we are approving the portion of the Texas Regional Haze SIP that determined that PM BART emission limits are not required for any Texas EGUs.

As we explained in the January 2017 proposal, the Texas Regional Haze SIP did not evaluate PM impacts from all BART-eligible EGUs. We have evaluated and determined this omission does not affect Texas' conclusion that no BART-eligible EGUs should be subject-to-BART for PM emissions. In our proposal, we identified several facilities as BART-eligible that Texas did not identify as BART eligible in the Texas Regional Haze SIP. Specifically, we identified the following additional BART-eligible sources: Coleto Creek Unit 1 (Dynegy), Dansby Unit 1 (City of Bryan), Greens Bayou Unit 5 (NRG), Handley Units 3,4, and 5 (Excelon), Lake Hubbard Units 1 and 2 (Luminant), Plant X Unit 4 (Xcel), Powerlane Units ST1, ST2, and ST3 (City of Greenville), R W Miller Units 1, 2, and 3 (Brazos Elec.), Spencer Units 4 and 5 (City of Garland), and Stryker Creek Unit ST2 (Luminant). In our proposal, we used CALPUFF modeling and a model-plant analysis and found that all of these facilities except Coleto Creek and Stryker Creek had impacts from NO_X, SO_2 and PM below the BART screening level.[49] CALPUFF modeling showed that Stryker Creek Unit ST2 had a visibility impact of 0.786 dv from NO_X, SO_2 and PM. However, Stryker Creek Unit ST2 is now covered by a BART alternative for NO_X and SO_2, so we evaluated the visibility impact of Stryker Creek Unit ST2's PM emissions alone. The CALPUFF modeling files and spreadsheets included in our proposal indicate that light extinction from PM (PM_{Fine} and PM_{Coarse}) is less than 1% of total light extinction at all Class I areas. Therefore, because the visibility impact of PM emissions from Stryker Creek Unit ST2 would be a small fraction of 0.786 dv (roughly 1%), the source is not subject to BART for PM under EPA's 2006 guidance.

We also evaluated the potential visibility impact of PM emissions from Coleto Creek Unit 1 using the CAMx modeling that Texas used for PM BART screening of its EGU sources in its SIP.[50] Specifically, we evaluated the modeling results for two facilities (LCRA Fayette and Sommers Deely) with stack parameters similar to Coleto Creek's, but which are located closer to Class I Areas than Coleto Creek. Texas grouped the LCRA Fayette Facility in Group 2 of their PM screening modeling along with other sources and found that their maximum aggregate impacts at all Class I areas were less than 0.25 deciviews (dv). Texas also explicitly modeled the City Public Service Sommers Deely Facility's PM impacts. Maximum impacts at all Class I areas from Sommers Deely were less than 0.32 dv. To extend these model results to Coleto Creek, we used the Q/D ratio where Q is the maximum annual PM emissions [51] and D is the distance to the nearest receptor of a Class I area. If the Q/D ratio of Coleto Creek is smaller than the ratios for the two modeling results (Fayette and Sommers Deely) then Coleto Creek impacts can be estimated as less than the impacts of these source(s) and thus be screened out. We evaluated the closest Class I Areas (Big Bend, Guadalupe Mountains, Carlsbad, Wichita Mountains, and Caney Creek) and the Q/D ratios were: Coleto Creek (0.59–0.86), Fayette (4.25–6.1), and Sommers Deely (6.0–10.05).[52] The Q/D ratio for Fayette is 6 to 8 times larger than for Coleto Creek, while the Q/D ratio for Sommers Deely is 9 to 11.6 times higher than for Coleto Creek. Therefore, if we were to model the PM impacts from Coleto Creek, they would be an order of magnitude smaller than the impacts from these facilities, which are well below the threshold of 0.5 dv. Therefore, Coleto Creek is not subject to BART for PM emissions.

In finalizing an approval of Texas' determinations regarding PM BART, we offer one additional note. We originally proposed to approve Texas' screening approach in 2014,[53] and our final action today essentially conforms to our technical evaluation in that proposal.

5. NO_X BART

We are finalizing our proposed determination that Texas EGUs' continued participation in the CSAPR program for interstate transport for ozone will serve as a BART alternative for NO_X for EGUs in the State of Texas. Our action to address NO_X BART for EGUs as it applies to Texas is based on two other recent rulemakings concerning CSAPR. The first is the rulemaking to update CSAPR to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS, which established a new ozone season budget for NO_X emissions in Texas.[54] The second is the determination that CSAPR continues to be a better than BART alternative, on a pollutant specific basis, for states that participate in the CSAPR program as it now exists.[55] Because our FIP relies on CSAPR as a BART alternative for NO_X for Texas EGUs, we are not required in this action to promulgate source-specific

[47] *See* discussion in Memorandum from Joseph Paisie to Kay Prince, ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations,'' July 19, 2006.

[48] Stryker Creek is covered by CSAPR for NO_X and by the SO_2 trading program but was not included in the 2009 Regional Haze SIP. How Stryker Creek is screened out for PM is discussed below.

[49] EPA's Proposal screened out Dansby, Greens Bayou, Handley, Lake Hubbard, Plant X, Powerlane, R W Miller, and Spencer using CALPUFF direct modeling and Model Plants.

[50] Environ Report—''Final Report Screening Analysis of Potential BART-Eligible Sources in Texas'', September 27, 2006; ''Addendum 1—BART Exemption Screening Analysis'', Draft December 6, 2006; and ''BARTmodelingparameters V2.csv''.

[51] This is calculated by using the maximum daily PM_{10} daily emission rate, adding the maximum daily $PM_{2.5}$ emission rate and then calculating the total emissions in tons per year if this max daily rate happened every day.

[52] *See* 'Coleto_Creek_Screen_analysis.xlsx.'

[53] *See* 79 FR 74817, 74848 (Dec. 16, 2014).

[54] 81 FR 74504 (Oct. 16, 2016).

[55] See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

NO_X BART determinations for those sources.

We note that Texas may opt to use its SIP planning authority, as was noted in its 2009 Regional Haze SIP in a similar context, to address the NO_X BART requirement for EGUs without relying on CSAPR. If Texas instead wishes to rely upon the CSAPR program to address the NO_X BART requirement, it may submit a SIP revision to establish its reliance on the program to satisfy the requirement for NO_X BART for EGUs. By using the SIP pathway, Texas would be exercising the primary responsibility for air pollution control that is embodied in the Act. *See* CAA section 101(a)(3). Recognizing that the 2009 Regional Haze SIP did not, by its terms, provide an approvable means to address the requirement, however, we are now required to exercise our FIP authority to address it.[56] We are therefore finalizing the determination as proposed.

B. Interstate Transport of Pollutants That Affect Visibility

We are finalizing our proposal to disapprove Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. As explained further in our proposal, Texas' infrastructure SIPs for these six NAAQS relied on the 2009 Regional Haze SIP, including its reliance on CAIR as an alternative to EGU BART for SO_2 and NO_X to meet the interstate visibility transport requirements.[57] We are finalizing a FIP to fully address Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone, (2) 1997 $PM_{2.5}$ (annual and 24 hour), (3) 2006 $PM_{2.5}$ (24-hour), (4) 2008 8-hour ozone, (5) 2010 1-hour NO_2 and (6) 2010 1-hour SO_2.

An EPA guidance document (2013 Guidance) on infrastructure SIP elements states that CAA section 110(a)(2)(D)(i)(II)'s interstate visibility transport requirements can be satisfied by approved SIP provisions that the EPA has found to adequately address a state's contribution to visibility impairment in other states.[58] The EPA interprets interstate visibility transport to be pollutant-specific, such that the infrastructure SIP submission need only address the potential for interference with protection of visibility caused by the pollutant (including precursors) to which the new or revised NAAQS applies.[59] The 2013 Guidance lays out two ways in which a state's infrastructure SIP submittal may satisfy interstate visibility transport. One way is through a state's confirmation in its infrastructure SIP submittal that it has an EPA approved regional haze SIP in place. In the absence of a fully approved regional haze SIP, a demonstration that emissions within a state's jurisdiction do not interfere with other states' plans to protect visibility meets this requirement. Such a demonstration should point to measures that limit visibility-impairing pollutants and ensure that the resulting reductions conform with any mutually agreed emission reductions under the relevant regional haze regional planning organization (RPO) process.[60]

To develop its 2009 Regional Haze SIP, TCEQ worked through its RPO, the Central Regional Air Planning Association (CENRAP), to develop strategies to address regional haze, which at that time were based on emissions reductions from CAIR. To help states in establishing reasonable progress goals for improving visibility in Class I areas, the CENRAP modeled future visibility conditions based on the mutually agreed emissions reductions from each state. The CENRAP states then relied on this modeling in setting their respective reasonable progress goals.

This FIP is adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states because the BART FIP emission reductions are consistent with the level of emissions reductions relied upon by other states during consultation. The 2009 Texas Regional Haze SIP relied on CAIR to meet SO_2 and NO_X BART requirements. Under CAIR, Texas EGU sources were projected to emit approximately 350,000 tpy of SO_2. As discussed elsewhere, Texas EGU emissions for sources covered by the trading program will be constrained by the number of available allowances. Average annual emissions for the covered sources will be less than or equal to 248,393 tons with some year to year variability constrained by the number of banked allowances and number of allowances that can be allocated in a control period from the supplemental pool. Sources not covered by the program emitted less than 27,500 tons of SO_2 in 2016 and are not projected to significantly increase from this level. Any new units would be required to be well controlled and similar to the existing units not covered by the program, they would not significantly increase total emissions of SO_2. Additionally, this FIP relies on CSAPR as an alternative to EGU BART for NO_X, which exceeds the emissions reductions relied upon by other states during consultation. As such, this BART FIP is sufficient to address the interstate visibility transport requirement under CAA section 110(a)(2)(D)(i)(II) for the six NAAQS.

C. Reasonable Progress

This final action is part of the long-term strategy for Texas and will contribute to making reasonable progress toward natural visibility conditions at Texas' and downwind Class I areas. However, the EPA is not determining at this time that this final action fully resolves the EPA's outstanding obligations with respect to reasonable progress that resulted from the Fifth Circuit's remand of our reasonable progress FIP. We intend to take future action to address the Fifth Circuit's remand.

IV. Summary and Analysis of Major Issues Raised by Commenters

We received both written and oral comments at the public hearings we held in Austin. We also received comments by the internet and the mail. The full text of comments received from these commenters, except what was claimed as CBI, is included in the publicly posted docket associated with this action at *www.regulations.gov.* The CBI cannot be posted to *www.regulations.gov,* but is part of the record of this action. We reviewed all public comments that we received on the proposed action. Below we provide a summary of certain comments and our responses. First, we provide a summary of all of the relevant technical comments we received and our responses to these comments. We do not consider some of the technical comments as relevant to the final action. For these comments we provide a brief summary of the comments and a discussion as to why they are not relevant. Second, we provide a summary below of the more significant legal comments with a summary of our responses. All of the legal comments we received that are relevant to our final

[56] As explained in our proposal, our ongoing authority and obligation to address the NO_X BART requirement for Texas EGUs under CAA section 110(c) traces to EPA's limited disapproval of the 2009 Texas Regional Haze SIP in 2012 due to the State's reliance on the remanded and replaced CAIR as an alternative to NO_X BART. *See also EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 133–34 (D.C. Cir. 2015) holding that SIPs based on CAIR were unapprovable to fulfill good neighbor obligations.

[57] 82 FR 912, 916 (Jan. 4, 2017).

[58] *See* ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and (2)'' included in the docket for this action.

[59] *See Id.,* at 33.

[60] *See Id.,* at 34, and 76 FR 22036 (April 20, 2011) containing EPA's approval of the visibility requirement of 110(a)(2)(D)(i)(II) based on a demonstration by Colorado that did not rely on the Colorado Regional Haze SIP.

action are found in a separate document, titled the Legal Response To Comments (RTC) document. Therefore, if additional information is desired concerning how we addressed a particular legal comment, the reader should refer to the Legal RTC document. Third, we provide a summary of the more significant/relevant modeling related comments with a summary of our responses. The entirety of the modeling comments and our responses thereto are contained in a separate document titled the Modeling RTC document.

A. Comments on Relying on CSAPR for SO_2 BART or Developing an Intrastate SO_2 Trading Program

Comment: We received comments from TCEQ that our proposed SO_2 controls for the coal-fired power plants represents more control than is necessary to satisfy BART. The EPA should consider an alternate control approach for these BART-affected units using source or system caps. Because the CSAPR level of control is better than BART, the EPA should have considered an equivalent control level in its BART analysis. For example, a potential alternative is the concept of system-wide emission caps using CSAPR allocations. A SO_2 system-cap approach for BART would be based on establishing a cap on all the BART subject units under common ownership and control based on CSAPR allocations to those specific units. System-wide caps for these BART subject units based on CSAPR allocations would provide flexibility while actually being more stringent than CSAPR because the companies would not have the ability to trade allocations with non-BART facilities or with companies in other states. Furthermore, the EPA has approved system-cap approaches under the TCEQ's Chapter 117 rules for NO_X. If such an approach using CSAPR allocations or some other similar variation can be demonstrated to be more stringent than CSAPR itself, then the EPA's CSAPR-is-better-than-BART determination should satisfy some of the demonstration requirements for BART alternatives. Even if not based on CSAPR allocations, the EPA should consider a source-cap or system cap approach as an alternative to unit-by-unit rate-based standards. Source and system cap strategies achieve equivalent reductions by setting mass-based limits (*e.g.,* ton per day) for a group of units derived from rate-based standards and baseline levels of activity for the units. In this context, the rate-based standards used to set the caps would be the emission rates determined to represent BART. These types of cap approaches allow companies to consider a broader range of alternative strategies. Under a FIP with only unit-by-unit rate-based limits, as proposed by EPA, such an alternative strategy would not be allowed and EPA would have to revise its FIP to allow the company to pursue the alternative. A similar approach using system-caps would provide additional flexibility for companies. If the EPA is averse to creating a system-cap trading program for a single state, an alternative would be to allow for a state system-cap trading program that would allow companies to trade between systems once the EPA has approved the state program.

We received a comment from American Electric Power (AEP) stating that in the proposed Texas BART FIP, EPA states that it encourages Texas to consider adopting SIP provisions that would allow EPA to fully approve the Regional Haze SIP with respect to Regional Haze and Interstate Visibility Transport. AEP also suggests that alternatively, Texas may also elect to satisfy its obligations by demonstrating an alternative. Although AEP views the most expeditious resolution for satisfying BART is finalization of CSAPR as a better-than-BART alternative, AEP would also welcome and support working with the State and EPA to develop a satisfactory BART compliance alternative. For example, AEP is open to consideration of a cap and trade program or other option for BART compliance. AEP is prepared to engage in such discussions as soon as possible.

We also received a comment from Luminant stating that the EPA can and should address BART for Texas, not through EPA-mandated controls on individual units but through one of several available BART alternatives that will ensure equivalent or greater benefits at far less costs, as demonstrated by EPA's own prior analyses of Texas EGUs' emissions. Among those available alternatives is EPA's original proposed BART plan for EGUs in Texas—reliance on Texas EGUs' participation in the CSAPR annual SO_2 and NO_X trading programs as BART compliance. Since CSAPR became effective in 2015, SO_2 emissions from Texas EGUs have declined substantially and are well below the levels that EPA previously determined are ''better-than-BART.'' EPA itself calculated ''major visibility improvements at Class I areas in and around Texas'' from the CSAPR-for-BART alternative for Texas. The CSAPR-for-BART alternative remains the most expeditious and cost effective path for finalizing a BART solution for Texas EGUs. Indeed, EPA's only lawful path forward to finalize a BART FIP for Texas by the current September 9, 2017 deadline in EPA's consent decree with Sierra Club is to finalize a CSAPR-for-BART FIP for Texas EGUs, as EPA proposed to do in December 2014. That proposal was not withdrawn, remains a valid and defensible alternative, is supported by the record and prior EPA technical analyses, and has been fully vetted with substantial public review and comments.

Response: Due to these comments requesting a BART alternative in lieu of source-specific EGU BART, we are finalizing an intrastate SO_2 trading program as an alternative to source-by-source BART and to meet the interstate visibility transport requirements. This program will provide the commenters, and other owners of covered EGUs, with many of the benefits that they attributed to CSAPR. The premise in the comment that Texas EGUs are subject to CSAPR's SO_2 trading program is no longer true, given our recent action to remove Texas from that trading program.[61] Hence, we cannot take the commenter's recommended action of addressing SO_2 BART through reliance on CSAPR.

B. Comments on Source-Specific BART

Comment: We received a number of comments in favor or against our proposals regarding BART-eligibility status, subject-to-BART status, and source-specific BART technologies and emission limits. Some were general and some were very specific.

Response: Due to the comments we received requesting a BART alternative in lieu of source-specific BART determinations, we are finalizing an intrastate SO_2 trading program as an alternative to source-by-source BART and to meet the interstate visibility transport requirements. As a consequence, we believe that it is not necessary to respond to comments concerning the merits of the proposed source-specific BART technologies and emission limits. Comments related to BART-eligibility status and subject-to-BART status are addressed elsewhere in this preamble.

C. Comments on EPA's Proposed SIP Disapprovals

Comment: The root of EPA's flawed proposal is EPA's departure from the cooperative federalism principles underlying the Clean Air Act. The State of Texas developed its regional haze SIP

[61] See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

after years of work, technical analysis, and coordination with other States. For BART, Texas relied on the participation of Texas EGUs in CAIR and EPA's determination that CAIR was better-than-BART. EPA should have approved Texas's SIP at the time because it complied with all statutory requirements and was supported by EPA's own modeling. In no way does the Proposed Texas BART FIP—which starts over from scratch and creates an entirely new approach to BART for Texas EGUs—respect the State's primary role under the statute. At a minimum, to more closely align with the State of Texas's original choice to meet BART through a regional trading program, EPA should now finalize its prior proposal that CSAPR serve as a complete BART alternative for Texas EGUs.

Response: Our action in 2012 to disapprove Texas' 2009 SIP submission due to its reliance on CAIR is not the subject of this rulemaking and we do not address here the comment opposing that final action. We agree that CSAPR continues to be available on a pollutant-specific basis as a BART alternative for participating states for those pollutants subject to trading by CSAPR program participation; hence, we are finalizing a determination that CSAPR is better than BART for NO_X at Texas EGUs. However, the premise in the comment that Texas EGUs are subject to CSAPR's SO_2 trading program is no longer true, given our recent action to remove them from that trading program.[62] Hence, we cannot take the specific action recommended in this comment. Due to these comments requesting a BART alternative in lieu of source-specific EGU BART determinations, we are, however, finalizing a SO_2 trading program as an alternative to source-by-source BART and as meeting the interstate visibility requirements.

D. Legal Comments

We received comments addressing EPA's authority to promulgate a Federal Implementation Plan (FIP), the use of CSAPR as a better-than-BART alternative, cooperative federalism, deference to the State, the new Administration's policies, Executive Orders, and litigation. These comments, and the response to comments, can be found in the document titled Legal RTC in the docket for this action. Below is a summary of some of the more significant comments we received. For a detailed review of all legal comments and responses, we refer the reader to this separate document.

1. EPA's Obligation and Authority To Promulgate a FIP

Comment: Texas' and industry's challenge to CSAPR does not relieve EPA of its mandatory duty to issue a source-specific BART FIP for Texas. Although EPA would have permitted Texas to rely on CSAPR's modest cap-and-trade program to avoid source-specific BART controls, Texas, Luminant, AEP, and Southwestern Public Service Company all chose to challenge CSAPR. They were ultimately successful in defeating EPA's inclusion of Texas in the program for SO_2 and ozone-season NO_X. Ever since the D.C. Circuit remanded the Texas NO_X and SO_2 budgets to EPA in July 2015, Texas has been on notice that source-specific BART could well be necessary to meet its BART obligations. Yet Texas has not put forward either a new interstate transport SIP to replace CSAPR or a new BART SIP to address the Regional Haze Rule.

Response: We agree that we have a mandatory duty to address the BART requirements for Texas EGUs but we do not agree that we must address these requirements through a FIP establishing source specific BART limits. We understand the comment to be referencing the court action, *EME Homer City Generation* v. *EPA,* 795 F.3d 118 (D.C. Cir., July 28, 2015). At all times since the original submission of the 2009 Regional Haze SIP, Texas has been entitled to submit updated or new SIP revisions to address BART or interstate transport. A State is also entitled to submit a SIP that may be approved to replace a FIP after a FIP's promulgation. When and whether Texas has been ''on notice'' regarding a potential need for source-specific BART is not material to the present need to address the EGU BART requirements through either a SIP or FIP. We do note that the 2009 Regional Haze SIP stated, ''The TCEQ will take appropriate action if CAIR is not replaced with a system that the US EPA considers to be equivalent to BART.'' See 2009 SIP at 9–1. The 2009 SIP further acknowledged, ''Some EGUs may become subject to BART pending resolution of the CAIR at the federal level.'' See 2009 SIP at 9–17. As circumstances now apply to Texas (and, as this comment suggests, may have been earlier projected), the State can take appropriate action to develop a SIP to address the EGU BART and interstate visibility transport requirements. The TCEQ and EPA recently signed a MOA to work together to develop a SIP revision addressing interstate visibility transport requirements and BART requirements for EGUs with a BART alternative trading program starting from CSAPR.[63] However, without such a SIP, the Clean Air Act requires a promulgation of a FIP to address the outstanding BART and interstate transport requirements.

Comment: Texas's decision to not meet the BART requirements for its EGUs through voluntary participation in CSAPR does not relieve EPA of its mandatory duty to issue a source-specific BART FIP for Texas. Even if Texas were willing to voluntarily incorporate EPA's invalidated CSAPR emission budgets into its SIP, the state cannot simply opt in and avoid source-specific BART. Because Texas cannot reverse course and adopt emissions budgets that it demonstrated were unnecessary, as a matter of law, and because the agency cannot achieve ''all'' of the CSAPR reductions by 2018 (the end of the first planning period), it cannot voluntarily adopt CSAPR.

Response: We agree that we have a mandatory duty to address the BART requirement for Texas EGUs, but we do not agree that we must address it through a source-specific BART FIP. We understand this comment to refer to a hypothetical scenario based on the development and submission of a SIP by Texas providing for voluntary participation in CSAPR as a means of addressing the SO_2 and/or NO_X BART requirements for Texas EGUs. The possibility of such an option was detailed in a June 27, 2016 memorandum 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.'' That memorandum was provided and available to Texas and other states. Several other states have pursued this option, but Texas has not, and it is not within the scope of our proposal. We are not opining on the operation of state law or otherwise responding to this comment. We address the issue of whether emission reductions from a BART alternative must be achieved by 2018 in our response to another comment.

Comment: EPA withdrawal of Texas from CSAPR does not relieve EPA of its mandatory duty to issue a source-specific BART FIP for Texas. After

[62] See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

[63] See Memorandum of Agreement Between the Texas Commission on Environmental Quality and the Environmental Protection Agency Regarding a State Implementation Plan to Address Certain Regional Haze and Interstate Visibility Transport Requirements Pursuant to Sections 110 and 169A of the Clean Air Act, Signed August 14, 2017.

having given Texas four months' notice of its intent to fully withdraw the state from the CSAPR program, and made clear the implication that there would no longer be any doubt that Texas sources would need to comply with source-specific BART obligations, EPA formally issued its proposal to withdraw its federal plan to include Texas in the CSAPR emissions trading program one month before issuing the BART proposal. 81 FR 78954 (Nov. 10, 2016). EPA again made clear the situation: ''[I]f and when this [CSAPR withdrawal] proposal is finalized, Texas will no longer be eligible to rely on CSAPR participation as an alternative to certain regional haze obligations including the determination and application of source-specific SO_2 BART. Any such remaining obligations are not addressed in this proposed action and would be addressed through other state implementation plan (SIP) or FIP actions as appropriate.'' *Id.* at 78,956. EPA has informed the U.S. District Court for the District of Columbia that it intends to finalize this proposal by October 31, 2017.

After challenging the state's inclusion in CSAPR for years, industry has done an about face in response to EPA's Texas BART Proposal and now opposes EPA's withdrawal of Texas from CSAPR. But EPA has gone on record that the agency does not currently have an analytical basis to support new CSAPR budgets for Texas. As EPA has noted, there was no such thing as a legally compliant CSAPR budget for Texas following the remand. Texas has had many years to submit a state SIP equivalent to CSAPR or other BART alternative to avoid source-specific BART, but Texas has taken no action to address its contribution to interstate pollution or regional haze.

Response: We agree that we have a mandatory duty to address the BART requirement for Texas EGUs, but we do not agree that we must address it through a source-specific BART FIP. We also have a mandatory duty to address the interstate visibility transport requirements.

Comment: We have strongly opposed the CSAPR-Better-than-BART rule since its inception. It is unlawful and unsupported by the scientific record. Legal challenges to EPA's rule which purports to authorize reliance on CSAPR to satisfy BART are currently pending in the D.C. Circuit Court of Appeals. Until the D.C. Circuit rules on the validity of the CSAPR-Better-than-BART rule, neither EPA nor Texas should assume that CSAPR is an appropriate substitute for BART.

Response: The legal and technical determinations of the CSAPR-Better-than-BART rule are subject to judicial review under existing challenges and a separate administrative record, as indicated by the comment. Any challenges raised with regard to the present rulemaking and outside that litigation may be time-barred or directed to the wrong forum. As such, we do not believe that the incorporation of arguments from a brief filed with the D.C. Circuit concerning a separate regulatory determination warrants responses here, in this rulemaking, and that to offer responses here would suggest some basis for collateral, time-barred arguments that are out of the scope of this action.

Comment: In addition to the legal uncertainty surrounding the national CSAPR-Better-than-BART rule, it is too late for Texas to rely on a BART alternative like CSAPR or any other program. Under EPA's Regional Haze Rule, any BART *alternative* must include a ''requirement that all necessary emission reductions take place during the period of the first long-term strategy for regional haze''—*i.e.,* no later than 2018. There are no plans in place, or even in development, for any federal or state program that would ensure the necessary reductions take place by the end of the first planning period in 2018.

With the exception of a BART alternative approved for the Navajo Generating Station, which relied on the Tribal Authority Rule to provide additional flexibility, EPA has never proposed or approved a BART alternative that would allow the necessary emission reductions to be delayed past 2018. In *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016), Texas and industry persuaded the Fifth Circuit of a likelihood that EPA could not require controls beyond the first planning period for reasonable progress. While neither the statute nor regulation precludes emission reductions relative to *reasonable progress requirements* to occur beyond the planning period deadline, the *BART alternative requirements* contain a provision directly on point. Accordingly, emission reductions under a BART alternative must be implemented by the end of the first planning period.

Response: The Regional Haze Rule at 40 CFR 51.308(e)(2)(iii) requires that the emission reductions from BART alternatives occur ''during the period of the first long-term strategy for regional haze.'' The SO_2 BART alternative that EPA is finalizing here will be implemented beginning in January 2019, and thus emission reductions needed to meet the allowance allocations must take place by the end of 2019. For the purpose of evaluating Texas's BART alternative, the end of the first planning period of the first long-term strategy for Texas is 2021. This is a result of recent changes to the regional haze regulation, revising the requirement for states to submit revisions to their long-term strategy from 2018 to 2021.[64] Therefore, the emission reductions from the Texas SO_2 trading program will be realized prior to that date and within the period of Texas' first long-term strategy for regional haze. Moreover, we expect that source owners in 2018 will already be taking steps, including appropriate source-level compliance planning (*e.g.,* purchase contracts for coal), to be ready for the compliance year beginning on January 1, 2019. Adding to this, the State has already experienced reductions in SO_2 emissions in response to market conditions and, to some extent, periods of compliance with CSAPR, including its allocations for SO_2, when those measures were in effect or otherwise part of source owner planning considerations.

We note that the BART alternative is projected to be implemented before any of the earlier-proposed compliance dates for source-specific SO_2 BART for coal-fired units.

The last year for which Texas EGUs must meet CSAPR requirements for SO_2 is 2016. We considered and decided not to make the Texas SO_2 trading program effective for 2017 because that would be unreasonably short notice to the affected EGUs in light of the late date in 2017 on which this action will become effective. We considered and decided not to make the program effective for 2018 because that also would be unreasonably short notice given that affected EGU owners should be allowed more than a few months to determine their strategy for compliance with the program in light of it having some features that are different from the CSAPR trading program they have been operating under until recently, for example the fact that they will no longer be able to purchase and use allowances from out-of-state EGUs.

Comment: Adopting an emissions trading program for Texas that allows anywhere close to the tonnage of SO_2 permitted by the emissions caps in CSAPR would also fail to meet the substantive requirements for a BART alternative. While the D.C. Circuit is considering whether CSAPR meets these substantive requirements in the CSAPR-Better-than-BART litigation, Texas's situation is unique in that EPA has

[64] 82 FR 3078 (Jan. 10, 2017).

actually completed a source-specific BART proposal that can be directly compared with the CSAPR program. Thus, even if the CSAPR-Better-than-BART rule is upheld as a national rule that EPA has the option of relying upon in certain states, and even if Texas were to join CSAPR or voluntarily adopt its budgets, it would be arbitrary for EPA to rely on CSAPR as a BART alternative without actually comparing the CSAPR or CSAPR-like program with its BART proposal. When comparing the two head-to-head, it is obvious as a practical matter that allowing Texas's coal-fired power fleet to essentially continue emitting the same levels of SO_2 as the status quo is not going to achieve equivalent visibility gains as the BART proposal would. As detailed in ''EPA's Fact Sheet for the Open House on EPA's Clean Air Plan Proposal for Texas Regional Haze'', the proposed BART limits are expected to reduce emissions of SO_2 from 16 EGUs and would cut emissions from approximately 89 to 98 percent—a reduction of over 194,000 tons of SO_2 every year.

To satisfy the requirements for a BART ''alternative,'' an emissions trading program must make a technical demonstration that the trading program ''will achieve greater reasonable progress [towards natural visibility] than would have resulted from the installation and operation of BART at all sources subject to BART.'' *Id.* § 51.308(e)(2)(i). Under EPA's regulations, if the distribution of emissions is different under an alternative program, a state ''must conduct dispersion modeling'' to determine differences in visibility between BART and the trading program for each impacted Class I area, for the worst and best 20 percent of days. The modeling only demonstrates ''greater reasonable progress'' if both of the following two criteria are met: (i) Visibility does not decline in any Class I area, and (ii) There is an overall improvement in visibility, determined by comparing the average differences between BART and the alternative over all affected Class I areas. *Id.* § 51.308(e)(3).

Response: The comment addresses the approvability of a hypothetical SIP offered to meet the requirements of 40 CFR 51.308(e)(2). First, we do not agree with the premise of the comment that merely proposed determinations of BART in the context of a possible FIP set a stringency threshold for a demonstration set forth in a hypothetical SIP. Proposed determinations are only proposals and the facts put forth to support those proposals are themselves subject to correction via public comment and new information. Second, we also do not agree with any extension of the commenter's assertion to a FIP. While the comment does not address all the pertinent requirements for a BART alternative, we have done so elsewhere in this preamble. For example, as allowed by the requirements for a BART alternative in § 51.308(e)(2)(i)(C), we are declining to conduct the analysis that would include making determinations of BART for each source subject to BART and we are instead exercising the exception allowed when the alternative measure ''has been designed to meet a requirement other than BART (such as the core requirement to have a long-term strategy to achieve the reasonable progress goals established by States).'' [65] Third, we disagree that 51.308(e)(3) applies to this action. Rather, we find justification for the BART alternative under the ''clear weight of the evidence'' that the trading program will provide greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources. This means of validating a BART alternative, described by one Court as the ''catch-all,'' is permitted by 40 CFR 51.308(e)(2)(i)(E). We are allowed but not required to validate the BART alternative under the test set out in 40 CFR 51.308(e)(3). Although we are not applying that test here, we believe this intrastate trading program meets the intent of (e)(3). When promulgating the 2012 CSAPR-Better-than-BART rule, the EPA relied on an analysis showing that CSAPR would result in greater reasonable progress than BART under the test in 40 CFR 51.308(e)(3). In this action we are relying, in part, on that demonstration to show that the clear weight of evidence demonstrates that the SO_2 Trading Program will provide for greater reasonable progress than BART in Texas. This is based on a showing that the emissions in Texas under the BART alternative will be on average no greater than the emission levels from Texas EGUs that was forecast in the demonstration for Texas EGU emissions assuming CSAPR participation.

2. Statutory or Regulatory Text

Comment: A state should be able to independently rely on EPA's CSAPR-is-better-than-BART determination if the state can demonstrate that a state-only program for EGUs is more stringent than CSAPR. While the TCEQ has not proposed any action to implement a Texas-only program for EGUs based in some way on CSAPR as a means of satisfying BART, and these comments in no way represent a commitment to propose such an action, the TCEQ should be able to rely on the EPA's CSAPR-is-better-than-BART determination to satisfy certain aspects of the BART alternative provisions in 40 CFR part 51, § 51.308(e)(2) if such a program can be demonstrated to be more stringent than CSAPR. Specifically, the state should be able to rely on the EPA's determination that CSAPR resulted in greater reasonable progress than source-specific BART to satisfy the requirements of § 51.308(e)(2)(i)(E) and (e)(3).

We acknowledge that other requirements of § 51.308(e)(2) would still need to be satisfied, such as monitoring, recordkeeping, reporting, and provisions for emission trading programs. While the CSAPR option is specifically listed at § 51.308(e)(4), the EPA's Regional Haze rules do not prohibit a state from relying on EPA's modeling demonstration that CSAPR resulted in greater reasonable progress when using an alternative under § 51.308(e)(2). If a state-only program is more stringent than CSAPR, for example a program based on CSAPR allocations but without interstate trading, requiring a state to conduct extensive modeling to demonstrate what the EPA has already demonstrated for a less stringent program is illogical and places an unnecessary and wasteful burden on states.

Response: We agree with this comment. In response to this comment, our final FIP establishes an intrastate trading program that operates much like the CSAPR program did in Texas. This program is discussed in more detail elsewhere.

3. EPA's Reliance on CSAPR for NO_X BART

Comment: Agree with EPA's proposal regarding CSAPR as a BART alternative for NO_X which is proposed for separate finalization. EPA could have followed the D.C. Circuit's directive and updated NO_X (and SO_2) budgets for Texas. EPA could have but declined to do so. EPA notes that finalization of CSAPR as better-than-BART for NO_X is contingent on a separate finalization that the D.C. Circuit remands would not adversely impact 2012 demonstrations. Uncertainty in this proposal does not seem to be an issue for NO_X and EPA is again basing a proposal on an action yet to be finalized.

Response: Whether we were in a position to provide updated annual NO_X and SO_2 budgets for Texas is not relevant to this rulemaking. Because Texas EGUs are required to continue

[65] See 40 CFR 51.308(e)(2)(i)(C).

participation in CSAPR for ozone transport, which involves NO_X trading, we are determining that the NO_X BART requirement for EGUs continues to be met through our determination that CSAPR is better than BART.

We interpret the comment as supporting this action, even as it appears to criticize our reference to another proposed action, which has since been finalized, as part of the proposal for the NO_X aspect of this action. Our proposed and finalized action for the NO_X BART requirement addresses the Act's requirements for Texas. This action and our recent action to remove Texas EGUs from CSAPR's SO_2 trading program are distinct actions, but we have provided appropriate transparency and notice regarding how the proposed actions relate and have given careful consideration to comments received that have bearing on each of the actions.

Comment: EPA's proposal is unlawful because it exempts sources from installing BART controls without going through the exemption process Congress prescribed. The visibility protection provisions of the Clean Air Act include a ''requirement'' that certain sources ''install, and operate'' BART controls. 42 U.S.C. 7491(b)(2)(A). Congress specified the standard by which sources could be exempted from the BART requirements, which is that the source is not reasonably anticipated to cause or contribute to a significant impairment of visibility in any Class I area. Appropriate federal land managers must concur with any proposed exemption. EPA has not demonstrated that any of the Texas EGUs subject to BART meet the standards for an exemption, nor has EPA obtained the concurrence of federal land managers. Therefore, EPA must require source-specific BART for each power plant subject to BART.

Response: To the extent the comment is directed to the prior rules that determined and redetermined that CSAPR is better than BART and may be relied upon as an alternative to BART, we disagree that relying on CSAPR is in conflict with the CAA provision regarding exemptions from BART. In addition, the commenter's objection does not properly pertain to this action, but instead to our past action that established 40 CFR 51.308(e)(4). We believe this comment to fall outside of the scope of our action here. To the extent the comment objects to BART alternatives generally, we also disagree. In addition, that objection does not properly pertain to this action, but instead to our past regulatory action that provided for BART alternatives.

Comment: Even if EPA could use a BART alternative without going through the statutory exemption process, the CSAPR-Better-than-BART Rule was fatally flawed, and even if it were valid in 2012, is now woefully outdated. EPA's regulations purport to allow the use of an alternative program in lieu of source-specific BART only if the alternative makes ''greater reasonable progress'' than would BART. 40 CFR 51.308(e)(2). To demonstrate greater reasonable progress, a state or EPA must show that the alternative program does not cause visibility to decline in any Class I area and results in an overall improvement in visibility relative to BART at all affected Class I areas. *Id.* § 51.308(e)(3)(i)–(ii).

EPA compared CSAPR to BART in the Better-than-BART Rule by using CSAPR allocations that are more stringent than now required as well as by using presumptive BART limits that are less stringent than are actually required under the statute. Even under EPA's skewed 2012 comparison, CSAPR achieves barely more visibility improvement than BART at Big Bend and Guadalupe Mountains. The NO_X emissions allowed under CSAPR from Texas EGUs are higher than would be allowed under BART. This was true even before EPA revised CSAPR to increase the emissions allocations for all Texas EGUs.

If it were assumed that the CSAPR-Better-than-BART Rule were valid in 2012, it is based on assumptions for both CSAPR and BART emissions which are now woefully outdated. The CSAPR-Better-than-BART Rule's reliance on presumptive BART emission limits is now outdated, given that EPA has issued or approved source-specific BART determinations for dozens of sources since 2012. In particular, for Texas sources, EPA has proposed SO_2 BART limits which are far below the presumptive BART limits EPA used in the Better-than-BART Rule. For units other than Martin Lake, EPA proposes SO_2 BART limits of 0.04 to 0.06 lbs/MMBtu, which are well below the presumptive SO_2 BART limit of 0.15 lbs/MMBtu; even at Martin Lake, EPA proposes limits of 0.11 to 0.12, which are still below presumptive BART for SO_2.

Similarly, the CSAPR-Better-than-BART Rule is based on a version of CSAPR that no longer exists. Accordingly, any conclusion that EPA made in the 2012 Better than BART rule regarding whether CSAPR achieves greater reasonable progress than BART is no longer valid. Since 2012, EPA has significantly changed the allocations and the compliance deadlines for CSAPR. Of particular relevance here, after 2012, EPA dramatically increased the CSAPR allocations for every covered EGU in Texas. EPA later withdrew the February 21, 2012 rule revision, but issued a new rule that included both the changes in the February 21, 2012 rule as well as additional changes to state budgets.

By the time EPA finalized the Better-than-BART-Rule in June 2012, EPA had changed the state emissions budgets by tens of thousands of tons, yet EPA proceeded to finalize the Better-than-BART Rule based solely on the emissions budgets in the original, 2011 CSAPR rule. EPA also extended the compliance deadlines by three years, such that the phase 1 emissions budgets take effect in 2015–2016 and the phase 2 emissions budgets take effect in 2017 and beyond. Even more changes to CSAPR have occurred as a result of the D.C. Circuit's decision in *EME Homer City II Generation,* including the proposed withdrawal of Texas from the annual NO_X and SO_2 trading programs. Given the large number of final BART determinations made since 2012, and the significant changes to CSAPR budgets since 2012, it is arbitrary and capricious to rely on the outdated assumptions about emissions which were made in the CSAPR-Better-than-BART Rule.

Response: As we had proposed, our finalized determination that CSAPR participation will resolve NO_X BART requirements for Texas EGUs is based on a separately proposed and finalized action. This comment falls outside of the scope of our action here.

Comment: EPA's November 2016 ''Sensitivity Analysis'' purports to update its CSAPR-Better-than-BART analysis to show that CSAPR still makes greater reasonable progress than BART. We agree with EPA that the 2016 Sensitivity Analysis is not a proper legal basis for demonstrating that CSAPR makes greater reasonable progress than BART, because the 2016 analysis is merely a proposed rule. It would be unlawful to issue a final BART rule relying on CSAPR to satisfy the NO_X BART requirements in the absence of a final rule demonstrating that the CSAPR Update makes greater reasonable progress than BART.

To demonstrate that CSAPR makes greater reasonable progress than BART, EPA must show that (1) visibility does not decline in any Class I area under CSAPR, and (2) there is an overall improvement in visibility, based on comparing the average differences between CSAPR and BART across all affected Class I areas. EPA's analysis falls well short of making such a

demonstration, as we noted in our prior comments on EPA's 2016 Sensitivity Analysis.

EPA's 2016 analysis is markedly different from the CSAPR-Better-than-BART Rule, which relied on quantitative modeling of electric power section emissions, using the Integrated Planning Model, and quantitative modeling of visibility at all affected Class I areas, using CAMx. Instead of updating that modeling, EPA's 2016 analysis consists of a back-of-the-envelope, qualitative discussion. This is wholly insufficient. There have been enormous changes in the electric power sector since EPA issued the Better-than-BART Rule in 2012, including changes in regulatory requirements (*e.g.,* CSAPR revisions, NAAQS updates, etc.) and changes in unit operations caused by changes in fuel prices, demand, etc. Given that EPA believed in 2012 that it was necessary to conduct quantitative modeling of power sector emissions and the visibility impacts of such emissions, EPA must update that modeling in order to prove that CSAPR still makes greater reasonable progress than BART.

EPA's failure to update the modeling upon which it relied in the 2012 Better than BART Rule is even more arbitrary given EPA's assumption, in the 2016 Sensitivity Analysis, that no trading of CSAPR allowances would occur across state lines. The Sensitivity Analysis uses ''emissions that would occur if the state budgets are increased as proposed assuming that all of the additional allowances are used by sources in the respective state (*i.e.,* we did not re-model trading).'' This assumption bears no relationship to reality, in which CSAPR—both the original rule, and the updated rule—expressly allows trading across state lines. EPA's failure to create a realistic depiction of the geographic distribution of emissions under the updated CSAPR budgets dooms its Sensitivity Analysis, as EPA must demonstrate that visibility does not decline in any Class I area. Trading across state lines can increase emissions from particular sources, which in turn can degrade visibility at particular Class I areas. Having failed to consider how inter-state trading will affect the distribution of emissions under CSAPR, EPA cannot possibly show that visibility will not decline in any Class I area under CSAPR.

Similarly, EPA failed to account for intra-state trading under CSAPR. Even assuming all changes in budgets would apply only within the affected state—that is, assuming interstate emissions trading did not change at all—EPA has not accounted for trading within the states. A 20% reduction in statewide emissions does not imply that each unit will reduce its emissions by 20%; indeed, some units could increase emissions while statewide emissions went down. EPA does not seem to have accounted for this in its analysis. Thus, even within EPA's scenario whereby no changes to reflect current conditions need to be made, EPA's *ad hoc* analysis fails to demonstrates that the ''Better-than-BART'' test above would be met because EPA has failed to account for changes in emissions distribution based on the altered budgets.

In addition, EPA cannot simply assume that the visibility improvement averaged across all Class I areas, 40 CFR 51.308(e)(3)(ii), will still be better under the updated CSAPR than under BART. Without updated visibility modeling, EPA has no data to demonstrate that the second prong of the BART alternative test will be met in spite of the substantial changes in coverage and budgets under CSAPR.

Response: In part, the comment makes the point that this final action cannot rely on another action that has only been proposed. We agree with this aspect of the comment, but this part of the comment is no longer relevant because the other action has now been finalized. As we had proposed, our finalized determination that CSAPR participation will resolve NO_X BART requirements for Texas EGUs is based on a separately proposed and now finalized action. This comment in its discussion of the 2016 sensitivity analysis and other particulars raises issues that are addressed in the record for that separately finalized action. This comment falls outside of the scope of our action here.

Comment: Under the updated version of CSAPR, Texas will not have allowances for annual NO_X emissions. Instead, Texas will have a CSAPR budget for NO_X for only the ozone season, which runs a few months each year. But BART is not a seasonal requirement; BART requires continuous operation of pollution controls. ''The determination of BART must be based on an analysis of the best system of continuous emission control technology available and associated emission reductions achievable for each BART-eligible source that is subject to BART within the State.'' It violates EPA's regulations to use seasonal emissions reductions under CSAPR to satisfy the BART requirement to install and operate ''continuous emission control technology.''

Response: We disagree with this comment, but also note that it should not be directed to this action but rather to the past rulemaking determination that provided BART coverage for pollutant trading under CSAPR as specified at 40 CFR 51.308(e)(4). In any event, the argument that BART must be based on ''continuous'' control does not transfer to the application and operation of a BART alternative. Sources that would operate under an annual trading program that provides tons per year allocations for a unit are not necessarily applying ''continuous'' controls either. In fact, they are also free to operate seasonally or with intermittent use of controls so long as they operate within the allocation or purchase allowances whenever emissions may exceed that allocation. We necessarily disagree that EPA regulations would bar seasonal emissions reductions to satisfy requirements for a BART alternative.

4. Other CSAPR Comments

Comment: The EPA should proceed to finalize CSAPR as a better-than-BART alternative not only as to NO_X but also as to SO_2. In the Texas Regional Haze SIP, Texas relied on EPA's Regional Haze Rule that allows states to implement an alternative to BART as long as the alternative has been demonstrated to achieve greater reasonable progress toward the national visibility goal than BART. EPA made such a demonstration for CAIR and many states, including Texas, relied on CAIR's cap and trade programs as a BART alternative for EGU emissions of SO_2 and NO_X in their SIP submittals. Following EPA's demonstration in 2005 that CAIR is better-than-BART and after Texas submitted the Regional Haze SIP, the D.C. Circuit Court remanded CAIR to EPA but ultimately did not vacate the CAIR rule. EPA approved certain States' SIPs that implemented CAIR as a BART alternative, yet, EPA did not do so for Texas.

CSAPR was issued to replace CAIR and because of EPA's action on CAIR, EPA subsequently withdrew reliance on CAIR as a BART alternative and finalized the demonstration that compliance with CSAPR is better than application of BART. This action occurred after Texas had submitted its SIP.

On December 16, 2014, EPA published a proposed FIP program to ''replace reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to BART for SO_2 and NO_X emissions for EGUs.'' The CSAPR rule had been challenged in the D.C. Circuit and the court held that EPA had over-controlled certain States' budgets and remanded the CSAPR rule without vacatur for further revision by EPA. In January 2016, EPA did not finalize BART controls for EGUs, citing

uncertainty. EPA issued the CSAPR Update on October 24, 2016 but did not revise SO_2 or NO_X annual budgets for Texas.

EPA's Proposed FIP and the imposition of source-specific BART relies on the EPA's proposed rulemaking for the withdrawal of Texas from the CSAPR Phase 2 trading budgets for SO_2. In November 2016, EPA published a proposal to withdraw the FIP provisions that required affected EGUs to participate in Phase 2 of the CSAPR trading programs for annual emissions of SO_2 and NO_X purportedly to address a decision of the U.S. Court of Appeals for the District of Columbia Circuit that had remanded for further consideration the CSAPR Phase 2 SO_2 budgets for Texas and other states.

EPA's proposed withdrawal of Texas from the Phase 2 CSAPR program for SO_2 included a ''sensitivity analysis'' indicating that removal of Texas from the Phase 2 SO_2 budget trading program (and including the removal of the Florida trading program) would not adversely impact the demonstration that CSAPR participation continued to qualify as an alternative to compliance with BART, in other states that were relying on CSAPR for BART compliance.

EPA also noted that ''[n]o changes to the Regional Haze Rule are proposed as part of the rulemaking.'' *Id.* However, in support of this FIP proposal addressing Regional Haze, EPA notes that it, ''had earlier proposed to rely on CSAPR participation to address these BART-related deficiencies in Texas' SIP submittals referencing its December, 2014 proposed FIP.'' EPA did not address the D.C. Circuit Court's remand as directed.

The D.C. Circuit had remanded without vacatur the Phase 2 budgets in *EME Homer City Generation, L.P.* v. *EPA, 795 F.3d 118* (D.C. Circuit 2015) and directed the EPA to reconsider the emission budgets and propose revised budgets. AEP said they did not support EPA's proposal to withdraw Texas from CSAPR, stating that the EPA had provided insufficient justification and explanation for the proposal and had not considered the impact on the trading market. AEP noted that the court had specifically not vacated the Phase 2 budgets due to concerns that such a decision would disrupt the trading markets. AEP also expressed concern that withdrawing Texas from CSAPR would impact the compliance strategies facilities have developed for compliance with BART, as BART eligible facilities had developed compliance strategies assuming BART compliance would be achieved through compliance with CSAPR. AEP said they supported the CSAPR trading programs because of their flexibility and administrative convenience, cost-effectiveness and the ''remarkable reductions that have occurred across the electric utility industry.'' AEP also considered EPA's analysis of the impact of sources in Texas on nonattainment areas in other states was inadequate and the explanation provided by EPA for its decision to change the initial determination was insufficient and potentially exposed Texas EGUs to future liability for the impact of $PM_{2.5}$ emissions on Madison County and other upwind locations. AEP concluded their comments on 81 FR 78954 by recommending the EPA finalize CSAPR as a compliance alternative to BART for SO_2 and revise the Phase 2 budgets, instead of withdrawing Texas from CSAPR.

The D.C. Circuit requires EPA to propose acceptable budgets consistent and confirm that those budgets are a BART alternative and allow Texas to remain in the CSAPR trading program. Source specific controls, then, would no longer be necessary since CSAPR as a BART alternative would provide a more cost-effective, less burdensome and flexible program for compliance with Texas' visibility obligations.

By EPA's reliance on the proposed withdrawal of Texas from the CSAPR trading program for SO_2 as the basis for the proposed Texas BART FIP, EPA is illegally proposing BART controls on facilities premised on a proposed rule. Buttressing the proposed FIP on a proposed-not-yet-finalized rule is inconsistent with the APA. EPA seems concerned with uncertainty created by the remand yet, this action by EPA creates its own uncertainty with regard to whether the proposed withdrawal will be finalized as proposed. The APA requires that an agency provide notice and an opportunity to comment on proposed rules. 5 U.S.C. 553(c). An agency must be open to taking comments and responding to them. This necessarily requires that EPA must consider comments from the public *before* finalizing a proposed rule. In fact, the comment period for the proposed withdrawal of Texas from the SO_2 CSAPR budgets ended *after* the date of the proposed BART FIP. Clearly, EPA gave itself no opportunity to consider public comment on the proposed withdrawal prior to relying on it as if it were final as proposed to justify the need for proposing source-specific BART. EPA's actions demonstrate that it had no intention of accepting public comment and had already made up its mind that the proposal would be finalized as proposed, a direct contravention of the APA.

Response: Several contentions provided by this commenter are relevant to the action withdrawing Texas from Phase 2 CSAPR program budget, but given the finalization of that action they are not relevant to this action. We are required to address the BART requirements for both pollutants under our CAA FIP authority, in the absence of an approvable SIP. We are finalizing our proposal that NO_X BART is met by continued participation in CSAPR and we are finalizing a BART alternative to address the SO_2 BART requirement. The BART alternative applies the CSAPR allowance allocations for SO_2 to all BART-eligible coal-fired EGUs, several additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs. In addition to being a sufficient alternative to BART, it secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.

We do not agree with the commenter's suggestion that we were not open to the consideration of comments in our proposed action or in any related actions in violation of the APA. Moreover, the assertion that EPA had made up its mind that any proposal would be finalized as proposed regardless of comments that might be offered is not correct. For efficiency and because of time constraints, our proposal for the NO_X aspect of this action was based on a scenario of later finalization of the CSAPR remand response rule, but that does not mean that we did not fairly consider all comments on the CSAPR remand response rule or pre-decided the outcome of that rule. Our final decisions in this action reflect the final CSAPR remand rule, and consideration of comments on our proposal for this action.

Comment: Recommend the CSAPR budgets be revised. Revising the CSAPR budgets is supported by actual SO_2 emissions. The Texas EGU SO_2 and NO_X emissions have steadily decreased and have fallen well below 2017 CSAPR budgets. These emissions are well below the original better-than-BART budgets for SO_2. EPA's determinations that CSAPR is better-than-BART is still valid and supported even if emissions were increased.

We anticipate that EPA may respond that a September 9, 2017 Consent Decree deadline (derived from a case in which the EGUs were not party) did not permit time to consider comments before proposing the Texas BART FIP.

Clearly, the most expeditious approach would be for EPA to revise the invalid Phase 2 CSAPR budgets for Texas and propose that reliance on the revised budgets satisfies BART compliance. Any delays in addressing Texas' BART obligations are the result of EPA not establishing an acceptable CAIR or CSAPR program, and EPA's refusal to revise CSAPR Phase 2 budgets and not Texas' failure to agree to accept invalid CSAPR budgets. In fact, the D.C. Circuit instructed EPA to act ''promptly'' in revising the budgets.

Additionally, EPA's attempt to comply with a court deadline does not justify noncompliance with the APA. With its current proposal (Texas BART FIP), EPA has done nothing but create further uncertainty and violate the APA. EPA could have requested an extension of the deadline to revise the budgets, but did not. Consistent with the Administration's Executive Order on Reducing Regulation and Controlling Regulatory Costs, EPA could revise the CSAPR budgets adhere to CSAPR is better-than-BART, as they have in many other states, and remove two proposed regulations in doing so without the promulgation of another rule (proposed withdrawal of Texas from the CSAPR Phase 2 program and proposed source-specific BART for Texas source.) EPA should update the Phase 2 SO_2 budgets as directed and post-haste proceed to finalize CSAPR as a better an alternative to the application of source-specific BART.

Response: Texas declined to submit a SIP to voluntarily participate in CSAPR and we have addressed our remand obligations for Phase 2 SO_2 budgets by ending Texas EGU participation in CSAPR for $PM_{2.5}$ transport. We agree, however, that Texas sources can continue NO_X BART coverage under CSAPR and we are finalizing a BART alternative for SO_2 instead of establishing source-specific SO_2 BART determinations for units at those sources. The BART alternative applies the CSAPR allowance allocations for SO_2 to all BART-eligible coal-fired EGUs, several additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs. In addition to being a sufficient alternative to BART, it secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.

Comment: EPA is now proposing to require stringent emission control technology on units that have already met the BART obligations by participation in the regional trading programs, CAIR, and its replacement, CSAPR. In this proposal, EPA has effectively removed a cost-effective compliance mechanism which has been in place for the duration of the first planning period, with costs and reductions that far exceed the regulatory obligation, with limited or no benefit to visibility. Because it was only late last week that EPA made available the technical documents that it claims would support its action and EPA has yet to provide us with the specific modeling supporting the proposal that we requested several weeks ago, We have not yet had an opportunity to thoroughly evaluate EPA's technical justification for the proposal.

Response: Our proposal did not effectively remove CSAPR, and we disagree with the comment's characterization of how and when CSAPR has been ''in place.'' Regardless, we agree with the premise of the comment that SO_2 BART and NO_X BART for Texas EGUs can be addressed by the BART alternatives we rely on in our final action. We also disagree that our proposal would have provided limited or no benefit to visibility to the extent it suggests our final action is not providing visibility benefits. Visibility benefits are being secured and preserved into the future by the final FIP measures.

Comment: Texas' SO_2 emissions are below the levels that EPA has found to be better-than-BART, and any reasonable assessment would conclude that trends of anticipated emissions in Texas will remain below those levels. EPA conducted two sensitivity analyses that both demonstrate that revised CSAPR emission levels for Texas are better-than-BART. We compared actual Texas EGU SO_2 emissions in 2015 and 2016 to the SO_2 emission levels that EPA found are better-than-BART. In both cases, Texas' actual emissions are well below the budgets that EPA has determined are better-than-BART.

Response: We are finalizing a BART alternative that applies the CSAPR allowance allocations for SO_2 to all BART-eligible coal-fired EGUs, several additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs. In addition to being a sufficient alternative to BART, it secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule. To the extent, the comment suggests that current and anticipated emissions alone are enough to satisfy requirements for BART or a BART alternative, we disagree. As a fundamental matter, emissions reductions must be enforceable to prevent undesired and unexpected increases in future years. Pointing to ''trends''—*i.e.,* unenforceable emissions levels without legal requirements against future increases—does not meet CAA requirements.

Comment: EPA must promulgate or approve a BART alternative for Texas, and must not finalize the unlawful and cost-prohibitive proposed Texas BART FIP. EPA should not, and lawfully may not, finalize its Proposed Texas BART FIP. The Proposed Texas BART FIP—like the predecessor Reasonable Progress Rule that is stayed and was remanded by the Fifth Circuit for reconsideration—is fundamentally flawed, cost-prohibitive to implement, and contrary to reasoned decision-making. EPA should address BART for Texas—not through federally-mandated specific controls on individual units—but through one of several available BART alternatives that will achieve equivalent or greater benefits at far less costs, as demonstrated by EPA's own prior modeling and sensitivity analyses.

Among those available alternatives is EPA's original proposed BART action for EGUs in Texas—reliance on Texas EGUs' participation in CSAPR's annual SO_2 and NO_X trading Programs as BART compliance. That alternative remains the most expeditious and defensible path for finalizing a BART solution for Texas EGUs, and it is fully supported by EPA's previous CSAPR better-than BART modeling and sensitivity analyses. Indeed, EPA's *only* lawful path forward to finalize a BART FIP for Texas by the current September 9, 2017 deadline in EPA's consent decree with Sierra Club is to finalize a CSAPR-for-BART FIP for Texas EGUs, as EPA signed in December 2014. For the many reasons discussed in Section II of these comments, EPA would be acting unlawfully were it to finalize the Proposed Texas BART FIP as issued in December 2016.

As an alternative to finalizing a CSAPR-for-BART FIP in September 2017, EPA could seek an extension of the consent decree deadline and proceed to work cooperatively with the State of Texas and Texas EGU operators to develop and propose for comment a different BART alternative for Texas, as it has done in other states. Such an alternative could, for example, establish SO_2 emission caps for Texas EGUs that are comparable to CSAPR budgets and would thus fall squarely within EPA's previous CSAPR=BART demonstration and sensitivity analyses for Texas. EPA has frequently worked with states and stakeholders to develop workable BART alternatives for EGUs, and it should do

the same here with Texas and Texas stakeholders, including Luminant.

Promulgation of a CSAPR-for-BART FIP is EPA's only lawful option for meeting the September 9, 2017 consent decree deadline. If EPA believes that it must finalize a BART rule for Texas EGUs by September 2017, EPA's only valid legal option is to finalize its 2014 proposed CSAPR-for-BART FIP. In that proposal, EPA specifically stated that it was proposing ''a FIP to replace reliance on CAIR with reliance on the trading programs of CSAPR as an alternative to BART for SO_2 and NO_X emissions from EGUs in the regional haze plan for Texas.'' In support, EPA explained that it ''determined that [1] CSAPR provides for greater reasonable progress towards the national goal than would BART and [2] Texas is included in CSAPR for NO_X and SO_2.'' The same is true today, and, indeed, recent emission trends and EPA's sensitivity analyses for Texas confirm that CSAPR is and remains better-then-BART for Texas EGUs. Texas remains in the CSAPR annual programs for NO_X and SO_2, and EPA's determination that CSAPR provides for greater reasonable progress than the installation of BART remains scientifically sound. EPA has determined that ''[CSAPR] achieves greater reasonable progress towards the national goal of achieving natural visibility conditions than source-specific BART.'' That conclusion remains valid today, and EPA has not undertaken any action to revise or rescind that rulemaking. In fact, the Eighth Circuit recently upheld EPA's conclusion that CSAPR is better than BART, stating that ''EPA's explanation that the Transport Rule is better than source-specific BART is rational.'' There is no legal or technical barrier to EPA finalizing its original proposal of CSAPR-for-BART for Texas EGUs, and, indeed, that is EPA's only lawful current option if it were to meet the September 2017 deadline.

EPA's consent decree with Sierra Club does not prevent EPA from finalizing its original CSAPR-for-BART proposal in Texas. The consent decree that EPA entered into with Sierra Club was revised in December 2015 to provide two alternative deadlines for issuing a final rule that implements BART for Texas. First, the revised consent decree provides that by ''[n]o later than December 9, 2016,'' EPA was to promulgate a final BART FIP for Texas, unless EPA had approved Texas's SIP or promulgated ''a partial SIP'' meeting the BART requirements under the regional haze program. Alternatively, the December 2016 deadline would be ''extended to September 9, 2017,'' if EPA signed a new proposed rule for BART by December 9, 2016. EPA signed the Proposed Texas BART FIP on December 9, 2016, thereby triggering the extension in the consent decree.

The consent decree, however, does not (and cannot) dictate the substance of EPA's final BART rulemaking under the extended deadline of September 9, 2017; the only prerequisite to invoking this extension is the signing of a proposal by December 9, 2016. EPA is not bound by the consent decree to finalize the terms of the current proposal or any similar source-specific BART rule; in fact, established principles of administrative law require EPA to remain open-minded during the rulemaking process. The consent decree merely established deadlines for EPA's pending course of action. Accordingly, for purposes of meeting the upcoming deadline of September 9, 2017, EPA is not prohibited by the consent decree from reverting to its 2014 proposal to finalize CSAPR as a BART alternative for Texas EGUs.

Response: We agree that the existence of the consent decree deadline does not dictate the substance of our action to address Clean Air Act requirements to meet the deadline. We disagree that our only possible lawful action for meeting the deadline is to impose a FIP based on CSAPR. 40 CFR 51.308(e) requires that states submit a SIP containing emission limitations that represent BART for BART eligible sources that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area. Alternatively, 40 CFR 51.308(e) allows states to establish an emissions trading program or other alternative as long as the trading program or other alternative will achieve greater reasonable progress toward natural visibility conditions than BART. Where a state has failed to submit a SIP by the applicable deadline or has submitted a SIP that has been disapproved by the EPA, the CAA authorizes and requires EPA to promulgate a FIP that meets the requirements of the applicable federal statutes and regulations. Thus, EPA has the authority to promulgate a FIP containing emission limits that represent BART for BART eligible sources that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area. Alternatively, EPA may establish an emissions trading program or other alternative which will achieve greater reasonable progress than BART. We are meeting requirements with valid use of discretion where appropriate to finalize NO_X BART as proposed, and to finalize a BART alternative with emission levels similar to CSAPR to address SO_2 BART. We are not able to revive the 2014 proposal to satisfy SO_2 BART for Texas EGUs because remand obligations have led to the removal of SO_2 trading requirements for Texas. We agree that this might have been a viable solution, but Texas declined to submit a SIP to voluntarily participate in CSAPR to fully preserve and accommodate this option.

Comment: The Proposed Texas BART FIP is not only cost-prohibitive, it is not necessary to achieve the goals of the Regional Haze Program and satisfy the requirements of the CAA. EPA's own prior modeling and analysis show that BART for these units is more than met by current SO_2 emission levels from Texas EGUs, and the stringent additional limits in the Proposed Texas BART FIP are not necessary.

EPA's sensitivity analyses for Texas's SO_2 CSAPR budgets and recent emission trends in Texas demonstrate that CSAPR remains better-than-BART. EPA's sensitivity analyses definitively confirm that EPA's determination that CSAPR is better-than-BART in Texas remains scientifically sound. When EPA issued the final rule promulgating the CSAPR-for-BART provision in June 2012, EPA confirmed that the upward adjustments to Texas's budgets under CSAPR did not adversely impact visibility conditions in nearby Class I areas. EPA initially calculated visibility improvements for nearby Class I areas based on a SO_2 budget for Texas of 243,954 tons/year. Following EPA's upward adjustments to the CSAPR budget due to errors in EPA's initial calculation, EPA revised its visibility improvement estimates based on a SO_2 budget of 294,471 tons/year. EPA's methodology demonstrates the expected visibility improvement as a result of implementing the CSAPR is better-than-BART provision under the original budget and the revised budget. Even with an SO_2 budget of nearly 300,000 tons for Texas, visibility at these Class I areas was projected to improve (not degrade).

Recent emissions data confirm EPA's prior determination—*i.e.,* that Texas's emissions are well below the threshold that was previously determined to be better-than-BART. Implementation of CSAPR Phase 1 began in 2015, and implementation of Phase 2 began in 2017. For 2015 and 2016—during CSAPR Phase 1—Texas maintained its annual emissions of SO_2 and NO_X well under the budgets established by EPA. The state-wide budget for annual SO_2 in Texas is 294,471 tons, and the state-

wide budget for annual NO_X in Texas is 137,701 tons. These same budgets will apply during Phase 2, and there is no expectation that Texas EGUS will exceed these thresholds. In fact, EPA's own data demonstrate that Texas has not exceeded, or even approached, its annual allowance allocations for either SO_2 or NO_X during Phase I of CSAPR. Emissions of SO_2 from Texas EGUs were 260,122 tons in 2015 and 244,233 tons in 2016. As for NO_X, emissions from Texas EGUs were 107,921 tons in 2015 and 106,625 tons in 2016. Once CSAPR became effective in Texas in 2015, SO_2 emissions from Luminant's coal-fired EGUs dropped dramatically and have trended downward. There is no reason to believe, and EPA presented no reason, that this trend will reverse—and certainly not to a degree that Texas EGU SO_2 emissions would exceed CSAPR budgets or call into question EPA's CSAPR better-than-BART demonstration.

Texas has maintained its emissions well below the budgets established by CSAPR. The record establishes that BART for these units can be no more stringent than current emission levels, which are well below CSAPR budgets. In 2012, EPA concluded that ''[CSAPR] achieves greater reasonable progress towards the national goal of achieving natural visibility conditions than source-specific BART.'' EPA confirmed this determination in subsequent sensitivity analyses. So long as Texas's emissions remain below the CSAPR budgets, the operation of Texas EGUs in such a manner will continue to be better-than-BART.

Thus, the Proposed Texas BART FIP is based on a fundamental flaw by EPA—that BART for Texas EGUs must be ''more emission reductions than projected under CAIR or CSAPR.'' To the contrary, because Texas validly remains in the annual CSAPR programs for SO_2 and NO_X combined with the fact that Texas EGU SO_2 emissions are well below the annual allocations, EPA has no valid basis to change course from its 2014 proposal to finalize CSAPR for BART in Texas in order to impose more stringent source-specific BART controls. EPA should proceed to finalize a FIP for Texas that approves CSAPR as a BART alternative for Texas EGUs.

Response: We agree that emissions similar to the CSAPR budgets would be better than BART and can be justified as a BART alternative. To the extent the comment suggests that merely pointing to current emissions level can satisfy the requirements of a BART alternative, we disagree. Those emissions levels must be made enforceable, and our final action accomplishes that. NO_X BART for EGUs is addressed by continued participation in CSAPR program for ozone transport. With regard to SO_2, the BART alternative is designed to achieve SO_2 emission levels from Texas EGUs similar to the SO_2 emission levels that would have been realized from the SO_2 trading program under CSAPR. These measures will assure Texas' recent reductions of SO_2 and NO_X will be maintained and improved upon in the future.

Comment: The D.C. Circuit's remand of CSAPR budgets does not create ''uncertainty'' that prevents EPA from finalizing CSAPR-for-BART for Texas EGUs. EPA says that it did not finalize its initial CSAPR-for-BART proposal for Texas EGUs because it noted some ''uncertainty arising from the remand of Texas' CSAPR budgets'' by the D.C. Circuit. EPA made that claim in the now-stayed January 2016 Reasonable Progress Rule. That claim was wrong when it was made then, and it is clearly wrong now. There is no ''uncertainty.'' The D.C. Circuit's remand does not prevent EPA from finalizing CSAPR as an SO_2 BART alternative for Texas EGUs.

First, EPA's claim that there is an ''absence of CSAPR coverage for SO_2'' in Texas following the D.C. Circuit's remand is simply wrong. Texas EGUs are and have been regulated by a BART equivalent trading program for the entirety of the first planning period to date—first through CAIR and, after CAIR's replacement and up to the present day, through CSAPR. Texas EGUs are presently subject to CSAPR's annual SO_2 and NO_X programs under the budgets remanded by the D.C. Circuit, which are budgets that EPA has confirmed as better-than-BART. EPA's prior determination that CSAPR is better-than-BART for all states, including Texas, is scientifically sound and remains a binding part of EPA's regulations. EPA may properly respond to the D.C. Circuit's remand by revising Texas's annual SO_2 budget (as instructed by the D.C. Circuit) *after* it finalizes the proposed CSAPR-for-BART FIP for Texas.

Second, regardless of when EPA responds to the D.C. Circuit's remand, EPA's own sensitivity analyses confirm that were EPA to properly respond to the remand by increasing Texas's annual SO_2 budgets so they do not over-control as instructed by the D.C. Circuit, those revised budgets would remain better-than-BART. EPA established a multi-step methodology to analyze whether increases in Texas's SO_2 annual budgets would change EPA's CSAPR better-than-BART determination (which remains part of EPA's binding regulations). First, EPA's methodology for conducting a revised sensitivity analysis requires the identification of the Class I areas in and near Texas that that are most likely affected by Texas emissions. Second, EPA's analysis then ''employ[s] [the] very conservative'' assumption that ''all of the visibility improvement'' that EPA's CSAPR better-than-BART modeling predicted for these nine areas as a result of *all* CSAPR reductions from *all* covered states is ''solely due to [reductions] from Texas.'' Third, with this conservative assumption, EPA then ''proportionally reduce[s]'' the modeled visibility improvements at these nine Class I areas based on the corrected higher SO_2 budget for Texas. For example, if, in response to the D.C. Circuit's remand, EPA were to adjust Texas's budget to 350,000 tons, CSAPR would still be better-than-BART for Texas and other states. Such an adjustment would be equivalent to a 57% reduction in the number of SO_2 tons reduced compared to the original Texas CSAPR reductions that were modeled for EPA's original CSAPR better-than-BART modeling. EPA's methodology would thus reduce the visibility benefit accordingly by multiplying the visibility improvement at the Class I areas affected by Texas by a factor of 0.43. Thus, for example, the visibility improvement at Wichita Mountains from CSAPR, even after increasing Texas's budget to 350,000 tons, would be 0.688 deciview [1.6 deciview $\times$ 0.43 = 0.688]. This methodology could be applied to other budgets as well. Visibility improvements at nine Class I areas in or around Texas result from the application of EPA's sensitivity analysis of a hypothetical adjustment of Texas's CSAPR SO_2 budget to 350,000 tons per year. Thus, EPA's own modeling shows that visibility at these Class I areas is projected to improve (not degrade) and that the BART requirements are met even if the CSAPR budgets are increased.

Response: We have completed our response to the CSAPR remand by withdrawing Texas EGUs from CSAPR requirements for $PM_{2.5}$ transport. We did not act to upward adjust Texas' SO_2 budget. Whether that was a proper response to the remand or whether upward adjustments would have preserved the analytic demonstration that CSAPR is better than BART are not issues of concern with the present finalized action. To the extent the comment asserts that CSAPR budgets can be used to support a better than BART alternative, we agree with the comment and this concept is part of the

BART alternative and weight of the evidence that we deem to justify it.

Comment: The proposed rule is legally dependent on other pending proposed rulemakings. EPA may not proceed with this action without first finalizing other proposed rules under the CAA on which this action is based.

Since 2009, Texas EGUs have been subject to federal regulatory programs that have resulted in substantial reductions in the NO_X and SO_2 emissions that have been targeted by EPA as contributing to interstate transport and haze. In compliance with EPA rules and precedent, Texas relied on CAIR, and then its replacement CSAPR as achieving reductions in haze precursors from EGUs that are ''better than BART'' in its Texas Regional Haze SIP submittal. In the unlawful proposed rule, EPA rejects its prior position that Texas EGUs are exempt from BART due to participation in CSAPR. Yet, Texas EGUs continue to this day to be subject to CSAPR requirements for NO_X and SO_2. While EPA has proposed to withdraw CSAPR SO_2 requirements for Texas EGUs, it has not yet done so and those EGUs remain subject to CSAPR allocations for both NO_X and SO_2 under federal and state laws and permits. Additionally, EPA's proposal to withdraw the CSAPR FIP with respect to SO_2 has been challenged in that rulemaking docket as unlawful and not in accordance with the court decision remanding that action to EPA.

As a result, EPA may not proceed with the disapproval of Texas' reliance on CSAPR as ''better than BART'' until such time that the proposal is legally finalized in compliance with the Court decision that remanded that rule to EPA. Once that rule is legally finalized, then Texas should be given an opportunity to address whether and how that affects the state's regional haze program before a FIP is considered.

Response: As was made clear by our proposal, we agree our rule is dependent on other proposed and now finalized rulemakings. Nothing in our proposal or final action prevents Texas from addressing the State's regional haze program under its SIP planning authorities. Texas did not request that we withhold our action to withdraw CSAPR SO_2 requirements for Texas EGUs, and it did not submit comments to oppose that action. We disagree that anything in the sequencing of actions would allow us to suspend our FIP obligations when there is no SIP to address the requirements.

Comment: The effort to impose BART controls is the result of the proposed withdrawal of Texas from the CSAPR Phase 2 or annual trading program for SO_2. Compliance with regional haze obligations for BART-eligible facilities in Texas has depended on CAIR-equal BART and CSAPR-equal BART and removing Texas from CSAPR results in significant disruption and costs to planned future compliance for these facilities. EPA seeks these excessive controls which will achieve limited visibility benefits. EPA should take the proper approach and follow the remand without vacatur of the D.C. Circuit, revise the trading budgets and then finalize CSAPR as compliance strategy for BART in lieu of this proposal.

Response: We completed our response to the CSAPR remand in a separate action and refer Commenter there. We are finalizing a BART alternative for SO_2 BART.

E. Comments on the Identification of BART-Eligible Sources

Comment: We received comment from the owners of Coleto Creek stating that in the Texas Regional Haze SIP, TCEQ determined that Coleto Creek Unit 1 was not a BART-eligible source, based on its interpretation and application of its SIP-approved regional haze rules at 30 TAC Chapter 116, Subchapter M. In implementing its rules, TCEQ prepared questionnaires that sought the information needed to render its BART-eligibility determinations.[66] As a result of this TCEQ-led process, TCEQ determined that Coleto Creek Unit 1 was not BART-eligible because it was not built, and did not commence operation, until 1980, which is well after the August 7, 1977 applicability date. Coleto Creek Unit 1 has reasonably relied on the state's eligibility determination in evaluating its obligations under the Regional Haze Rule program. EPA's decision to reject TCEQ's BART-eligibility determination for Coleto Creek Unit 1 under 30 TAC 116.1500 is unsupported.

Response: The commenter states that because Coleto Creek Unit 1 did not commence operations until 1980, it should be determined to be not BART-eligible, as was determined by the TCEQ. However, we believe the TCEQ erred in not listing Coleto Creek Unit 1 as being BART-eligible. The date test for BART-eligibility is whether the units was ''in existence on August 7, 1977,'' and began operation after August 7, 1962. The BART rule defines as ''in existence on August 7, 1977'' as follows (70 FR 39159):

What does ''in existence on August 7, 1977'' mean?

2. The regional haze rule defines ''in existence'' to mean that: ''the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (1) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (2) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed in a reasonable time.'' 40 CFR 51.301.

The owner of Coleto Creek Unit 1 provided information that onsite construction began prior to August 7, 1977. Thus, Coleto Creek Unit 1 satisfies the above criteria as being ''in existence on August 7, 1977.'' Therefore, we disagree with the commenter and continue to find that Coleto Creek Unit 1 is BART-eligible. The NO_X BART requirement for Coleto Creek is met by relying on CSAPR as an alternative to EGU BART for NO_X. The SO_2 BART requirement is met by the intrastate trading program FIP that we are finalizing in this action and to which Coleto Creek will be subject. The PM BART requirement is met by our determination that the visibility impacts of PM emissions from Coleto Creek are too small to be considered to cause or contribute to visibility impairment at any Class I area and we determined the facility screens out and is not subject to PM BART.

F. Comments on PM BART

We previously proposed to disapprove the SIP's subject-to-BART determinations for PM, on the grounds that the SIP had based these determinations on reliance on a BART alternative for SO_2 and NO_X and, as a result, considered only the contribution of PM emissions to visibility impairment, and to adopt source-specific PM emission limits to fill the SIP gap. In that context, we received several comments related to PM BART issues. Now, however, we have determined it is appropriate to adopt a BART alternative to address SO_2 and NO_X and therefore find Texas' original SIP was correct in considering only the contribution of PM emissions. Considering only PM emissions, all sources considered in the Texas SIP were demonstrated to screen out of the need for source specific PM BART emission limits.

Also, as explained above, we have identified additional sources as BART-eligible that were not considered in the

[66] *See* October 24, 2005 letter from Al Espinosa, Coleto Creek Power Station, #TX187–0023–0001, Docket Item No. EPA–R06–OAR–2016–0611–0023 at p. 6.

2009 Texas Regional Haze SIP. As discussed elsewhere, we have determined that the impact due to PM emissions from these additional sources are also below the BART screen level. Thus, the SIP's determination that none of the BART-eligible EGUs are subject-to-BART for PM is correct and approvable. As a consequence, there is no SIP gap needing to be filled by a FIP. Because we are approving EGU PM BART screening determinations that result in no EGUs being subject to PM BART analysis, comments supporting or alleging errors in the details of our PM BART five-factor analysis and our proposed PM BART technology selections and emission limits are not relevant. We address in this section comments that are relevant to whether it is appropriate to approve the portion of this 2009 SIP submission and EPA's analysis in our proposal that determined that no PM emission limits for Texas EGUs are needed to satisfy the BART requirement because the visibility impacts of PM emissions from BART-eligible EGUs do not cause or contribute to visibility impairment. The information in section III.A. on the history of our proposals regarding the EGU PM BART element of the 2009 Texas SIP submission and EPA's proposals is useful background for understanding the comments and our responses on this topic.

Although we are not finalizing the MATS-based PM limits proposed as PM BART for the coal-fired EGUs, this regional haze action does not affect the existing MATS requirements for these units. We are also not finalizing the fuel oil sulfur percentage limits that we proposed for gas/fuel oil-fired EGUs; the same limits in existing permits for these sources are not affected by our action.

Comments: AEP states that we provide no basis for not approving the TCEQ's PM BART determination in 2016 or logical support for our decision to proceed with modeling PM in the proposed Texas BART FIP. AEP believes that when a state is provided statutory deference in implementing the Regional Haze program, EPA must support its decision for not approving the state's determination. While AEP also agrees that current PM requirements for sources complying with MATS are sufficient for meeting PM BART for Welsh Unit 1, it disagrees that PM BART is even warranted at all or that EPA has provided adequate basis for declaring that TCEQ's screening analysis is no longer reliable. AEP says that buried in a footnote, EPA grasps at some claim of error that Texas' PM BART determinations only looked at the impact of PM emissions on visibility, that Texas can only take this approach when the BART requirements of NO_X and SO_2 are satisfied, and that Texas' error of not identifying several PM BART eligible sources is grounds for disapproval. AEP believes this logic is unfounded and the situation is created by EPA's piecemeal approach to rulemaking. AEP agrees with EPA's conclusion that gas-fired units that occasionally burn fuel oil should have no further control. AEP will limit burning fuel oil with a sulfur content of 0.7% as currently required by its permit. However, EPA has not provided sufficient reasons to be addressing PM BART. EPA should finalize its earlier proposal to approve Texas' determination that sources in Texas are not subject to PM BART.

The Lower Colorado River Authority disagrees with the disapproval of the Texas PM BART demonstration.

The TCEQ and the Public Utilities Commission of Texas stated that our reliance on language in a guidance memo [67] to bar TCEQ from conducting pollutant-specific modeling to determining BART eligibility was incorrect. The TCEQ believes this memo did not state that the TCEQ's pollutant-specific modeling is only appropriate when BART for other pollutants is satisfied with a BART alternative such as the CAIR or CSAPR. The TCEQ believes the memo states that such modeling may be appropriate where an alternative program is used for other pollutants. The TCEQ also believes we incorrectly claimed that its SIP acknowledges PM-only modeling is inappropriate where an alternative to BART is not employed.[68]

The TCEQ states that our CAMx modeling supports the conclusions from the screening modeling conducted by it that shows these same units did not meet the 0.5 deciview (dv) threshold.[69] Furthermore, the TCEQ states that we found that for gas-fired units, PM emissions are ''inherently low,'' and that existing controls plus compliance with the MATS filterable PM limit of 0.03 lb/MMBtu is already BART, further supporting its conclusion that there are no significant visibility impacts from PM emissions from these sources and BART controls for PM are unnecessary. Thus, the TCEQ reasons, a FIP for PM BART is unnecessary and the EPA should approve the screening modeling the TCEQ conducted, as we proposed to do in January 2015.

Luminant provided comments similar to those above. Luminant added that it believes that Texas remains in CSAPR so there is no basis for us to deviate from our prior proposal to approve Texas's PM BART determination. Luminant also stated that our reliance on a Ninth Circuit Court decision to support our rejection of pollutant-specific BART screening is incorrect because the case in point relied upon the BART de minimis exemption, which does not apply in this instance.

Response: We are approving the EGU PM BART element of Texas's 2009 SIP submittal. Under the combination of reliance on the CSAPR ozone-season NO_X trading program to satisfy NO_X BART and reliance on the FIP's intrastate trading program for SO_2 emissions to satisfy SO_2 BART, it is appropriate for determinations of whether a BART-eligible EGU is subject to BART for PM to be based only on the visibility impact of the source's PM emissions. It is not necessary for us to respond to the comments stating that a PM-only analysis would be appropriate even if both SO_2 and NO_X were not addressed by trading programs.

In particular, TCEQ's comments are correct that the BART Guidelines do not prohibit pollutant-specific screening. The July 19, 2006 guidance memo states that EPA does not generally recommend a pollutant-specific screening approach, however, such a screening approach may be appropriate for PM in certain situations. The memo provides the situation of a state relying on CAIR for NO_X and SO_2 BART as an example where pollutant-specific screening for PM may be appropriate. We agree with TCEQ that the memo's intention is not to limit PM-only analysis to SIPs that rely on CAIR. While we disagree with TCEQ's position that a PM-only analysis is appropriate in a situation involving source-specific SO_2 BART emission limits, the approaches promulgated here for SO_2 and NO_X BART are BART alternatives and are similar to the CAIR situation described in the memo. Therefore, we find that the pollutant specific PM screening approach in TCEQ's original 2009 SIP submittal is appropriate and demonstrates that the sources covered by the BART alternative program for SO_2 screen out of PM BART. For BART-eligible EGU sources not participating in the BART alternative program for SO_2, all these sources screened out of BART for all visibility impairing pollutants utilizing model plants and CALPUFF modeling as described in our proposed rule and

[67] Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations, Joseph Paisie, EPA Geographic Strategies Group, July 19, 2006.

[68] Technical Support Document for the Texas Regional Haze BART Federal Implementation Plan, BART FIP TSD, Docket ID No. EPA–R06–OAR–2016–0611–004, page 26, footnote 39.

[69] *Id,* at 82.

BART Screening TSD. Therefore, we are approving the determination that no Texas EGUs are required to have source-specific PM emission limits in order for the BART requirement to be met. This approval is consistent with our December 2014 proposal for PM BART, in which EPA proposed to rely on Texas' CSAPR participation for SO_2 and NO_X BART and to approve the SIP's determinations regarding the need for PM emission limits. *See* 79 FR 74817, 74848 (January 13, 2015). We are also determining that other sources that EPA identified in our December 2016 proposal as BART-eligible that were not identified as BART eligible in TCEQ's 2009 Regional Haze SIP are also screened out from PM BART.

Comment: The Sierra Club states that we should finalize our proposed disapproval of Texas's PM BART determinations, which assumed that SO_2 and NO_X emissions contributing to PM formation would be regulated under CSAPR, *see* 82 FR at 935. Following the D.C. Circuit Court's remand of CSAPR, SO_2 emissions from Texas sources are no longer limited by CSAPR. The assumption underlying Texas's PM BART determinations—that CSAPR would limit emissions of PM precursors from Texas sources—is now inaccurate; therefore, reasons the Sierra Club, we must disapprove the State's PM BART determinations.

Response: We note that the D.C. Circuit Court remanded the budget for Texas EGUs in the CSAPR trading program for SO_2 without vacatur, so the commenter's statement that Texas EGUs are no longer limited by CSAPR was not true at the time the comment was offered. It is true now as a result of our recent action to remove Texas EGUs from the annual SO_2 and NO_X trading programs. However, a large set of Texas EGUs will, under the final FIP, be subject to CSAPR for ozone-season NO_X and the intrastate trading program FIP for SO_2. For these EGUs, the BART guidelines and our guidance allow for the subject-to-BART for PM determination to be based on only the impacts of PM emissions on visibility. For the BART-eligible EGUs that will not be required to participate in the FIP's intrastate trading program, our analysis indicates that even when all three pollutants are included in the modeling, all of these sources affect visibility at surrounding Class I Areas by less than 0.5 dv, thus screening out of being subject to PM BART.

Comment: EPA in its previous rulemaking on the reasonable progress measures for the Texas and Oklahoma regional haze plans initially proposed to accept Texas' finding that no PM BART controls were necessary for EGUs ''based on a screening analysis of the visibility impacts from just PM emissions . . . .'' In its current Texas BART rulemaking, EPA states that ''[i]n connection with changed circumstances on how Texas EGUs are able to satisfy NO_X and SO_2 BART, we are now proposing to disapprove the portion of the Texas Regional Haze SIP that evaluated the PM BART requirements for EGUs.'' The changed circumstances EPA refers to is the removal of Texas sources from the SO_2 caps of the CSAPR rule. Unless a source is subject to a BART alternative or is otherwise determined to be exempt from BART for a particular pollutant, EPA's regulations and BART guidelines do not generally provide for exemptions from a five-factor BART analysis for a specific pollutant. Under EPA's BART Guidelines and the definition of BART, once a source has been determined to be subject to BART, a five-factor BART analysis must be done for each pollutant pursuant to 40 CFR part 51, 51.301 and Appendix Y, section IV.A. So, EPA is correct that it must address BART for PM for the BART-subject sources in Texas.

Response: The premise in the comment that EGUs in Texas will not be subject to a BART alternative for both NO_X and SO_2 is incorrect, given the content of this final action.

Comment: Coleto Creek Unit 1 should not be subject to any FIP emission limits, because it should not be determined to be BART-eligible.

Response: Texas' 2009 SIP submission did not include Coleto Creek Unit 1 as a BART-eligible source and consequently the SIP did not present any analysis of whether it is subject-to-BART, while we are determining in this action that Coleto Creek Unit 1 is BART-eligible. However, we evaluated the available modeling and other analyses and we have concluded that this information shows minimal impacts from PM from this particular BART-eligible source. Modeled PM impacts from Coleto Creek Unit 1 are expected to be much less than 0.32 delta deciviews (see Section III.4).

Comment: Requiring the Stryker and Graham units to switch to ultra-low-sulfur diesel would significantly improve visibility. Requiring this switching at Stryker would improve visibility by more than 0.5 dv at Caney Creek, and switching to ultra-low-sulfur diesel at Graham would improve visibility by 0.85 dv at Wichita Mountains.

Response: Insofar as this is a comment on our proposed source-specific FIP emission limits to address BART for PM, it is not necessary for us to respond because we are approving the SIP and not promulgating any such limits in this action. We note that the cited visibility benefits of switching to low-sulfur fuel reflect assumed reductions in both direct PM emissions and SO_2 emissions from these two sources. The Stryker and Graham units are both covered by the intrastate trading program for SO_2 and CSAPR for NO_X, so it is appropriate that the subject-to-BART determination be made on the basis of the impacts of direct PM emissions alone. Those impacts are less than 0.5 dv.

Comment: Texas identified 126 sources as BART-eligible or potentially BART eligible.

Yet Texas ultimately concluded that no BART-eligible source is subject to BART. Texas's determination is based in part on the unsupported selection of 0.5 dv as the threshold for contribution to visibility impairment. EPA must disapprove Texas's determination as to the sources subject to BART. Texas adopted 0.5 dv as the threshold for ''contribution'' to visibility impairment. Texas provided no justification for using a 0.5 dv threshold. There is no documentation in the record as to how or why Texas selected this threshold, and there is no legal support for such threshold. EPA's BART Guidelines do not authorize states automatically to use a 0.5 dv contribution threshold. Instead, the BART Guidelines state only that ''any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews. In the next sentence, the Guidelines instruct each state that it ''should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' There is no evidence in the record that Texas ever conducted this analysis. Furthermore, the Guidelines conclude that ''a larger number of sources causing impacts in a Class I area may warrant a lower contribution threshold.'' As Texas's list of 126 BART eligible sources indicates, a large number of sources impact the Class I areas in Texas and in neighboring states. Indeed, the subset of sources that screened out of BART based on individual modeling have a combined, baseline impact of nearly 10 deciviews. Thus, the situation in Texas is exactly what EPA had in mind when it noted that a contribution threshold lower than 0.5 dv may be appropriate. Had Texas followed the BART Guidelines, it may well have selected a threshold lower than 0.5 dv. Using a lower contribution threshold would change Texas's conclusion as to which

sources are subject to BART because there are sources with a baseline impact just below 0.5 deciviews. EPA has a statutory responsibility to ensure that a SIP meets all applicable Clean Air Act requirements and is supported by the record. Here, Texas's use of a 0.5 dv threshold has two fatal flaws: It is not based on the analysis prescribed by the BART Guidelines, and it is not supported by any analysis whatsoever in the record. Therefore, EPA must disapprove Texas's conclusions that sources are not subject to BART, where Texas screened out sources because of a visibility impact below 0.5 deciviews.[70]

Response: EPA's BART Guidelines allow states conducting source-by-source BART determinations to exempt sources with visibility impacts as high as 0.5 dv. While we agree that a state may choose to use a lower threshold, this should be based on consideration of not only the number of sources, but the proximity to the Class I area and the potential combined visibility impacts from a group of sources. States have the discretion within the CAA, Regional Haze Rule, and BART Guidelines to set an appropriate contribution threshold considering the number of emissions sources affecting the Class I areas at issue and the magnitude of the sources' impacts.

G. Comments on EPA's Source-Specific SO_2 BART Cost Analyses

Comment: We received a large number of comments from the EGU owners covered under our proposal and environmental groups concerning various aspects of the SO_2 BART cost analyses we performed for the coal-fired EGUs. These comments included both criticisms of and support for our basic approach, the tools we used, and various individual aspects of our cost analyses. We also received Confidential Business Information (CBI) comments from the owner of one of the EGUs covering the same areas.

We also received comments from environmental groups stating that we should have required the gas-fired units that occasionally burn fuel oil to minimally switch to Ultra-Low-Sulfur Diesel (ULSD) in lieu of our proposed BART determination that these units be limited to 0.7% fuel oil by weight. These commenters argued that our estimate of the price per gallon for ULSD was too high and that in any case, the total annual cost to make the switch is very low. They also argue that requiring the Stryker and Graham units to switch to ultra-low-sulfur diesel would significantly improve visibility.

Response: Due to the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. As a consequence, we believe that comments concerning the SO_2 BART cost analyses we performed on the coal-fired EGUs and these gas-fired units that occasionally burn fuel oil are no longer relevant. The trading program, by its nature, provides sources with flexibility in meeting the requirements. As a result, we expect compliance for sources to be extremely cost-effective. The program addresses both BART eligible and non-BART eligible EGUs. The combination addresses 89% of the emissions (based on 2016 annual emissions) that would have been addressed by CSAPR and, as a result, EGU emissions in Texas will be similar to emission levels anticipated in the CSAPR better than BART demonstration and will achieve greater reasonable progress than BART.

H. Comments on EPA's Modeling

1. Modeling Related to Screening out BART-eligible sources based on CALPUFF Modeling and Model Plant analysis

Comment: We received comments stating that we used an outdated version of CALPUFF and CALMET in our CALPUFF analyses and there are more recent EPA approved versions of CALPUFF and CALMET. The commenter indicated that there are more recent non-regulatory versions of CALPUFF (such as version 6.4) that include a number of technological improvements that could have been used. The commenter also indicated we did not follow USDA Forest Service Guidance that recommend using Mesocscale Model Interface Program (MMIF) for generating met fields for CALPUFF.[71] The commenter concluded that EPA's CALPUFF analysis was less reliable because of these issues.

Response: For those BART-eligible EGUs that are not covered by the BART alternative for SO_2, we are finalizing determinations that those EGUs are not subject-to-BART for NO_X, SO_2 and PM as proposed, based on the methodologies utilizing model plants and CALPUFF modeling as described in our proposed rule and BART Screening TSD. As mentioned in the BART screening TSD, we used versions (CALPUFF v5.8.4 and an existing CALMET data set that utilized CALMET v5.53a) that do not significantly differ from the current regulatory versions of CALPUFF (v5.8.5) and CALMET (v5.8.5). The current regulatory versions do include some additional bug fixes but the bugs that were fixed are not expected to significantly change the results for the modeling assessments we have done. The 2016 USDA Forest Service Guidance was not released until August of 2016 and no BART modeling was conducted by states and RPOs using MMIF. The USDA Forest Service Guidance is more germane for future SIP developments and any visibility analyses for other regulatory assessments in the future.

In considering the comment that we should use a more recent version of CALPUFF (6.4) or an earlier version 6.112, we considered the regulatory status of CALPUFF for visibility analyses and what analyses are needed to utilize an updated CALPUFF modeling system. The requirements of 40 CFR 51.112 and 40 CFR part 51, Appendix W, Guideline on Air Quality Models (GAQM) and the BART Guidelines which refers to GAQM as the authority for using CALPUFF, provide the framework for determining the appropriate model platforms and versions and inputs to be used. Because of concern with CALPUFF's treatment of chemical transformations, which affect AQRVs, EPA has not approved the chemistry of CALPUFF's model as a ''preferred'' model. The use of the regulatory version is approved for increment and NAAQS analysis of primary pollutants only. Currently, CALPUFF Version 5.8, is subject to the requirements of GAQM 3.0(b) and as a screening model, GAQM 4. CALPUFF Versions 6.112 and 6.4 have not been approved by EPA for even this limited purpose. The versions of CALPUFF, version 6.112 or 6.4, that the commenter recommended could be used to provide modeling analyses of BART eligible sources that have not gone through a full regulatory review in accordance with 40 CFR part 51 Appendix W Section 3.2.2. Furthermore, the currently available information does not support the approval of these versions of the CALPUFF model for use in making BART determinations. In addition, if these versions of the model

[70] This comment was submitted to a public docket (separate from the docket established for this action), in response to our December 2014 proposal (79 FR 74817, 74853–54 (Dec. 16, 2014)) to approve the subject-to-BART determinations in Texas' 2009 SIP submission and to disapprove the reasonable progress and some other elements of that SIP submission. *See* Docket Item No. EPA–R06–OAR–2014–0754–0067. We never took final action on PM BART, and did not respond to the comment. We are responding to it today because of its relevance to this final action.

[71] USDA Forest Service, Guidance on the Use of the Mesoscale Model Interface Program (MMIF) for Air Quality Related Values Long Range Transport Modeling Assessments (Aug. 2016).

were acceptable for use, EPA would have to reconsider whether using the 98th percentile impact for determining impairment was appropriate. Therefore, EPA does not believe the use of CALPUFF version 6.112 or 6.4 is appropriate for this rulemaking. We believe we have made the appropriate choice in using CALPUFF version 5.8. For further discussion, see our Modeling RTC and the response to comments in our previous New Mexico Final FIP in 2011.[72]

Comment: We received a number of comments concerning the acceptable distances/range for which CALPUFF modeling results should be used for BART screening. A number of commenters indicated that EPA has repeatedly stated that 300 km should be the maximum distance for CALPUFF modeling results and even cited to some past actions (several FIPs—Arkansas, Oklahoma, Montana, and New Mexico) where EPA has indicated that 300 km was the general outer distance for CALPUFF. Commenters also raised past promulgation of CALPUFF in 2003 and IWAQM guidance/reports to support the claim that 300 km is the acceptable outer range of CALPUFF. TCEQ commented we should not use CALPUFF for distances beyond 400 km. Two commenters indicated that EPA had inappropriately reported CALPUFF results for distances of 412 km and 436.1 km, well outside of 300 km. Another commenter indicated we included some model plants at distances greater than 400 km in our model plant screening analysis.

Other commenters indicated that we should use the modeling results from CALPUFF for BART screening at ranges much greater than 400 km. They stated that CALPUFF over-predicts visibility impacts at distances greater than 300 km; therefore, CALPUFF is an acceptable and conservative tool for screening BART sources at large distances from Class I areas. We received comments from several different companies (NRG, LCRA, Coleto Creek, and Luminant) that provided contractor (AECOM) analysis with opinions on the acceptable range of CALPUFF. AECOM's report for LCRA included CALPUFF modeling results for 14 Class I areas with distances out to more than 1000 km and asserted that TCEQ and EPA had utilized CALPUFF previously in screening out sources from being subject to a full BART analysis in the 2009 Texas regional haze SIP submission, our 2014 proposal, and our 2015 final action. Some comments were supportive of using CALPUFF results at distances of 400–1000 + km,[73] while others opposed using CALPUFF beyond 300 km if the results did not screen a facility out of a full BART analysis.

A number of commenters also raised concerns with the accuracy of the CALPUFF model and several uncertainty issues related to the CALPUFF model and results from the model. We also received the comment that CALPUFF's regulatory status as a preferred model recently changed and that this change raises a question of whether CALPUFF should have been used for the Proposed Texas BART FIP.

Response: As previously discussed and included in our record for our proposal we did use direct CALPUFF modeling results of facilities out to 432 km for some very large EGU facilities (very large emissions from tall stacks). We also used CALPUFF for model plants for screening of sources beyond 360 km to a Class I Area, but the actual distance to a Class I Area was 360 km or less for each of the model plants used for screening of sources. In our 2014 proposed action [74] and the 2015 final action [75] on Texas regional haze we approved the use of CALPUFF to screen BART-eligible non-EGU sources at distances of 400 to 614 km for some sources. In those actions, we weighed the modeling results that were mostly well below 0.5 delta-dv with the potential uncertainty of CALPUFF results at these greater distances outside the typical range of CALPUFF in deciding how to use the results in screening of facilities. We disagree with the comment that it was inappropriate to rely on CALPUFF to screen BART-eligible EGU sources at ranges beyond 400 km and that it would not be consistent with our past approval of the BART screening modeling included in the 2009 Texas Regional Haze SIP of non-EGU BART sources.[76]

It has been asserted by the commenters that CALPUFF overestimates visibility impacts at greater distances (greater than 300/400 km) and therefore some commenters claimed that use of CALPUFF is conservative and acceptable for screening BART sources. We disagree with this comment. EPA has seen situations of both under-prediction and over-prediction at these greater distances. EPA has indicated historically that use of CALPUFF was generally acceptable at 300 km and for larger emissions sources with elevated stacks. We and FLM representatives have also allowed or supported the use of CALPUFF results beyond 400 km in some cases other than the Texas actions as pointed out by commenters.[77] EPA has a higher confidence level with results within 300 km and when analysis of impacts at Class I areas within 300 km is sufficient to inform decisions on BART screening and BART determinations, we have often limited the use of CALPUFF results to within 300 km as there are fewer questions about the suitability of the results. However, that does not preclude the use of model results for sources beyond the 300 km range with some additional consideration of relevant issues such as stack height, size of emissions, etc. As one commenter pointed out, EPA and FLM representatives have utilized CALPUFF results in a number of different situations when the range was between 300–450 km. The model plants utilized in our model plant screening analysis were modeled at distances of 300–360 km from the Class I area. In our model plant analysis, we found that in some situations there was a difference in whether or not a source screened out based on the distance between the model plant and the Class I area. Some initial model plant runs were done at distances of 201–300 km from a Class I Area and yielded higher Q/D ratios than the same model plant evaluation with the same modeled visibility impact at 350–360 km (only 20% more than 300 km).[78] This difference and the lower Q/

[72] 76 FR 52388, 52431–52434 (Aug. 22, 2011).

[73] For example, see comment from Andrew Gray, Footnote 11, ''For example, Texas used CALPUFF to perform BART modeling for Alcoa Inc, RN100221472 (nearest Class I area 490 km); Equistar Chemicals LP, RN 100542281 (nearest Class I area 517 km); ExxonMobil, RN102579307 and RN102450756 (nearest Class I areas 526 and 482 km, respectively); and Invista, RN104392626 and RN102663671 (nearest Class I areas 472 and 614 km, respectively). See February 25, 2009 Texas Regional Haze Plan, Chapter 9 at pages 9–9 through 9–14, available at *https://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.* South Dakota used CALPUFF for Big Stone's BART determination, including its impact on multiple Class I areas further than 400 km away, including Isle Royale, which is more than 600 km away. See 76 FR 76656. Nebraska relied on CALPUFF modeling to evaluate whether numerous power plants were subject to BART where the ''Class I areas [were] located at distances of 300 to 600 kilometers or more from'' the sources. See Best Available Retrofit Technology Dispersion Modeling Protocol for Selected Nebraska Utilities, p. 3. EPA Docket ID No. EPA–R07–OAR–2012–0158–0008. EPA has approved reliance on these models.''

[74] 79 FR 74818 (Dec. 16, 2014).

[75] 81 FR 296 (Jan. 5, 2016).

[76] We note that the Fifth Circuit Court of Appeals remanded the rule in its entirety. See *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[77] See comments from Andrew Gray, n 11 (which is listed in its entirety earlier in this document) citing examples of modeled impacts from sources at distances greater than 300 km in Texas, Nebraska, and South Dakota.

[78] We did iterative modeling with the model plants to model emissions at a level that would yield a value just under the screening level of 0.5

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D modeling for the model plant located at a greater distance from the Class I area indicated that using the model plant modeling at 300 km or less was overly conservative when we are evaluating facilities at distances of 360–600 km. Therefore, we chose the range that we thought was appropriate in the context of the distances of the sources being evaluated with that model plant. A distance of 300–360 km also fell within a range for which we have evaluated CALPUFF results a number of times and felt comfortable with using for large elevated point sources, and in most cases the comparison of Q/D ratios of the facility to model plant were not similar and the facility screened out with a significant safety margin.[79]

We note that we also had direct CALPUFF screening of some coal-fired plants out to 412 km with NO_X, SO_2, and PM in our proposal. The impacts of these facilities in the proposal screening modeling were typically very large and well above the 0.5 del-dv, so even considering that there are more uncertainties at distances greater than 300 km the impacts were large enough that it was clear that these facilities would have impacts above the threshold based on impacts from the 3 pollutants.[80] The BART Guidelines indicate other models may be used on a case-by-case basis. CAMx is a photochemical modeling platform with a full chemistry mechanism that is also suited for assessing visibility impacts from single facilities/sources at longer distances where CALPUFF is more uncertain (such as distances much greater than 300 km). Texas and EPA have previously approved the use of CAMx for determining source impacts for BART screening purposes, and we also decided to supplement our CALPUFF analysis for some large coal-fired sources with CAMx modeling. Our CAMx modeling of these coal-fired sources in the proposal further supported the magnitude of the assessed impacts were well above 0.5 del-dv (NO_X, SO_2, and PM) for these facilities that fell into the greater than 300 km range. We note that this screening modeling for these coal-fired facilities directly modeled with CALPUFF beyond 300 km and also modeled with CAMx is not pertinent to this final action since these coal-fired sources are participating in the SO_2 trading program and we are not finalizing subject to BART determinations for these sources.

Due to the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. With the NO_X BART coverage from CSAPR, all the BART-eligible sources participating in the SO_2 trading program only have PM emissions that have to be assessed for screening and potential subject to PM BART determinations. As discussed elsewhere, we are approving the determination in the 2009 Texas Regional Haze SIP that PM BART emission limits are not required for any Texas EGUs.

We disagree with the commenter's characterization of uncertainties raised that invalidate the CALPUFF modeling results. We respond to comments raised briefly here and in our Modeling RTC. We have also responded to a number of these issues in our past FIP actions.[81]

In response to the court's 2002 finding in *American Corn Growers Ass'n.* v. *EPA*[82] that we failed to provide an option for BART evaluations on an individual source-by-source basis, we had to identify the appropriate analytical tools to estimate single-source visibility impacts. The 2005 BART Guidelines recommended the use of CALPUFF for assessing visibility (secondary chemical impacts) but noted that CALPUFF's chemistry was fairly simple and the model has not been fully tested for secondary formation and thus is not fully approved for secondary-formed particulate. In the preamble of the final 2005 BART guidelines, we identify CALPUFF as the best available tool for analyzing the visibility effects of individual sources, but we also recognized that it is a model that includes certain assumptions and uncertainties.[83] Evaluation of CALPUFF model performance for dispersion (no chemistry) to case studies using inert tracers has been performed.[84] It was concluded from these case studies the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.[85] [86] As discussed above EPA has indicated historically that use of CALPUFF was generally acceptable at 300 km and for larger emissions sources with elevated stacks we and FLM representatives have also allowed or supported the use of CALPUFF results beyond 400 km in some cases.

In promulgating the 2005 BART guidelines, we responded to comments concerning the limitations and appropriateness of using CALPUFF.[87] In the 2005 BART Guidelines the selection of the 98th percentile value rather than the maximum value was made to address concerns that the maximum may be overly conservative and address concerns with CALPUFF's limitations.[88]

In the 2003 revisions to the Guideline on Air Quality Models, CALPUFF was added as an approved model for long range transport of primary pollutants. At that time, we considered approving CALPUFF for assessing the impact from secondary pollutants but determined that it was not appropriate in the context of a PSD review because the impact results could be used as the sole determinant in denying a permit.[89] However, the use of CALPUFF in the context of the Regional Haze rule provides results that can be used in a relative manner and are only one factor in the overall BART determination. We determined the visibility results from CALPUFF could be used as one of the

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del-dv, typically a value around 0.49 del-dv. In these model distance sensitivity runs when we used the same number of sources and stack parameters but varied the emissions to yield 98th percentile max impacts of approximately 0.49 del-dv. We found that model plants at 350–360 km range had lower resulting Q/Ds than the same model plants at 300 km, thus sources more easily screened out using model plants at 350–360 km.

[79] See our Screening of BART TSD.pdf (EPA-R06-OAR-2016-0611-0005.pdf); most sources had Q/D values on the order 30–50% of the critical Q/D from the model plant.

[80] *Id.* For example, Big Brown was 404 km from WIMO and the maximum impacts with NO_X, SO_2, and PM was 4.265 del-dv (over 8 times the 0.5 del-dv threshold).

[81] For example, see Arkansas FIP, 81 FR 66332, 66355- 66413 (Sept. 27, 2016) and the Response to Comments, Docket No. EPA–R06–OAR–2015–0189.

[82] *Am. Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002).

[83] 70 FR 39104, 39121 (July 6, 2005).

[84] ''[M]ore recent series of comparisons has been completed for a new model, CALPUFF (Section A.3). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed.'' 68 FR 18440, 18458 (April 15, 2003), 2003 Revisions to Appendix W, Guideline on Air Quality Models.

[85] Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC. 1998.

[86] 68 FR 18440, 18458 (Apr. 15, 2003). (2003 Revisions to Appendix W, Guideline on Air Quality Models).

[87] 70 FR 39104, 39121 (July 6, 2005).

[88] *Id.,* at 39121. ''Most important, the simplified chemistry in the model tends to magnify the actual visibility effects of that source. Because of these features and the uncertainties associated with the model, we believe it is appropriate to use the 98th percentile—a more robust approach that does not give undue weight to the extreme tail of the distribution.''

[89] 68 FR 18440 (Apr. 15, 2003).

five factors in a BART evaluation and the impacts should be utilized somewhat in a relative sense because CALPUFF was not explicitly approved for full chemistry calculations.[90] We note that since the BART Guidelines were finalized in 2005 there has been more modeling with CALPUFF for BART and PSD primary impact purposes and the general community has utilized CALPUFF in the 300–450 km range many times (a number of examples were pointed out by a commenter) and EPA and FLM representatives have weighed the additional potential uncertainties with the magnitude of the modeled impacts in comparison to screening/impact thresholds on a case-by-case basis in approving the use of CALPUFF results at these extended ranges.

We disagree with the commenter's general statement that there is an acknowledged over-prediction of the CALPUFF model or an acknowledged inaccuracy at low impact levels, and that the actual visibility impacts from the BART sources are lower. The CALPUFF model can both under-predict and over-predict visibility impacts when compared to predicted visibility impacts from photochemical grid models. See our Modeling RTC for more detailed response.[91]

CALPUFF visibility modeling, performed using the regulatory CALPUFF model version and following all applicable guidance and EPA/FLM recommendations, provides a consistent tool for comparison with the 0.5 dv subject-to-BART threshold. The CALPUFF model, as recommended in the BART guidelines, has been used for almost every single-source BART analysis in the country and has provided a consistent basis for assessing the degree of visibility benefit anticipated from controls as one of the factors under consideration in a five factor BART analysis. Since almost all states have completed their BART analyses and have either approved SIPs or FIPs in place, there is a large set of available data on modeled visibility impacts and benefits for comparison with, and this data illuminates how those model results were utilized to screen out sources and as part of the five-factor analysis in making BART control determinations.

The regulatory status of CALPUFF was changed in the recent revisions to the Guideline on Air Quality Models (GAQM) as far as the classification of CALPUFF as a preferred model for transport of pollutants for primary impacts, not impacts based on chemistry. The recent GAQM changes do not alter the original status of CALPUFF as discussed and approved for use in the 2005 BART guidelines. The GAQM changes indicated that the change in model preferred status had no impact on the use of CALPUFF for BART.[92]

Comment: We received comments stating that we used out-of-date and unrealistic emissions for some units, which artificially inflate the actual visibility impacts. The commenters state that the data used is unrealistic due to the 2000–2004 time period selected and also due to reporting errors to CAMD. Had more recent emissions been utilized in the screening analysis, these units would have been determined to not be subject to BART by the various screening methods applied by EPA. Commenters also state that a common sense reading of the Clean Air Act, BART regulations, and BART Guidelines indicate that the ''subject to BART'' analysis should be based on the most recently available emission data, which EPA's subject-to-BART analysis does not use. Furthermore, the BART Guidelines do not specifically mandate the use of the 2000–2004 emission rates. Although the BART Guidelines recommend that for the purpose of screening BART-eligible sources, ''States use the 24-hour average actual emission rate from the highest emitting day of the metrological period modeled,'' the BART Guidelines do not state that the time period analyzed must be restricted to 2000–2004. In fact, in the context of analyzing cost effective control options, the BART Guidelines recommend the use of emissions that are a ''*realistic depiction* of *anticipated* annual emissions for the source.''[4] And ''[i]n the absence of enforceable limitations, you calculate baseline emissions based upon *continuation of past practice*.''[5] EPA must also use realistic emissions when determining whether a unit causes or contributes to visibility impairment for BART. The use of 15-year old NO_X and SO_2 data for purposes of evaluating this threshold question is illogical and arbitrary and capricious.

We also received comments that doubling the annual emissions of PM was conservative and we should have potentially used maximum heat input to estimate PM emission rates for subject to BART modeling. We also received comments that the values we modeled based on CEM data may have included emission rates during upset conditions, thus the emission rates used may be larger than normal operations.

Response: We note that, as discussed elsewhere, we are not making a subject-to-BART determination for those sources covered by the SO_2 trading program. In our final rule, the relevant BART requirement for these participating units will be encompassed by BART alternatives for NO_X and SO_2 such that we do not deem it necessary to finalize subject-to-BART findings for these EGUs. In addition, we are approving the determination in the 2009 TX RH SIP that none of these sources are subject to BART for PM. Therefore, comments concerning the emissions utilized in our subject to BART modeling for the sources participating in the SO_2 trading program are no longer relevant. For those BART-eligible EGUs that are not covered by the BART alternative for SO_2, we are finalizing determinations that those EGUs are not subject-to-BART for NO_X, SO_2 and PM as proposed, based on the methodologies utilizing model plants and CALPUFF modeling as described in our proposed rule and BART Screening TSD.

We disagree with the commenter and believe using emissions from the 2000–2004 period is appropriate for determining if a source is subject to BART. Our analysis for facilities followed the BART Guidelines and was consistent with the BART analyses done for all BART-eligible sources. The BART Guidelines recommend that for the

[90] 70 FR 39104, 39123–24 (July 6, 2005). ''We understand the concerns of commenters that the chemistry modules of the CALPUFF model are less advanced than some of the more recent atmospheric chemistry simulations. To date, no other modeling applications with updated chemistry have been approved by EPA to estimate single source pollutant concentrations from long range transport,'' and in discussion of using other models with more advanced chemistry, ''A discussion of the use of alternative models is given in the Guideline on Air Quality in appendix W, section 3.2.''

[91] For example, see Comparison of Single-Source Air Quality Assessment Techniques for Ozone, $PM_{2.5}$, other Criteria Pollutants and AQRVs, ENVIRON, September 2012; and Anderson, B., K. Baker, R. Morris, C. Emery, A. Hawkins, E. Snyder ''Proof-of-Concept Evaluation of Use of Photochemical Grid Model Source Apportionment Techniques for Prevention of Significant Deterioration of Air Quality Analysis Requirements'' Presentation for Community Modeling and Analysis System (CMAS) 2010. Annual Conference, (October 11–15, 2010) can be found at *http://www.cmascenter.org/conference/2010/agenda.cfm.*

[92] 82 FR 5182, 5196 (Jan. 17, 2017). ''As detailed in the preamble of the proposed rule, it is important to note that the EPA's final action to remove CALPUFF as a preferred appendix A model in this *Guideline* does not affect its use under the FLM's guidance regarding AQRV assessments (FLAG 2010) nor any previous use of this model as part of regulatory modeling applications required under the CAA. Similarly, this final action does not affect the EPA's recommendation [See 70 FR 39104, 39122–23 (July 6, 2005)] that states use CALPUFF to determine the applicability and level of best available retrofit technology in regional haze implementation plans.''

purpose of screening BART-eligible sources, ''States use the 24-hour average actual emission rate from the highest emitting day of the metrological period modeled'' unless this rate reflects periods start-up, shutdown, or malfunction. The emissions estimates used in the models are intended to reflect steady-state operating conditions during periods of high capacity utilization. Consistent with this guidance, we utilized the 24-hr maximum emission rate from the 2000–2004 baseline period and modeled using 2001–2003 meteorological data. We based our analysis on the CEM data from the baseline period 2000–2004 and removed what looked like questionably high values that did not occur often as they were potentially upset values. As discussed elsewhere we did review sources to determine if they installed controls during the baseline period and when that occurred we only looked at baseline emission data post controls. We received general comments that the values we used from CEM data might include upset values, but did not receive comments that indicated the values used were specifically upset values during the baseline period and should not be used. Facilities did not give us specific information to justify that the emission rates we used were not representative maximum 24-hour emission rates during the 2000–2004 period, so EPA considers the emission rates used were acceptable for the BART screening process.

We are not aware of any newly installed controls or limitations on emissions that have been put in place between the 2000–2004 baseline period and now for any of the BART-eligible sources not participating in the SO_2 trading program that would affect the potential visibility impact from the source. Furthermore, because all these sources were shown to have visibility impacts less than the 0.5 dv threshold using the maximum 24-hr actual emissions during the 2000–2004, modeling of lower emissions due to any new controls or emissions limits would also result in the same determination. We were also not provided any specific information where additional emission reductions/controls had been installed and resulted in a short-term (24-hour) maximum emission rate significantly less than modeled at any of these units.

The overall concern of the commenters was that the emissions used in the modeling resulted in some facilities being subject to a full BART analysis, but, as discussed elsewhere, we are not finalizing subject to BART determinations for the sources participating in the SO_2 trading program. For the sources not participating in the trading program, they have been screened out with our baseline emissions modeling, so underlying concerns about emissions being high/non-representative would not result in any differences to the sources being screened out from a full BART analysis.

Comment: We received comments that stated that the proposed PM BART demonstration by Texas only considered PM emissions because SO_2 and NO_X emissions were to be controlled through an alternative BART program, CAIR. Following the same type of approach, EPA in this Proposed Rule finds that CSAPR for ozone season NO_X is better than BART. However, for the screen modeling used in the development of this Proposed Rule, instead of setting the NO_X emission rate consistent with CSAPR, EPA uses the maximum 24-hour NO_X emission rates from the 2000–2004 time period. EPA ignores the continued application of CSAPR ozone season budgets that apply to EGUs in Texas. This methodology is inconsistent with past practices and overestimates cumulative conditions and facility impacts. Commenters also state that because NO_X is to be controlled by CSAPR, NO_X related haze impacts should not be considered in the screening analysis.

Response: As discussed in our response to another comment, the emission rates used in the modeling should reflect maximum 24-hour emission rates from the baseline period. CSAPR for ozone season NO_X is a seasonal NO_X budget but does not effectively limit short-term emission rates such that a newer maximum 24-hour emission rate can be determined. Therefore, even if it were appropriate to consider any potential reductions due to CSAPR, it is not possible to accurately model any reductions/limits due to CSAPR on a short term basis. Furthermore, emissions from a unit can vary greatly over time as the CSAPR program allows sources to meet emission budgets in a given year by using banked allowances from previous years or by purchasing allowances from other sources within or outside of the State allowing emissions from the source to exceed their annual allocation level. We also note that we were not provided specific short-term emission rate limits from commenters that were based on the installation of new controls or other reductions that were permanent reductions to short-term emission rates. Our proposal did assess if emission controls were installed during the base period and we utilized the maximum short-term emission rate from the base period after the controls were installed where applicable. Regardless of this issue, the underlying concern of the commenters was whether their facility screened out of being subject to a full BART analysis. With CSAPR coverage for NO_X and the SO_2 intrastate trading program coverage for BART for all BART-eligible coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs, all the BART eligible units screen out of a full BART analysis for the pollutants not covered by trading programs, thus the chief concern that the modeling based on 2000–2004 maximum emissions and the inclusion of NO_X contributed to a determination that the source was subject-to-BART, is no longer relevant.

Concerning the inclusion of NO_X emissions in the screening analysis, EPA's position is that the modeling must include both pollutants (NO_X and SO_2) since they both compete for ammonia. If we modeled only SO_2, all of it would convert to ammonia sulfate (based on ammonia availability) and both baseline screening impacts for SO_2 and visibility benefits from any control assessments would also be overestimated. The chemical interaction between pollutants and background species can lead to situations where the reduction of emissions of a pollutant can actually lead to an increase or inaccurate assessment of the visibility impairment, if both NO_X and SO_2 are not included in CALPUFF modeling. Therefore, to fully assess the visibility benefit anticipated from the use of controls, all pollutants should be modeled together.

BART screening modeling would also include the PM emissions. BART screening is meant to be a conservative and inclusive test. We have always considered combined NO_X, SO_2, and PM impacts even if the facility had NO_X coverage or stringent NO_X controls already installed. The BART guidelines state ''You must look at SO_2, NO_X, and direct particulate matter (PM) emissions in determining whether sources cause or contribute to visibility impairment'' unless emissions of these pollutants from the source are less than de minimis.[93] The BART Guidelines then provide three modeling options to determine which sources and pollutants need to be subject to BART:[94] (1) Dispersion modeling to ''determine an individual source's impact on visibility as a result of its emissions of SO_2, NO_X *and* direct PM emissions''; (2) model plants to exempt individual sources with common characteristics as

[93] 40 CFR part 51 Appendix Y, Section III.A.2.

[94] 40 CFR part 51 Appendix Y, Section III.A.3.

described in our BART Screening TSD; and (3) cumulative modeling on a pollutant by pollutant basis or for all visibility-impairing pollutants to show that no source in the State is subject to BART. The BART guidelines are clear that individual source modeling should evaluate impacts from NO_X, SO_2 and PM in determining if a source is subject to BART and the pollutant-specific analyses are directed as an option to screen out the impacts of all BART sources in the State for a specific pollutant such as VOC or PM (in the case of EGUs covered by trading programs for NO_X and SO_2). The BART Guidelines also state that in assessing the visibility benefits of controls ''modeling should be conducted for SO_2, NO_X, *and* direct PM emissions ($PM_{2.5}$ and/or PM_{10}).'' [95] In many cases a state may have only a handful of sources and impacts from more linear species (VOC or PM) may be so small that they make up a very small contribution (on the order of a 0–2% of the NO_X and SO_2 impacts) to the visibility impacts at a Class I Area, therefore it may be acceptable to screen out pollutants that have a minimal impact. This is not the situation with NO_X, SO_2 and PM emissions from EGUs in Texas where some EGUs' PM modeled impacts were greater than 0.25 del-dv. EPA's 2006 memorandum on this is clear that you have to model both (NO_X and SO_2) because of technical and policy concerns, and also reiterated that pollutant specific analysis was for the limited situation of addressing PM when a large group of sources had BART coverage for the non-linear reacting pollutants (NO_X and SO_2) through a BART alternative.[96] The BART Guidelines specifically indicate that NO_X, SO_2 and PM should be modeled together when modeling BART eligible units at one facility.[97] This is similar to the BART eligibility test contemplated in the BART guidelines where if the emissions from the identified units at source exceed a potential to emit of 250 tons per year for any single visibility-impairing pollutant, the source is considered BART-eligible and may be subject to a BART review for all visibility impairing pollutants.[98]

As previously discussed the commenter's primary concern with regard to the inclusion of NO_X was that this may have contributed to facilities not screening out from a full BART analysis. Because, in the final rule, trading programs constitute BART alternatives for NO_X and SO_2, the facilities that were proposed as subject to BART now screen out for the pollutants not covered by a trading program.

Comment: We received a comment from TCEQ that EPA should screen out the Newman facility based on CALPUFF modeling or use CAMx to appropriately screen Newman and determine its visibility impacts. We also received comments from the owner of Newman, EPEC, stating that the PM and SO_2 BART limits for those gas-fired units that occasionally burn fuel oil, applicable to Newman 2 and 3, of a fuel oil sulfur content of 0.7% is acceptable, and that Newman 4 is restricted to burn only natural gas. EPEC has maintained on-site diesel fuel oil with a lesser sulfur content as emergency backup fuel for testing for preparedness purposes, and in the unlikely scenario of a natural gas curtailment event or other situation that may compromise the steady flow of the primary pipeline quality natural gas fuel supply. EPEC also notes that these units are only permitted to operate 876 hours per year.

Response: Based upon the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. We are not finalizing subject-to-BART determinations for BART eligible sources covered by the BART alternative for SO_2 and NO_X. In our final rule, the relevant BART requirement for these participating units, including the BART-eligible Newman units, will be satisfied by BART alternatives for NO_X and SO_2 such that we do not deem it necessary to finalize subject-to-BART findings for these EGUs. In addition, we are approving a determination that none of these sources are subject to BART for PM. Therefore, we do not find it necessary to respond to the merits of comments concerning screening modeling for this source, because the outcome of that modeling is not dispositive to the source's inclusion in the BART alternative or its allowance thereunder. See discussion above for assessment of previous CAMx PM screening (Texas 2009 RH SIP) where the Newman source was included in Group 2 with a number of other sources and screened out from being subject to BART for PM.

Comment: We received comments that some of the stack parameters were incorrect at facilities in our CALPUFF and CAMx modeling. New stack height, diameter, velocity values were given for some units.

Response: We reviewed the information provided and note that some facilities gave contradicting data within their comments. For those facilities for which we are relying on modeling to determine they are not subject to BART, we have evaluated potential changes where we may have had an inaccurate number in our proposal modeling. We have determined that the impacts from changes to stack parameters would be minimal and not change our current assessment and decisions.

2. Modeling Related to Whether Coal-Fired Sources Are Subject to BART

Comment: We received comments on the CALPUFF and CAMx modeling utilized to determine which coal-fired EGUs are subject to BART. These included comments concerning emissions inputs, the metrics used, the post-processing methodology, and the model performance.

Response: Due to the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. This trading program includes participation of all BART-eligible coal-fired EGUs such that we do not deem it necessary to finalize subject-to-BART findings for these EGUs except for PM emissions. As a consequence, we believe that it is not necessary to respond to the merits of comments concerning modeled baseline visibility impacts using CALPUFF or CAMx and determination of which coal-fired sources are subject to BART. In this final action we are approving the determination in the Texas RH SIP that all EGU sources screen out of BART for PM. We are also finalizing the determination that all BART-eligible EGUs not participating in the trading program screen out of BART for NO_X, SO_2 and PM based on upon CALPUFF modeling (direct source and Model Plant). We address all comments pertinent to the use of CALPUFF (direct source and Model Plant) for BART screening for these sources in other responses to comments. We note that the comments expressing concerns about CALPUFF modeling were associated with facilities that did not screen out from a full subject to BART analysis. Since we have determined that no EGU sources are now subject to BART and a source-specific BART control analysis for pollutants not covered by a BART alternative, the

[95] 40 CFR part 51 Appendix Y, Section IV.D.5 (emphasis added).

[96] EPA Memorandum from Joseph W. Paisie OAQPS to Kay Prince EPA Region 4, ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations'', July 19, 2006.

[97] 40 CFR part 51 Appendix Y, Section III.A.3.

[98] See first example in 40 CFR part 51 Appendix Y, Section II.A.4.

specific concerns raised by commenters about being determined to be subject to a BART control analysis because of emissions inputs used, metrics used, etc. are not relevant to this final action. See the Modeling RTC document for the entirety of the modeling comments and our responses.

Comment: The 0.5 dv threshold used by EPA in its proposed determinations based on CAMx modeling of what sources are subject to BART is too low, given the uncertainties in the CAMx modeling methods used to quantify the visibility impacts of sources.

Response: In our proposed action, we utilized CAMx modeling to evaluate visibility impacts from BART-eligible sources that include BART eligible coal-fired EGUs. Due to the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. This trading program includes participation of all BART-eligible coal-fired EGUs such that we do not deem it necessary to finalize subject-to-BART findings for these sources except for PM emissions.

In this final action the only CAMx modeling we are relying upon is CAMx modeling performed for TCEQ in screening of EGU emissions of PM that was included in TCEQ's 2009 SIP. Our approval of the CAMx PM screening of EGUs is based on the original CENRAP modeling datasets, agreed modeling protocols and Texas' use of the 0.5 del-dv to screen sources as agreed upon by TCEQ in 2007. Any potential concerns with CAMx bias were considered in 2007 and TCEQ, EPA and FLM representatives agreed to the approach of using 0.5 del-dv to screen groups of sources using CAMx modeling. We note that the BART guidelines specifically state that ''as a general matter, any threshold that you use for determining whether a source ''contributes'' to visibility impairment should not be higher than 0.5 deciviews.'' [99] Furthermore, our action on the PM BART determinations in the 2009 Texas SIP submittal would not be any different had we used a higher threshold since all sources screened out based on the use of the 0.5 dv threshold. Since we are not relying on the CAMx modeling we had performed for our proposal, any comments concerning the use of this modeling are not pertinent to this final action and it is not necessary to respond to the merits of those comments.

[99] 40 CFR part 51 Appendix Y, Section III.A.1.

3. Modeling Related to Visibility Benefit of Sources Subject-to-BART

Comment: We received comments on the CALPUFF and CAMx modeling utilized to estimate the visibility benefits of controls. These included comments concerning the emissions inputs, the metrics used, the post-processing methodology, and the model performance.

Response: Based on the comments we received requesting a BART alternative in lieu of source-specific EGU BART determinations, we are finalizing a SO_2 trading program as an alternative to source-by-source BART. This trading program includes participation of all BART-eligible coal-fired EGUs and a number of BART-eligible gas or gas/fuel oil-fired EGUs. It also includes a number of non-BART eligible EGUs. The combination of the source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions from EGUs not covered by the program will result in future EGU emissions in Texas that are similar to the SO_2 emission levels forecast in the 2012 better-than-BART demonstration for Texas EGU emissions assuming CSAPR participation. We are not finalizing our evaluation of whether individual sources are subject to BART. As a consequence, we believe that it is not necessary to respond to the merits of comments concerning source-specific visibility benefits of controls on these units, because we are not finalizing requirements based on those controls.

I. Comments on Affordability and Grid Reliability

Comment: We received comments from the State, EGU owners covered under our proposal and environmental groups concerning whether our proposal would cause EGUs to retire and thus cause grid reliability issues. These comments included both criticisms of and support for our proposed position. Texas, in particular, stated that recent ERCOT studies have raised concerns that several units in Texas will no longer be economically viable if required to install capital intensive controls. They also indicated that EPA's IPM modeling supports this conclusion. Texas believed that if units shutdown with little notice it could cause reliability concerns.

Response: EPA takes very seriously concerns about grid reliability. We are finalizing a SO_2 trading program as an alternative to source-by-source BART. We believe the program we have designed will help address reliability concerns because it does not require installation of capital intensive controls and will provide much more flexibility to sources than the source by source compliance we proposed. In fact, aggregate emissions of the covered sources in 2016 were below the level called for by the trading program. In addition, the supplemental allowance pool is expected to provide additional flexibility to allow sources to run, if necessary, in an emergency. We believe that it is not necessary to respond on the merits to specific comments concerning the impacts to grid reliability related to the requirements of the proposed source-specific controls, because we are not finalizing those requirements.

V. SO_2 Trading Program and Its Implications for Interstate Visibility Transport, EGU BART, and Reasonable Progress

The Regional Haze Rule provides each state with the flexibility to adopt an allowance trading program or other alternative measure instead of requiring source-specific BART controls, so long as the alternative measure is demonstrated to achieve greater reasonable progress than BART. As discussed in Section III.A.3 above, based principally on comments submitted by the State of Texas during the comment period urging us to consider as a BART alternative the concept of system-wide emission caps using CSAPR allocations as part of an intrastate trading program,[100] we are acknowledging the State's preference and exercising our authority to promulgate a BART alternative for SO_2 for certain Texas EGUs. The combination of the source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions from EGUs not covered by the program will result in future EGU emissions in Texas that are similar to what was forecast in the 2012 better than BART demonstration for Texas EGU emissions assuming CSAPR participation.

A. Background on the CSAPR as an Alternative to BART Concept

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—qualifies as a BART alternative for those EGUs for that pollutant.[101] In promulgating this

[100] *See* Docket Item No. EPA–R06–OAR–2016–0611–0070, p. 3.

[101] 40 CFR 51.308(e)(4); *see also generally* 77 FR 33641 (June 7, 2012). Legal challenges to the CSAPR-better-than-BART rule from conservation groups and other petitioners are pending. *Utility Air*

CSAPR-better-than-BART rule (also referred to as ''Transport Rule as a BART Alternative''), the EPA relied on an analytic demonstration based on an air quality modeling study [102] showing that CSAPR implementation meets the Regional Haze Rule's criteria for a demonstration of greater reasonable progress than BART. In the air quality modeling study conducted for the 2012 analytic demonstration, the EPA projected visibility conditions in affected Class I areas [103] based on 2014 emissions projections for two control scenarios and on the 2014 base case emissions projections.[104] One control scenario represents ''Nationwide BART'' and the other represents ''CSAPR + BART-elsewhere.'' In the base case, neither BART controls nor the EGU SO_2 and NO_X emissions reductions attributable to CSAPR were reflected. 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.[105] The results of that analytic demonstration based on this air quality modeling passed the two-pronged test set forth at 40 CFR 51.308(e)(3). The first prong ensures that the alternative program will not cause a decline in visibility at any affected Class I area. The second prong ensures that the alternative program results in improvements in average visibility across all affected Class I areas as compared to adopting source-specific BART. Together, these tests ensure that the alternative program provides for greater visibility improvement than would source-specific BART.

For purposes of the 2012 analytic demonstration that CSAPR as finalized and amended in 2011 and 2012 provides for greater reasonable progress than BART, the analysis included Texas EGUs as subject to CSAPR for SO_2 and annual NO_X (as well as ozone-season NO_X). CSAPR's emissions limitations are defined in terms of emissions ''budgets'' for the collective emissions from affected EGUs in each covered state. Sources have the ability to purchase allowances from sources outside of the state, so total projected emissions for a state may, in some cases, exceed the state's emission budget, but aggregate emissions from all sources in a state should remain lower than or equal to the state's ''assurance level.'' The final emission budget under CSAPR for Texas was 294,471 tons per year for SO_2, including 14,430 tons of allowances available in the new unit set aside.[106] The State's ''assurance level'' under CSAPR was 347,476 tons.[107] Under CSAPR, the projected SO_2 emissions from the affected Texas EGUs in the CSAPR + BART-elsewhere scenario were 266,600 tons per year. In a 2012 sensitivity analysis memo, EPA conducted a sensitivity analysis that confirmed that CSAPR would remain better-than-BART if Texas EGU emissions increased to approximately 317,100 tons.[108]

As introduced in Section I.C, in the EPA's final response to the D.C. Circuit's remand of certain CSAPR budgets, we finalized the withdrawal of the requirements for Texas' EGUs to participate in the annual SO_2 and NO_X trading programs and also finalized our determination that the changes to the geographic scope of the CSAPR trading programs resulting from the remand response do not affect the continued validity of participation in CSAPR as a BART alternative. This determination that CSAPR remains a viable BART alternative despite changes in geographic scope resulting from EPA's response to the CSAPR remand was based on a sensitivity analysis of the 2012 analytic demonstration used to support the original CSAPR as better-than-BART rulemaking. A full explanation of the sensitivity analysis is included in the remand response proposal and final rule.[109]

B. Texas SO_2 Trading Program

Texas is no longer in the CSAPR program for annual SO_2 emissions and accordingly cannot rely on CSAPR as a BART alternative for SO_2 under 51.308(e)(4).[110] Therefore, informed by the TCEQ comments, we are proceeding to address the SO_2 BART requirement for coal-fired, some gas-fired, and some gas/fuel oil-fired units under a BART alternative, which we are justifying according to the demonstration requirements under 51.308(e)(2).

1. Identification of Sources Participating in the Trading Program

Under 51.308(e)(2), a State may opt to implement or require participation in an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. Such an emissions trading program or other alternative measure must achieve greater reasonable progress than would be achieved through the installation and operation of BART. At the same time, the Texas trading program should be designed so as not to interfere with the validity of existing SIPs in other states that have relied on reductions from sources in Texas. As discussed elsewhere, the Texas trading program is designed to provide the measures that are needed to address interstate visibility transport requirements for several NAAQS and to be part of the long-term strategy needed to meet the reasonable progress requirements of the

Regulatory Group v. *EPA,* No. 12–1342 (D.C. Cir. filed August 6, 2012).

[102] *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.

[103] The EPA identified two possible sets of ''affected Class I areas'' to consider for purposes of the study and found that implementation of CSAPR met the criteria for a BART alternative whichever set was considered. *See* 77 FR 33641, 33650 (June 7, 2012).

[104] For additional detail on the 2014 base case, *see* the CSAPR Final Rule Technical Support Document, available in the docket for this action.

[105] 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 (Dec. 27, 2011); 77 FR 10324 (Feb. 21, 2012); 77 FR 34830 (June 12, 2012). The CSAPR-better-than-BART final rule reflected consideration of these changes to CSAPR.

[106] Units that are subject to CSAPR but that do not receive allowance allocations as existing units are eligible for a new unit set aside (NUSA) allowance allocation. NUSA allowance allocations are a batch of emissions allowances that are reserved for new units that are regulated by the CSAPR, but weren't included in the final rule allocations. The NUSA allowance allocations are removed from the original pool of regional allowances, and divided up amongst the new units, so as not to exceed the emissions cap set in the CSAPR. Each calendar year, EPA issues three pairs of preliminary and final notices of data availability (NODAs), which are determined and recorded in two ''rounds'' and are published in the **Federal Register**. In any year, if the NUSA for a given CSAPR state and program does not have enough new units after completion of the 2nd round, the remaining allowances are allocated to existing CSAPR-affected units.

[107] See 40 CFR 97.710 for state SO_2 Group 2 trading budgets, new unit set-asides, Indian country new unit set-asides, and variability limits.

[108] For the projected annual SO_2 emissions from Texas EGUs 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), available in the docket for this action. at table 2–4. Certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo. See 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), available in the docket for this action. The increase in the Texas SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons.

[109] 81 FR 78954 (Nov. 10, 2016) and final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

[110] See final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

Regional Haze Rule.[111] To meet all of these goals, the trading program must not only be inclusive of all BART-eligible sources that are treated as satisfying the BART requirements through participation in a BART alternative, but must also include additional emission sources such that the trading program as a whole can be shown to both achieve greater reasonable progress than would be achieved through the installation and operation of BART, and achieve the emission reductions relied upon by other states during consultation and assumed by other states in their own regional haze SIPs, including their reasonable progress goals for their Class I areas.

The identification of EGUs in the trading program necessarily begins with the list of BART-eligible EGUs for which we intend to address the BART requirements through a BART alternative. As discussed elsewhere, we determined that several BART-eligible gas-fired and gas/oil-fired EGUs are not subject-to-BART for NO_X, SO_2, and PM, therefore those BART-eligible sources are not included in the trading program. The table below lists those BART-eligible EGUs identified for participation in the trading program.

TABLE 4—BART-ELIGIBLE EGUS PARTICIPATING IN THE TRADING PROGRAM

Facility	Unit
Big Brown (Luminant)	1.
Big Brown (Luminant)	2.
Coleto Creek (Dynegy[112])	1.
Fayette (LCRA)	1.
Fayette (LCRA)	2.
Graham (Luminant)	2.
Harrington Station (Xcel)	061B.
Harrington Station (Xcel)	062B.
J T Deely (CPS Energy)	1.
J T Deely (CPS Energy)	2.
Martin Lake (Luminant)	1.
Martin Lake (Luminant)	2.
Martin Lake (Luminant)	3.
Monticello (Luminant)	1.
Monticello (Luminant)	2.
Monticello (Luminant)	3.
Newman (El Paso Electric)	2.
Newman (El Paso Electric)	3.
Newman (El Paso Electric)	4.
O W Sommers (CPS Energy)	1.
O W Sommers (CPS Energy)	2.
Stryker Creek (Luminant)	ST2.
WA Parish (NRG)	WAP4.
WA Parish (NRG)	WAP5.
WA Parish (NRG)	WAP6.
Welsh Power Plant (AEP)	1.
Welsh Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	1.
Wilkes Power Plant (AEP)	2.
Wilkes Power Plant (AEP)	3.

For a BART alternative that includes an emissions trading program, the applicability provisions must be designed to prevent any significant potential shifting within the state of production and emissions from sources in the program to sources outside the program. Shifting would be logistically simplest among units in the same facility, because they are under common management and have access to the same transmission lines. In addition, since a coal-fired EGU to which electricity production could shift would have a relatively high SO_2 emission rate (compared to a gas-fired EGU), such shifting could also shift substantive amounts of SO_2 emissions. To prevent any significant shifting of generation and SO_2 emissions from participating sources to non-participating sources within the same facility, coal-fired EGUs that are not BART-eligible but are co-located with BART-eligible EGUs have been included in the program. While Fayette Unit 3, WA Parish Unit 8 (WAP8), and J K Spruce Units 1 and 2 were identified as coal-fired units that are not BART-eligible but are co-located with BART-eligible EGUs, these units have scrubbers installed to control SO_2 emissions such that a shift in generation from the participating units to these units would not result in a significant increase in emissions. Fayette Unit 3 has a high performing scrubber similar to the scrubbers on Fayette Units 1 and 2,[113] and has a demonstrated ability to maintain SO_2 emissions at or below 0.04 lbs/MMBtu.[114] We find that any shifting of generation from the participating units at the facility to Fayette Unit 3 would result in an insignificant shift of emissions. The scrubber at Parish Unit 8 maintains an emission rate four to five times lower than the emission rate of the other coal-fired units at the facility (Parish Units 5, 6, and 7) that are uncontrolled.[115] Shifting of generation from the participating units at the Parish facility to Parish Unit 8 would result in a decrease in overall emissions from the source. Similarly, J K Spruce Units 1 and 2 have high performing scrubbers and emit at emission rates much lower than the co-located BART-eligible coal-fired units (J T Deely Units 1 and 2).[116] In addition, because these units not covered by the program are on average better controlled for SO_2 than the covered sources and emit far less SO_2 per unit of energy produced, we conclude that in general, based on the current emission rates of the EGUs, should a portion of electricity generation shift to those units not covered by the program, the net result would be a decrease in overall SO_2 emissions, as these non-participating units are on average much better controlled. Relative to current emission levels, should participating units increase their emissions rates and decrease generation to comply with their allocation, emissions from non-participating units may see a small increase. Therefore, we have not included Fayette Unit 3, WA Parish Unit 8 (WAP8), and J K Spruce Units 1 and 2 in the trading program. The table below lists those coal-fired units that are co-located with BART-eligible units that have been identified for inclusion in the trading program.

TABLE 5—COAL-FIRED EGUS CO-LOCATED WITH BART-ELIGIBLE EGUS AND PARTICIPATING IN THE TRADING PROGRAM

Facility	Unit
Harrington Station (Xcel)	063B.
WA Parish (NRG)	WAP7.
Welsh Power Plant (AEP)	3.

In addition to these sources, we also evaluated other EGUs for inclusion in the trading program based on their potential to impact visibility at Class I areas. Addressing emissions from sources with the largest potential to impact visibility is required to make progress towards the goal of natural visibility conditions and to address emissions that may otherwise interfere

[111] EPA is not determining at this time that this final action fully resolves the EPA's outstanding obligations with respect to reasonable progress that resulted from the Fifth Circuit's remand of our reasonable progress FIP. We intend to take future action to address the Fifth Circuit's remand.

[112] Dynegy purchased the Coleto Creek power plant from Engie in February, 2017. Note that Coleto Creek may still be listed as being owned by Engie in some of our supporting documentation which was prepared before that sale.

[113] See the BART FIP TSD, available in the docket for this action (Document Id: EPA–R06–OAR–2016–0611–0004), for evaluation of the performance of scrubbers on Fayette Units 1 and 2.

[114] The annual average emission rate for 2016 for this unit was 0.01 lb/MMBtu.

[115] Parish Units 5 and 6 are coal-fired BART-eligible units. Parish Unit 7 is not BART-eligible, but is a co-located coal-fired EGU. Unlike Parish Unit 8, these three units do not have an SO_2 scrubber installed.

[116] The annual average emission rate for 2016 for J K Spruce Units 1 and 2 was 0.03 lb/MMBtu and 0.01 lb/MMBtu, respectively. The annual average emission rate for 2016 for J T Deely Units 1 and 2 was 0.52 lb/MMBtu and 0.51 lb/MMBtu, respectively.

with measures required to protect visibility in other states. EPA, States, and RPOs have historically used a Q/D analysis to identify those facilities that have the potential to impact visibility at a Class I area based on their emissions and distance to the Class I area. Where,

1. Q is the annual emissions in tons per year (tpy), and

2. D is the nearest distance to a Class I Area in kilometers (km).

We used a Q/D value of 10 as a threshold for identification of facilities that may impact air visibility at Class I areas and could be included in the trading program in order to meet the goals of achieving greater reasonable progress than BART and limiting visibility transport. We selected this value of 10 based on guidance contained in the BART Guidelines, which states:

Based on our analyses, we believe that a State that has established 0.5 deciviews as a contribution threshold could reasonably exempt from the BART review process sources that emit less than 500 tpy of NO_X or SO_2 (or combined NO_X and SO_2), as long as these sources are located more than 50 kilometers from any Class I area; and sources that emit less than 1000 tpy of NO_X or SO_2 (or combined NO_X and SO_2) that are located more than 100 kilometers from any Class I area.[117]

The approach described above corresponds to a Q/D threshold of 10. This approach has also been recommended by the Federal Land Managers' Air Quality Related Values Work Group (FLAG) [118] as an initial screening test to determine if an analysis is required to evaluate the potential impact of a new or modified source on air quality related value (AQRV) at a Class I area. For this purpose, a Q/D value is calculated using the combined annual emissions in tons per year of (SO_2, NO_X, PM_{10}, and sulfuric acid mist (H_2SO_4) divided by the distance to the Class I area in km. A Q/D value greater than 10 requires a Class I area AQRV analysis.[119]

We considered the results of an available Q/D analysis based on 2009 emissions to identify facilities that may impact air visibility at Class I areas.[120] The table below summarizes the results of that Q/D analysis for EGU sources in Texas with a Q/D value greater than 10 with respect to the nearest Class I area to the source.

TABLE 6—Q/D ANALYSIS FOR TEXAS EGUS

[Q/D greater than 10, 2009 annual emissions]

Facility	Maximum Q/D
H.W. Pirkey (AEP)	35.8
Big Brown (Luminant)	182.9
Sommers-Deely (CPS)	56.9
Coleto Creek (Dynegy)	46.0
Fayette (LCRA)	61.0
Gibbons Creek (TMPA)	30.8
Harrington Station (XCEL)	107.8
San Miguel	32.9
Limestone (NRG)	85.1
Martin Lake (Luminant)	367.4
Monticello (Luminant)	425.4
Oklaunion (AEP)	85.0
Sandow (Luminant)	63.0
Tolk Station (XCEL)	148.5
Twin Oaks	14.2
WA Parish (NRG)	84.3
Welsh (AEP)	230.1

Based on the above Q/D analysis, we identified additional coal-fired EGUs for participation in the SO_2 trading program due to their emissions, proximity to Class I areas, and potential to impact visibility at Class I areas. While Gibbons Creek is identified by the Q/D analysis, the facility does not include any BART-eligible EGUs and has installed very stringent controls such that current emissions are approximately 1% of what they were in 2009.[121] Therefore, we do not consider Gibbons Creek to have significant potential to impact visibility at any Class I area and do not include it in the trading program. The Twin Oaks facility, consisting of two units, is also identified as having a Q/D greater than 10. However, the Q/D for this facility is significantly lower than that of the other facilities, the facility does not include any BART-eligible EGUs, and the estimated Q/D for an individual unit would be less than 10. We do not consider the potential visibility impacts from these units to be significant relative to the other coal-fired EGUs in Texas with Q/Ds much greater than 10 and do not include it in the trading program. The Oklaunion facility consists of one coal-fired unit that is not BART-eligible. Annual emissions of SO_2 in 2016 from this source were 1,530 tons, less than 1% of the total annual emissions for EGUs in the state. We have determined that the most recent emissions from this facility are small relative to other non-BART units included in the program and we have not included Oklaunion in the trading program. Finally, San Miguel is identified as having a Q/D greater than 10. The San Miguel facility consists of one coal-fired unit that is not BART-eligible. In our review of existing controls at the facility performed as part of our action to address the remaining regional haze obligations for Texas, we found that the San Miguel facility has upgraded its SO_2 scrubber system to perform at the highest level (94% control efficiency) that can reasonably be expected based on the extremely high sulfur content of the coal being burned, and the technology currently available.[122] Since completion of all scrubber upgrades,[123] emissions from the facility on a 30-day boiler operating day [124] rolling average basis have remained below 0.6 lb/MMBtu and the 2016 annual average emission rate was 0.44 lb/MMBtu. Therefore, we have determined that the facility is well controlled and have not included San Miguel in the trading program. Other coal-fired EGUs in Texas that are not included in the trading program either had Q/D values less than 10 based on 2009 emissions or were not yet operating in 2009. New units beginning operation after 2009 would be permitted and constructed using emission control technology determined under either BACT or LAER review, as applicable and we do not consider the potential visibility impacts from these units to be significant relative to those coal-fired EGUs participating in the program. See Table 10 and accompanying discussion in the section below for additional information on coal-fired EGUs not included in the trading program. The table below lists the additional units identified by the Q/D analysis described above as potentially significantly impacting visibility and are included in the trading program. We note that all of the other coal-fired units identified for inclusion in the trading program due to their BART-eligibility or by the fact that they are co-located with BART-eligible coal units would also be identified for

[117] See 40 CFR part 51, App. Y, § III (How to Identify Sources ''Subject to BART'').

[118] Federal Land Managers' Air Quality Related Values Work Group (FLAG), Phase I Report—Revised (2010) Natural Resource Report NPS/NRPC/NRR—2010/232, October 2010. Available at *http://www.nature.nps.gov/air/Pubs/pdf/flag/FLAG_2010.pdf.*

[119] We also note that TCEQ utilized a Q/D threshold of 5 in its analysis of reasonable progress sources in the 2009 Texas Regional Haze SIP. See Appendix 10–1.

[120] See the TX RH FIP TSD that accompanied our December 2014 Proposed action 79 FR 74818 (Dec 16, 2014) and 2009statesum_Q_D.xlsx available in the docket for that action.

[121] 2016 annual SO_2 emissions were only 138 tons compared to 11,931 tons in 2009.

[122] 79 FR 74818 (Dec. 16, 2014).

[123] San Miguel Electric Cooperative FGD Upgrade Program Update, URS Corporation, June 30, 2014. Available in the docket for our December 2014 Proposed action, 79 FR 74818 (Dec 16, 2014) as ''TX166–008–066 San Miguel FGD Upgrade Program.''

[124] A boiler operating day (BOD) is any 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time at the steam generating unit. See 70 FR 39172 (July 6, 2005).

inclusion in the trading program if the Q/D analysis were applied to them.

TABLE 7—ADDITIONAL UNITS IDENTIFIED FOR INCLUSION IN THE TRADING PROGRAM

Facility	Unit
H.W. Pirkey (AEP)	1.
Limestone (NRG)	1.
Limestone (NRG)	2.
Sandow (Luminant)	4.
Tolk (Xcel)	171B.
Tolk (Xcel)	172B.

As discussed in more detail below, the inclusion of all of these identified sources (Tables 4, 5, and 7 above) in an intrastate SO_2 trading program will achieve emission levels that are similar to original projected participation by all Texas EGUs in the CSAPR program for trading of SO_2 and achieve greater reasonable progress than BART. In addition to being a sufficient alternative to BART, the trading program secures reductions consistent with visibility transport requirements and is part of the long-term strategy to meet the reasonable progress requirements of the Regional Haze Rule.[125] The combination of the source coverage for this program, the total allocations for EGUs covered by the program, and recent and foreseeable emissions from EGUs not covered by the program will result in future EGU emissions in Texas that on average will be no greater than what was forecast in the 2012 better-than-BART demonstration for Texas EGU emissions assuming CSAPR participation.

2. Texas SO_2 Trading Program as a BART Alternative

40 CFR 51.308(e)(2) contains the required plan elements and analyses for an emissions trading program or alternative measure designed as a BART alternative.

As discussed above, consistent with our proposal, we are finalizing our list of all BART-eligible sources, in Texas, which serves to satisfy § 51.308(e)(2)(i)(A).

This action includes a list of all EGUs covered by the trading program, satisfying the first requirement of § 51.308(e)(2)(i)(B). All BART-eligible coal-fired units, some additional coal-fired EGUs, and some BART-eligible gas-fired and oil-and-gas-fired units are covered by the alternative program.[126] This coverage and our determinations that the BART-eligible gas-fired and oil-and-gas-fired EGUs not covered by the program are not subject-to-BART for NO_X, SO_2 and PM satisfy the second requirement of § 51.308(e)(2)(i)(B).

Regarding the requirements of 40 CFR 51.308(e)(2)(i)(C), we are not making determinations of BART for each source subject to BART and covered by the program. The demonstration for a BART alternative does not need to include determinations of BART for each source subject to BART and covered by the program when the ''alternative measure has been designed to meet a requirement other than BART.'' The Texas trading program meets this condition, as discussed elsewhere, because it has been designed to meet multiple requirements other than BART. This BART alternative extends beyond all BART-eligible coal-fired units to include a number of additional coal-fired EGUs, and some BART-eligible gas-fired and oil-and-gas-fired units, capturing the majority of emissions from EGUs in the State and is designed to provide the measures that are needed to address interstate visibility transport requirements for several NAAQS. This is because for all sources covered by the Texas SO_2 trading program, those sources' CSAPR allocations for SO_2 are incorporated into this finalized BART alternative, and the BART FIP obtains more emission reductions of SO_2 and NO_X than the level of emissions reductions relied upon by other states during consultation and assumed by other states in their own regional haze SIPs including their reasonable progress goals for their Class I areas. This BART alternative, addressing emissions from both BART eligible and non-BART eligible sources, that in combination provides for greater reasonable progress than BART, is also designed to be part of the long-term strategy needed to meet the reasonable progress requirements of the Regional Haze Rule, which remain outstanding after the remand of our reasonable progress FIP by the Fifth Circuit Court of Appeals. Since the time of our January 4, 2017 proposal on BART, we note that the Fifth Circuit Court of Appeals has remanded without vacatur our prior action on the 2009 Texas Regional Haze SIP and part of the Oklahoma Regional Haze SIP.[127] We contemplate that future action on this remand, including action that may merge with new development of SIP revisions by the State of Texas as contemplated in its request for the SO_2 BART alternative, will bring closure to the reasonable progress requirement. For these reasons, we find that it is not necessary for us to make determinations of BART for each source subject to BART and covered by the program. In this context, 51.308(e)(2)(i)(C) provides that we may ''determine the best system of continuous emission control technology and associated emission reductions for similar types of sources within a source category based on both source-specific and category-wide information, as appropriate.'' In this action, we are relying on the determinations of the best system of continuous emission control technology and associated emission reductions for EGUs as was used in our 2012 determination that showed that CSAPR as finalized and amended in 2011 and 2012 achieves more reasonable progress than BART. These determinations were based on category-wide information.

Regarding the requirement of 40 CFR 51.308(e)(2)(i)(D), our analysis is that the Texas trading program will effectively limit the aggregate annual SO_2 emissions of the covered EGUs to be no higher than the sum of their allowances. As discussed elsewhere, the average total annual allowance allocation for covered sources is 238,393 tons and an additional 10,000 tons for the Supplemental Allowance pool. In addition, while the Supplemental Allowance pool may grow over time as unused supplemental allowances remain available and allocations from retired units are placed in the supplemental pool, the total number of allowances that can be allocated in a control period from the supplemental pool is limited to a maximum 54,711 tons plus the amount of any allowances placed in the pool that year from retired units and corrections. Therefore, annual average emissions for the covered sources will be less than or equal to 248,393 tons with some year to year variability constrained by the number of banked allowances and number of allowances that can be allocated in a control period from the supplemental pool. The projected SO_2 emission reduction that will be achieved by the program, relative to any selected historical baseline year, is therefore the difference between the aggregate historical baseline emissions of the covered units and the average total annual allocation. For example, the aggregate 2014 SO_2 emissions of the covered EGUs were 309,296 tons per year, while the average total annual allocation for the covered EGUs is

[125] EPA is not determining at this time that this final action fully resolves the EPA's outstanding obligations with respect to reasonable progress that resulted from the Fifth Circuit's remand of our reasonable progress FIP. We intend to take future action to address the Fifth Circuit's remand.

[126] See Table 3 above for list of participating units and identification of BART-eligible participating units.

[127] *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

248,393 tons/year.[128] Therefore, compared to 2014 emissions, the Texas trading program is projected to achieve an average reduction of approximately 60,903 tons per year.[129] We note that the trading program allows additional sources to opt-in to the program. Should sources choose to opt-in in the future, the average total annual allocation could increase up to a maximum of 289,740. For comparison, the aggregate 2014 SO_2 emissions of the covered EGUs including all potential opt-ins were 343,425 tons per year. Therefore, compared to 2014 emissions, the Texas trading program including all potential opt-ins is projected to achieve an average reduction of approximately 53,685 tons per year.

Regarding the requirement of 40 CFR 51.308(e)(2)(i)(E), the BART alternative being finalized today is supported by our determination that the clear weight of the evidence is that the trading program achieves greater reasonable progress than would be achieved through the installation and operation of BART at the covered sources. The 2012 demonstration showed that CSAPR as finalized and amended in 2011 and 2012 meets the Regional Haze Rule's criteria for a demonstration of greater reasonable progress than BART. This 2012 demonstration is the primary evidence that the Texas trading program achieves greater reasonable progress than BART. However, the states participating in CSAPR are now slightly different than the geographic scope of CSAPR assumed in the 2012 analytic demonstration. The changes to states participating in both CSAPR NO_X trading programs resulting from EPA's response to the D.C. Circuit's remand were found by us to have no adverse impact on the 2012 determination that CSAPR participation remains better-than-BART.[130] Regarding SO_2 emissions from Texas, as detailed below, the BART alternative is projected to accomplish emission levels from Texas EGUs that are similar to the emission levels from Texas EGUs that would have been realized from the SO_2 trading program under CSAPR. The changes to the geographic scope of the NO_X CSAPR programs combined with the expectation that the Texas trading program will reduce the SO_2 emissions of EGUs in Texas to levels similar to CSAPR-participation levels, despite slight differences in EGU participation between the two SO_2 programs, lead to the finding here that post-remand CSAPR and the Texas BART alternative program are better-than-BART for Texas.

The differences in Texas EGU participation in CSAPR and this BART alternative are either not significant or, in some cases, work to demonstrate the relative stringency of the BART alternative as compared to CSAPR. If Texas EGUs were still required to participate in CSAPR's SO_2 trading program, it would be plainly consistent with previous findings and approvals that CSAPR is an acceptable BART alternative. The Texas trading program will result in emissions from the covered EGUs and other EGUs in Texas that are no higher than if Texas EGUs were still required to participate in CSAPR's SO_2 trading program, and thus the clear weight of evidence is that the Texas trading program will provide more reasonable progress than BART. Still regarding 40 CFR 51.308(e)(2)(i)(E), we have considered the question of whether in applying this portion of the Regional Haze Rule we should take as the baseline the application of source-specific BART at the covered sources. We interpret the rule to not require that approach in this situation, given that 51.308(e)(2)(i)(C) provides for an exception (which we are exercising) to the requirement for source-specific BART determinations for the covered sources. We are not making any source-specific BART determinations in this action, nor did Texas do so in its 2009 SIP submission.

Table 8 below identifies the participating units and their unit-level allocations under the Texas SO_2 trading program. These allocations are the same as under CSAPR.

TABLE 8—ALLOCATIONS FOR TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/operator	Units	Allocations (tpy)
AEP	Welsh Power Plant Unit 1	6,496
	Welsh Power Plant Unit 2	7,050
	Welsh Power Plant Unit 3	7,208
	H W Pirkey Power Plant Unit 1	8,882
	Wilkes Unit 1	14
	Wilkes Unit 2	2
	Wilkes Unit 3	3
CPS Energy	JT Deely Unit 1	6,170
	JT Deely Unit 2	6,082
	Sommers Unit 1	55
	Sommers Unit 2	7
Dynegy	Coleto Creek Unit 1	9,057
El Paso Electric	Newman Unit 2	1
	Newman Unit 3	1
	Newman Unit 4	2
LCRA	Fayette/Sam Seymour Unit 1	7,979
	Fayette/Sam Seymour Unit 2	8,019
Luminant	Big Brown Unit 1	8,473
	Big Brown Unit 2	8,559
	Martin Lake Unit 1	12,024
	Martin Lake Unit 2	11,580
	Martin Lake Unit 3	12,236
	Monticello Unit 1	8,598

[128] Texas sources were subject to CSAPR in 2015 and 2016 but are no longer subject to CSAPR. We therefore select 2014 as the appropriate most recent year for this comparison.

[129] We note that for other types of alternative programs that might be adopted under 40 CFR 51.308(e)(2), the analysis of achievable emission reductions could be more complicated. For example, a program that involved economic incentives instead of allowances or that involved interstate allowance trading would present a more complex situation in which achievable emission reductions could not be calculated simply by comparing aggregate baseline emissions to aggregate allowances.

[130] 81 FR 78954, 78962 (November 10, 2016) and final action signed September 21, 2017 available at *regulations.gov* in Docket No. EPA–HQ–OAR–2016–0598.

TABLE 8—ALLOCATIONS FOR TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM—Continued

Owner/operator	Units	Allocations (tpy)
	Monticello Unit 2	8,795
	Monticello Unit 3	12,216
	Sandow Unit 4	8,370
	Stryker ST2	145
	Graham Unit 2	226
NRG	Limestone Unit 1	12,081
	Limestone Unit 2	12,293
	WA Parish Unit WAP4	3
	WA Parish Unit WAP5	9,580
	WA Parish Unit WAP6	8,900
	WA Parish Unit WAP7	7,653
Xcel	Tolk Station Unit 171B	6,900
	Tolk Station Unit 172B	7,062
	Harrington Unit 061B	5,361
	Harrington Unit 062B	5,255
	Harrington Unit 063B	5,055
Total		238,393

The total annual allocation for all sources in the Texas SO_2 trading program is 238,393 tons. In addition, a Supplemental Allowance pool initially holds an additional 10,000 tons for a maximum total annual allocation of 248,393 tons. The Administrator may allocate a limited number of additional allowances from this pool to sources whose emissions exceed their annual allocation, pursuant to 40 CFR 97.912. Under CSAPR, the total allocations for all existing EGUs in Texas is 279,740 tons, with a total of 294,471 tons including the new unit set aside of 14,430 tons and the Indian country new unit set aside.[131] As shown in Table 9 below, the coverage of the Texas SO_2 trading program represents 81% of the total CSAPR allocation for Texas and 85% of the CSAPR allocations for existing units. The Supplemental Allowance pool contains an additional 10,000 tons, compared to the new unit set aside (NUSA) allowance allocation under CSAPR of 14,430 tons. Examining 2016 emissions, the EGUs covered by the program represent 89% of total Texas EGU emissions.

TABLE 9—COMPARISON OF TEXAS SO_2 TRADING PROGRAM ALLOCATIONS TO PREVIOUSLY APPLICABLE CSAPR ALLOCATIONS AND TO 2016 EMISSIONS

	Annual allocations in the Texas Trading Program (tons per year)	% of total previously applicable CSAPR allocations (294,471 tons per year)	2016 emissions (tons per year)
Texas SO_2 Trading program sources	238,393	81	218,291
Total EGU emissions			245,737
Supplemental Allowance pool	10,000	3.4	
Existing Sources not covered by trading program	*	16	27,446

* No allocation.

The remaining 11% of the total 2016 emissions due to sources not covered by the program come from coal-fired units that on average are better controlled for SO_2 than the covered sources (26,795 tons in 2016) and gas units that rarely burn fuel oil (651 tons in 2016). The table below lists these coal-fired units. The average annual emission rate for 2016 is 0.50 lb/MMBTU for the coal-fired units participating in the trading program compared to 0.12 lb/MMBTU for the coal-fired units not covered by the program. Therefore, we conclude that in general, based on the current emission rates of the EGUs, should a portion of electricity generation shift to units not covered by the program, the net result would be a decrease in overall SO_2 emissions, as these non-participating units are on average much better controlled and emit far less SO_2 per unit of energy produced. Relative to current emission levels, should participating units increase their emissions rates and decrease generation to comply with their allocation, emissions from non-participating units may see a small increase.

[131] An Indian Country new unit set-aside is established for each state under the CSAPR that provides allowances for future new units locating in Indian Country. The Indian Country new unit set-aside for Texas is 294 tons. See 40 CFR 97.710.

TABLE 10—COAL-FIRED EGUS NOT COVERED BY THE TEXAS SO_2 TRADING PROGRAM

	Previously applicable CSAPR allocation (tons)	2016 emissions (tons)	2016 annual average emission rate (lb/MMBtu)
Fayette/Sam Seymour Unit 3	2,955	231	0.01
Gibbons Creek Unit 1	6,314	138	0.02
JK Spruce Unit 1	4,133	467	0.03
JK Spruce Unit 2	158	151	0.01
Oak Grove Unit 1	1,665	3,334	0.11
Oak Grove Unit 2*	.....	3,727	0.12
Oklaunion Unit 1	4,386	1,530	0.11
San Miguel Unit 1	6,271	6,815	0.44
Sandow Station Unit 5A	773	1,117	0.11
Sandow Station Unit 5B	725	1,146	0.10
Sandy Creek Unit 1*	.....	1,842	0.09
Twin Oaks Unit 1	2,326	1,712	0.21
Twin Oaks Unit 2	2,270	1,475	0.23
WA Parish Unit WAP8	4,071	3,112	0.16
Total	36,047	26,795	.....

*Oak Grove Unit 2 and Sandy Creek Unit 1 received allocations from the new unit set aside under the CSAPR program.

The exclusion of a large number of gas-fired units that occasionally burn fuel oil further limits allowances in the program as compared to CSAPR because CSAPR allocated these units allowances that are higher than their recent and current emissions. In 2016, these units emitted 651 tons of SO_2, but received allowances for over 5,000 tons. By excluding these sources from the program, those unused allowances are not available for purchase by other EGUs. We note the trading program does allow non-participating sources that previously had CSAPR allocations to opt-in to the trading program and receive an allocation equivalent to the CSAPR level allocation. Should some sources choose to opt-in to the program, the total number of allowances will increase by that amount. This will serve to increase the percentage of CSAPR allowances represented by the Texas SO_2 trading program and increase the portion of emissions covered by the program, more closely resembling the CSAPR program.

Finally, the Texas SO_2 trading program does not allow EGUs to purchase allowances from sources in other states. Under CSAPR, Texas EGUs were allowed to purchase allowances from other Group 2 states, a fact which could, and was projected to, result in an increase in annual allowances used in the State above the state budget. CSAPR also included a variability limit that was set at 18% of the State budget and an assurance level equal to the State's budget plus variability limit. The assurance level for Texas was set at 347,476 tons. The CSAPR assurance provisions are triggered if the State's emissions for a year exceed the assurance level. These assurance provisions require some sources to surrender two additional allowances per ton beyond the amount equal to their actual emissions, depending on their emissions and annual allocation level. In effect, under CSAPR, EGUs in Texas could emit above the allocation if willing to pay the market price of allowances and the cost associated with each incremental ton of emissions could triple if in the aggregate they exceeded the assurance level. The Texas trading program will have 248,393 tons of allowances allocated every year, with no ability to purchase additional allowances from sources outside of the State, preventing an increase beyond that annual allocation.[132] This includes an annual allocation of 10,000 allowances to the Supplemental Allowance pool. The Supplemental Allowance pool may grow over time as unused supplemental allowances remain available and allocations from retired units are placed in the supplemental pool but the total number of allowances that can be allocated in a control period from in this supplemental pool is limited to a maximum 54,711 tons plus the amount of any allowances placed in the pool that year from retired units and corrections. The 54,711-ton value is equal to 10,000 tons annually allocated to the pool plus 18% of the total annual allocation for participating units, mirroring the variability limit from CSAPR. The total number of allowances that can be allocated in a single year is therefore 293,104, which is the sum of the 238,393 budget for existing units plus 54,711. Annual average emissions for the covered sources will be less than or equal to 248,393 tons with some year to year variability constrained by the number of banked allowances and allowances available to be allocated during a control period from the Supplemental Allowance pool. If additional units opt into the program, additional allowances will be available corresponding to the amounts that those units would have been allocated under CSAPR. The projected SO_2 emissions from the affected Texas EGUs in the CSAPR + BART-elsewhere scenario were 266,600 tons per year. In a 2012 sensitivity analysis memo, EPA conducted a sensitivity analysis that confirmed that CSAPR would remain better-than-BART if Texas EGU emissions increased to approximately 317,100 tons.[133] Under the Texas SO_2 trading program, annual average EGU emissions are anticipated to remain well below 317,100 tons per year as annual allocations for participating units are

[132] We note the trading program does allow non-participating sources that previously had CSAPR allocations to opt-in to the trading program and receive an allocation equivalent to the CSAPR level allocation. Should some sources choose to opt-in to the program, the total number of allowances will increase by that amount.

[133] For the projected annual SO_2 emissions from Texas EGUs *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), available in the docket for this action, at table 2–4. Certain CSAPR budgets were increased after promulgation of the CSAPR final rule (and the increases were addressed in the 2012 CSAPR/BART sensitivity analysis memo), *See* memo titled ''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), available in the docket for this action. The increase in the Texas SO_2 budget was 50,517 tons which, when added to the Texas SO_2 emissions projected in the CSAPR + BART-elsewhere scenario of 266,600 tons, yields total potential SO_2 emissions from Texas EGUs of approximately 317,100 tons.

held at 248,393 tons per year. Sources not covered by the program emitted less than 27,500 tons of SO_2 in 2016 and are not projected to significantly increase from this level. Any new units would be required to be well controlled and similar to the existing units not covered by the program, they would not significantly increase total emissions of SO_2. Furthermore, as discussed above, any load shifting to these new non-participating units would be projected to result in a net decrease in emissions per unit of electricity generated and at most a small increase in total SO_2 emissions compared to them not having been brought into operation. We note that total emissions of SO_2 from all EGU sources in Texas in 2016 were 245,737 tons.

We also note that state-wide EGU emissions in Texas have decreased considerably since the 2002 baseline period, reflecting market changes and reductions due to requirements such as CAIR/CSAPR. In 2002, Texas EGU emissions were 560,860 tons of SO_2 compared to emissions of 245,737 tons in 2016, a reduction of over 56%. The Texas SO_2 trading program locks in the large majority of these reductions by limiting allocation of allowances to 248,393 tons per year for participating sources. While the Texas program does not include all EGU sources in the State, as discussed above, the EGUs outside of the program contribute relatively little to the total state emissions and these units on average are better controlled for SO_2 than the units subject to the Texas program.

C. Specific Texas SO_2 Trading Program Features

The Texas SO_2 Trading Program is an intrastate cap-and-trade program for listed covered sources in the State of Texas. The EPA is promulgating the Texas SO_2 Trading Program under 40 CFR 52.2312 and subpart FFFFF of part 97. The State of Texas may choose to remain under the Texas SO_2 Trading Program or replace it with an appropriate SIP. If the State of Texas is interested in pursuing delegation of the Texas SO_2 Trading Program, the request would need to provide a demonstration of the State's statutory authority to implement any delegated elements.

The Texas SO_2 Trading Program is modeled after the EPA's CSAPR SO_2 Group 2 Trading Program and satisfies the requirements of § 51.308(e)(2)(vi). Similar to the CSAPR SO_2 Group 2 Trading Program, the Texas SO_2 Trading Program sets an SO_2 emission budget for the State of Texas. Authorizations to emit SO_2, known as allowances, are allocated to affected units. The Texas SO_2 Trading Program provides flexibility to affected units and sources by allowing units and sources to determine their own compliance path; this includes adding or operating control technologies, upgrading or improving controls, switching fuels, and using allowances. Sources can buy and sell allowances and bank (save) allowances for future use as long as each source holds enough allowances to account for its emissions of SO_2 by the end of the compliance period.

Pursuant to the requirements of § 51.308(e)(2)(vi)(A), the applicability of the Texas SO_2 Trading Program is defined in 40 CFR 97.904. Section 97.904(a) identifies the subject units, which include all BART-eligible coal-fired EGUs, additional coal-fired EGUs, and several BART-eligible gas-fired and gas/fuel oil-fired EGUs, all of which were previously covered by the CSAPR SO_2 Group 2 Trading Program. Additionally, under 40 CFR 97.904(b), the EPA is providing an opportunity for any other unit in the State of Texas that was subject to the CSAPR SO_2 Group 2 Trading Program to opt-in to the Texas SO_2 Trading Program. We discuss in Section V.B above, how the applicability results in coverage of the Texas SO_2 trading program representing 81% of the total CSAPR allocation for Texas and 85% of the CSAPR allocations for existing units, and how potential shifts in generation would result in an insignificant change in emissions. The Texas SO_2 Trading Program establishes the statewide SO_2 budget for the subject units at 40 CFR 97.910(a). This budget is equal to the allowances for each subject unit identified under §§ 97.904(a) and 97.911(a). As units opt-in to the Texas SO_2 Trading under § 97.904(b), the allowances for each of these units will equal their CSAPR SO_2 Group 2 allowances under § 97.911(b). Additionally, the EPA has established a Supplemental Allowance Pool with a budget of 10,000 tons of SO_2 to provide compliance assistance to subject units and sources. Section 40 CFR 97.912 establishes how allowances are allocated from the Supplemental Allowance Pool to sources (collections of participating units at a facility) that have reported total emissions for that control period exceeding the total amounts of allowances allocated to the participating units at the source for that control period (before any allocation from the Supplemental Allowance Pool). For any control period, the maximum supplemental allocation from the Supplemental Allowance Pool that a source may receive is the amount by which the total emissions reported for its participating units exceed the total allocations to its participating units (before any allocation from the Supplemental Allowance Pool). If the total amount of allowances available for allocation from the Supplemental Allowance Pool for a control period is less than the sum of these maximum allocations, sources will receive less than the maximum supplemental allocation from the Supplemental Allowance Pool, where the amount of supplemental allocations for each source is determined in proportion to the sources' respective maximum allocations, with one exception. While all other sources required to participate in the trading program have flexibility to transfer allowances among multiple participating units under the same owner/operator when planning operations, Coleto Creek consists of only one coal-fired unit and is the only coal-fired unit in Texas owned and operated by Dynegy. To provide this source additional flexibility, Coleto Creek will be allocated its maximum supplemental allocation from the Supplemental Allowance Pool as long as there are sufficient allowances in the Supplemental Allowance Pool available for allocation, and its actual allocation will not be reduced in proportion with any reductions made to the supplemental allocations to other sources. Section 97.921 establishes how the Administrator will record the allowances for the Texas SO_2 Trading Program and ensures that the Administrator will not record more allowances than are available under the program consistent with 40 CFR 51.308(e)(2)(vi)(B). The monitoring, recordkeeping, and reporting provisions for the Texas SO_2 Trading Program at 40 CFR 97.930–97.935 are consistent with those requirements in the CSAPR SO_2 Group 2 Trading Program. The provisions in 40 CFR 97.930–97.935 require the subject units to comply with the monitoring, recordkeeping, and reporting requirements for SO_2 emissions in 40 CFR part 75; thereby satisfying the requirements of § 51.308(e)(2)(vi)(C)–(E). The Texas SO_2 Trading Program will be implemented by the EPA using the Allowance Management System. The use of the Allowance Management System will provide a consistent approach to implementation and tracking of allowances and emissions for the EPA, subject sources, and the public consistent with the requirements of 40 CFR 51.308(e)(2)(vi)(F). Additionally, the EPA is promulgating requirements at 40 CFR 97.913–97.918 for designated

and alternate designated representatives that satisfy the requirements of 40 CFR 51.308(e)(2)(vi)(G) and are consistent with the EPA's other trading programs under 40 CFR part 97. Allowance transfer provisions for the Texas SO_2 Trading Program at 40 CFR 97.922 and 97.923 provide procedures that allow timely transfer and recording of allowances; these provisions will minimize administrative barriers to the operation of the allowance market and ensure that such procedures apply uniformly to all sources and other potential participants in the allowance market, consistent with 40 CFR 51.308(e)(2)(vi)(H). Compliance provisions for the Texas SO_2 Trading Program at 40 CFR 97.924 prohibit a source from emitting a total tonnage of SO_2 that exceeds the tonnage value of its SO_2 allowance holdings as required by 40 CFR 51.308(e)(2)(vi)(I). The Texas SO_2 Trading Program includes automatic allowance surrender provisions at 40 CFR 97.924(d) that apply consistently from source to source and the tonnage value of the allowances deducted shall equal at least three times the tonnage of the excess emissions, consistent with the penalty provisions at 40 CFR 51.308(e)(2)(vi)(J). The Texas SO_2 Trading Program provides for banking of allowances under 40 CFR 97.926; Texas SO_2 Trading Program allowances are valid for compliance in the control period of issuance or may be banked for future use, consistent with 40 CFR 51.308(e)(2)(vi)(K). The EPA is promulgating the Texas SO_2 Trading Program as a BART-alternative for Texas' Regional Haze obligations. The CAA and EPA's implementing regulations require periodic review of the state's regional haze approach under 40 CFR 51.308(g) to evaluate progress towards the reasonable progress goals for Class I areas located within the State and Class I areas located outside the State affected by emissions from within the State. Because the Texas SO_2 Trading Program is a BART-alternative for Texas' Regional Haze obligations, this program is required to be reviewed in each progress report. We anticipate this progress report will provide the information needed to assess program performance, as required by 40 CFR 51.308(e)(2)(vi)(L).

As previously discussed, the EPA modeled the Texas SO_2 Trading Program after the EPA's CSAPR SO_2 Group 2 Trading Program. Relying on a trading program structure that is already in effect enables the EPA, the subject sources, and the public to benefit from the use of the Allowance Management System, forms, and monitoring, recordkeeping, and reporting requirements. However, there are a few features of the Texas SO_2 Trading Program that are separate and unique from the EPA's CSAPR. First, the program does not address new units that are built after the inception of the program; these units would be permitted and constructed using emission control technology determined under either BACT or LAER review, as applicable. Second, the Texas SO_2 Trading Program provides that sources that were previously covered under the CSAPR SO_2 Group 2 Trading Program, but are not subject to the requirements of subpart FFFFF of part 97 can opt-in to the Texas SO_2 Trading Program at the allocation level established under CSAPR. Finally, the Texas SO_2 Trading Program includes a Supplemental Allowance Pool to provide some compliance assistance to units whose emissions exceed their allocations. The amount of allocations to the Supplemental Allowance Pool each year is less than the portion of the Texas budget under the CSAPR SO_2 Group 2 Trading Program that would have been set aside each year for new units (and which would have been allocated to existing units to the extent not needed by new units).

VI. Final Action

A. Regional Haze

We are finalizing our identification of BART-eligible EGUs. We are approving the portion of the Texas Regional Haze SIP that addresses the BART requirement for EGUs for PM. As discussed elsewhere in this preamble, we are replacing Texas' reliance on CAIR with reliance on CSAPR to address the NO_X BART requirements for EGUs. To address the SO_2 BART requirements for EGUs, we are promulgating a FIP to replace Texas' reliance on CAIR with reliance on an intrastate SO_2 trading program for certain EGUs identified in Table 11 below. This FIP is codified under 40 CFR 52.2312 and subpart FFFFF of part 97. We are finalizing our determination that BART-eligible EGUs not covered by the intrastate SO_2 trading program are not subject-to-BART. This final action is also part of the long-term strategy to address the reasonable progress requirements for Texas EGUs, which remain outstanding after the remand of our reasonable progress FIP by the Fifth Circuit Court of Appeals. However, further assessment and analysis of the CAA's reasonable progress factors will be needed before the Regional Haze Rule's reasonable progress requirements will be fully addressed for Texas.

TABLE 11—TEXAS EGUS SUBJECT TO THE FIP SO_2 TRADING PROGRAM

Owner/operator	Units
AEP	Welsh Power Plant Units 1, 2, and 3.
	H W Pirkey Power Plant Unit 1.
	Wilkes Units 1*, 2*, and 3*.
CPS Energy	JT Deely Units 1 and 2, Sommers Units 1* and 2*.
Dynegy	Coleto Creek Unit 1.
LCRA	Fayette/Sam Seymour Units 1 and 2.
Luminant	Big Brown Units 1 and 2.
	Martin Lake Units 1, 2, and 3.
	Monticello Units 1, 2, and 3.
	Sandow Unit 4.
	Stryker ST2*.
	Graham Unit 2*.
NRG	Limestone Units 1 and 2.
	WA Parish Units WAP4*, WAP5, WAP6, WAP7.
Xcel	Tolk Station Units 171B and 172B.
	Harrington Units 061B, 062B, and 063B.
El Paso Electric	Newman Units 2*, 3*, and 4*.

* Gas-fired or gas/fuel oil-fired units.

B. Interstate Visibility Transport

In our January 5, 2016 final action [134] we disapproved the portion of Texas' SIP revisions intended to address interstate visibility transport for six NAAQS, including the 1997 8-hour ozone and 1997 $PM_{2.5}$.[135] That rulemaking was challenged, however, and in December 2016, following the submittal of a request by the EPA for a voluntary remand of the parts of the rule under challenge, the Fifth Circuit Court of Appeals remanded the rule in its entirety without vacatur.[136] In our January 4, 2017 proposed action we proposed to reconsider the basis of our prior disapproval of Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. We have reconsidered the basis of our prior disapproval and are disapproving Texas' SIP revisions addressing interstate visibility transport under CAA section 110(a)(2)(D)(i)(II) for six NAAQS. We are finalizing a FIP to fully address Texas' interstate visibility transport obligations for the following six NAAQS: (1) 1997 8-hour ozone, (2) 1997 $PM_{2.5}$ (annual and 24 hour), (3) 2006 $PM_{2.5}$ (24-hour), (4) 2008 8-hour ozone, (5) 2010 1-hour NO_2 and (6) 2010 1-hour SO_2. The BART FIP emission reductions are consistent with the level of emission reductions relied upon by other states during Regional Haze consultation, and it is therefore adequate to ensure that emissions from Texas do not interfere with measures to protect visibility in nearby states in accordance with CAA section 110(a)(2)(D)(i)(II).

VII. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has determined that this action imposes a collection burden that is subject to the Paperwork Reduction Act (PRA). 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. Therefore, the EPA will obtain a valid OMB control number unless OMB determines that these collection activities are covered under an existing information collection request (ICR) and associated OMB control number. If the EPA obtains a new OMB control number or amends an existing ICR with a valid OMB control number, the EPA will provide notice in the **Federal Register** as required by the PRA and the implementing regulations, with burden estimates, and, if necessary, publish a technical amendment to 40 CFR part 9 to display the new OMB control number for the information collection activities contained in this final rule.

D. Regulatory Flexibility Act

I certify that this action will not have a significant impact on a substantial number of small entities. 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 rule does not impose any requirements or create impacts on small entities. This FIP action under Section 110 of the CAA will not create any new requirement with which small entities must comply. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* emission limitations) may or will flow from this action does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. We have therefore concluded that, this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments.

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.

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

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

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

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks [137] applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. EPA interprets EO 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the EO has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the extent this rule will limit emissions of SO_2, the rule will have a beneficial effect on children's health by reducing air pollution.

[134] 81 FR 296 (Jan. 5, 2016).

[135] Specifically, we previously disapproved the relevant portion of these Texas' SIP submittals: April 4, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); May 1, 2008: 1997 8-hour Ozone, 1997 $PM_{2.5}$ (24-hour and annual); November 23, 2009: 2006 24-hour $PM_{2.5}$; December 7, 2012: 2010 NO_2; December 13, 2012: 2008 8-hour Ozone; May 6, 2013: 2010 1-hour SO_2 (Primary NAAQS). 79 FR 74818, 74821; 81 FR 296, 302.

[136] *Texas* v. *EPA,* 829 F.3d 405 (5th Cir. 2016).

[137] 62 FR 19885 (Apr. 23, 1997).

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. The EPA has decided to use the applicable monitoring requirements of 40 CFR part 75. Part 75 already incorporates a number of voluntary consensus standards. Consistent with the Agency's Performance Based Measurement System (PBMS), part 75 sets forth performance criteria that allow the use of alternative methods to the ones set forth in part 75. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. At this time, EPA is not recommending any revisions to part 75; however, EPA periodically revises the test procedures set forth in part 75. When EPA revises the test procedures set forth in part 75 in the future, EPA will address the use of any new voluntary consensus standards that are equivalent. Currently, even if a test procedure is not set forth in part 75, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified; however, any alternative methods must be approved through the petition process under 40 CFR 75.66 before they are used.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The rule limits emissions of SO_2 from certain facilities in Texas.

L. Congressional Review Act (CRA)

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Best available retrofit technology, Incorporation by reference, Intergovernmental relations, Interstate transport of pollution, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur dioxides.

Dated: September 29, 2017.

E. Scott Pruitt,

Administrator.

40 CFR parts 52 and 97 are 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 SS—Texas

■ 2. In § 52.2270, the second table in paragraph (e) is amended by adding the entry ''Texas Regional Haze BART Requirement for EGUs for PM'' at the end of the table to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Comments
*	*	*	*	*
Texas Regional Haze BART Requirement for EGUs for PM.	Statewide	3/31/2009	10/17/2017, [insert **Federal Register** citation].	

■ 3. Section 52.2304 is amended by adding paragraph (f) to read as follows:

§ 52.2304 Visibility protection.

* * * * *

(f) *Measures addressing disapproval associated with NO_X and SO_2.* (1) The deficiencies associated with NO_X identified in EPA's limited disapproval of the regional haze plan submitted by Texas on March 31, 2009, and EPA's disapprovals in paragraph (d) of this section, are satisfied by § 52.2283(d).

(2) The deficiencies associated with SO_2 identified in EPA's limited disapproval of the regional haze plan submitted by Texas on March 31, 2009, and EPA's disapprovals in paragraph (d of this section), are satisfied by § 52.2312.

■ 4. Add § 52.2312 to subpart SS to read as follows:

§ 52.2312 Requirements for the control of SO_2 emissions to address in full or in part requirements related to BART, reasonable progress, and interstate visibility transport.

(a) The Texas SO_2 Trading Program provisions set forth in subpart FFFFF of part 97 of this chapter constitute the Federal Implementation Plan provisions fully addressing Texas' obligations with respect to best available retrofit technology under section 169A of the Act and the deficiencies associated with EPA's disapprovals in § 52.2304(d) and partially addressing Texas' obligations with respect to reasonable progress under section 169A of the Act, as those obligations relate to emissions of sulfur dioxide (SO_2) from electric generating units (EGUs).

(b) The provisions of subpart FFFFF of part 97 of this chapter apply to sources in Texas but not sources in Indian country located within the

borders of Texas, with regard to emissions in 2019 and each subsequent year.

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM, CAIR NO_X AND SO_2 TRADING PROGRAMS, CSAPR NO_X AND SO_2 TRADING PROGRAMS, AND TEXAS SO_2 TRADING PROGRAM

■ 5. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 6. Revise the part heading for part 97 to read as set forth above.

■ 7. Add subpart FFFFF consisting of §§ 97.901 through 97.935 to read as follows:

Subpart FFFFF—Texas SO_2 Trading Program

Sec.

Subpart FFFFF—Texas SO_2 Trading Program

§ 97.901 Purpose.

This subpart sets forth the general, designated representative, allowance, and monitoring provisions for the Texas SO_2 Trading Program under sections 110 and 169A of the Clean Air Act and 40 CFR 52.2312, as a means of addressing Texas' obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to sulfur dioxide emissions from electricity generating units.

§ 97.902 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Acid rain program means a multi-state SO_2 and NO_X air pollution control and emission reduction program established by the Administrator under title IV of the Clean Air Act and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Director of the Clean Air Markets Division (or its successor determined by the Administrator) of the United States Environmental Protection Agency, the Administrator's duly authorized representative under this subpart.

Allocate or *allocation* means, with regard to Texas SO_2 Trading Program allowances, the determination by the Administrator, State, or permitting authority, in accordance with this subpart or any SIP revision submitted by the State approved by the Administrator, of the amount of such Texas SO_2 Trading Program allowances to be initially credited, at no cost to the recipient, to a Texas SO_2 Trading Program unit.

Allowance management system means the system by which the Administrator records allocations, transfers, and deductions of Texas SO_2 Trading Program allowances under the Texas SO_2 Trading Program. Such allowances are allocated, recorded, held, transferred, or deducted only as whole allowances.

Allowance management system account means an account in the Allowance Management System established by the Administrator for purposes of recording the allocation, holding, transfer, or deduction of Texas SO_2 Trading Program allowances.

Allowance transfer deadline means, for a control period in a given year, midnight of March 1 (if it is a business day), or midnight of the first business day thereafter (if March 1 is not a business day), immediately after such control period and is the deadline by which a Texas SO_2 Trading Program allowance transfer must be submitted for recordation in a Texas SO_2 Trading Program source's compliance account in order to be available for use in complying with the source's Texas SO_2 Trading Program emissions limitation for such control period in accordance with §§ 97.906 and 97.924.

Alternate designated representative means, for a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to act on behalf of the designated representative in matters pertaining to the Texas SO_2 Trading Program. If the Texas SO_2 Trading Program source is also subject to the Acid Rain Program or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the alternate designated representative as defined in the respective program.

Authorized account representative means, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer and otherwise dispose of Texas SO_2 trading Program allowances held in the general account and, for a Texas SO_2 Trading Program source's compliance account, the designated representative of the source.

Automated data acquisition and handling system or *DAHS* means the component of the continuous emission monitoring system, or other emissions monitoring system approved for use under this subpart, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by this subpart.

Business day means a day that does not fall on a weekend or a federal holiday.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.*

Coal means ''coal'' as defined in § 72.2 of this chapter.

Commence commercial operation means, with regard to a Texas SO_2 Trading Program unit, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means an Allowance Management System account, established by the Administrator for a Texas SO_2 Trading Program source under this subpart, in which any Texas SO_2 Trading Program allowance allocations to the Texas SO_2 Trading Program units at the source are recorded and in which are held any Texas SO_2 Trading Program allowances available for use for a control period in a given year in complying with the source's Texas SO_2 Trading Program emissions limitation in accordance with §§ 97.906 and 97.924.

Continuous emission monitoring system or *CEMS* means the equipment required under this subpart to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes and using an automated data acquisition and handling system (DAHS), a permanent record of SO_2 emissions, stack gas volumetric flow rate, stack gas moisture content, and O_2 or CO_2 concentration (as applicable), in a manner consistent with part 75 of this chapter and §§ 97.930 through 97.935. The following systems are the principal types of continuous emission monitoring systems:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A SO_2 monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(4) A CO_2 monitoring system, consisting of a CO_2 pollutant concentration monitor (or an O_2 monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An O_2 monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period starting January 1 of a calendar year, except as provided in § 97.906(c)(3), and ending on December 31 of the same year, inclusive.

CSAPR NO_X Ozone Season Group 2 Trading Program means a multi-state NO_X air pollution control and emission reduction program established in accordance with subpart EEEEE of this part and § 52.38(b)(1), (b)(2)(i) and (iii), (b)(6) through (11), and (b)(13) of this chapter (including such a program that is revised in a SIP revision approved by the Administrator under § 52.38(b)(7) or (8) of this chapter or that is established in a SIP revision approved by the Administrator under § 52.38(b)(6) or (9) of this chapter), as a means of mitigating interstate transport of ozone and NO_X.

Designated representative means, for a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the Texas SO_2 Trading Program. If the Texas SO_2 Trading Program source is also subject to the Acid Rain Program or CSAPR NO_X Ozone Season Group 2 Trading Program, then this natural person shall be the same natural person as the designated representative as defined in the respective program.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the designated representative, and as modified by the Administrator:

(1) In accordance with this subpart; and

(2) With regard to a period before the unit or source is required to measure, record, and report such air pollutants in accordance with this subpart, in accordance with part 75 of this chapter.

Excess emissions means any ton of emissions from the Texas SO_2 Trading Program units at a Texas SO_2 Trading Program source during a control period in a given year that exceeds the Texas SO_2 Trading Program emissions limitation for the source for such control period.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in 2005 or any calendar year thereafter.

General account means an Allowance Management System account, established under this subpart, which is not a compliance account.

Generator means a device that produces electricity.

Heat input means, for a unit for a specified period of unit operating time, the product (in mmBtu) of the gross calorific value of the fuel (in mmBtu/lb) fed into the unit multiplied by the fuel feed rate (in lb of fuel/time) and unit operating time, as measured, recorded, and reported to the Administrator by the designated representative and as modified by the Administrator in accordance with this subpart and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust.

Heat input rate means, for a unit, the quotient (in mmBtu/hr) of the amount of heat input for a specified period of unit operating time (in mmBtu) divided by unit operating time (in hr) or, for a unit and a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Indian country means ''Indian country'' as defined in 18 U.S.C. 1151.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emission monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe, rounded to the nearest tenth) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount (in MWe, rounded to the nearest tenth) as of such completion as specified by the person conducting the physical change.

Natural gas means ''natural gas'' as defined in § 72.2 of this chapter.

Natural person means a human being, as opposed to a legal person, which may be a private (*i.e.,* business entity or non-governmental organization) or public (*i.e.,* government) organization.

Operate or *operation* means, with regard to a unit, to combust fuel.

Operator means, for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at a source respectively, any person who operates, controls, or supervises a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit and shall include, but not be limited to, any holding company, utility system, or plant manager of such source or unit.

Owner means, for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at a source, any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit;

(2) Any holder of a leasehold interest in a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit, provided that, unless expressly provided for in a leasehold agreement, ''owner'' shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Texas SO_2 Trading Program unit; and

(3) Any purchaser of power from a Texas SO_2 Trading Program unit at the source or the Texas SO_2 Trading Program unit under a life-of-the-unit, firm power contractual arrangement.

Permanently retired means, with regard to a unit, a unit that is unavailable for service and that the unit's owners and operators do not expect to return to service in the future.

Permitting authority means ''permitting authority'' as defined in §§ 70.2 and 71.2 of this chapter.

Receive or *receipt of* means, when referring to the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Administrator in the regular course of business.

Recordation, record, or *recorded* means, with regard to Texas SO_2 Trading Program allowances, the moving of Texas SO_2 Trading Program allowances by the Administrator into, out of, or between Allowance Management System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Replacement, replace, or *replaced* means, with regard to a unit, the demolishing of a unit, or the permanent retirement and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or retired unit (the replaced unit).

Serial number means, for a Texas SO_2 Trading Program allowance, the unique identification number assigned to each Texas SO_2 Trading Program allowance by the Administrator.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. This definition does not change or otherwise affect the definition of ''major source'', ''stationary source'', or ''source'' as set forth and implemented in a title V operating permit program or any other program under the Clean Air Act.

State means Texas.

Submit or *serve* means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery;

(4) Provided that compliance with any ''submission'' or ''service'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Texas SO_2 Trading Program means an SO_2 air pollution control and emission reduction program established in accordance with this subpart and 40 CFR 52.2312 (including such a program that is revised in a SIP revision approved by the Administrator), or established in a SIP revision approved by the Administrator, as a means of addressing the State's obligations with respect to BART, reasonable progress, and interstate visibility transport as those obligations relate to emissions of SO_2 from electricity generating units.

Texas SO_2 Trading Program allowance means a limited authorization issued and allocated by the Administrator under this subpart, or by a State or permitting authority under a SIP revision approved by the Administrator, to emit one ton of SO_2 during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Texas SO_2 Trading Program.

Texas SO_2 Trading Program allowance deduction or *deduct Texas SO_2 Trading Program allowances* means the permanent withdrawal of Texas SO_2 Trading Program allowances by the Administrator from a compliance account (*e.g.,* in order to account for compliance with the Texas SO_2 Trading Program emissions limitation).

Texas SO_2 Trading Program allowances held or *hold Texas SO_2 Trading Program allowances* means the Texas SO_2 Trading Program allowances treated as included in an Allowance Management System account as of a specified point in time because at that time they:

(1) Have been recorded by the Administrator in the account or transferred into the account by a correctly submitted, but not yet recorded, Texas SO_2 Trading Program allowance transfer in accordance with this subpart; and

(2) Have not been transferred out of the account by a correctly submitted, but not yet recorded, Texas SO_2 Trading Program allowance transfer in accordance with this subpart.

Texas SO_2 Trading Program emissions limitation means, for a Texas SO_2 Trading Program source, the tonnage of SO_2 emissions authorized in a control period by the Texas SO_2 Trading Program allowances available for deduction for the source under § 97.924(a) for such control period.

Texas SO_2 Trading Program source means a source that includes one or more Texas SO_2 Trading Program units.

Texas SO_2 Trading Program unit means a unit that is subject to the Texas SO_2 Trading Program under § 97.904.

Unit means a stationary, fossil-fuel-fired boiler, stationary, fossil-fuel-fired combustion turbine, or other stationary, fossil-fuel-fired combustion device. A unit that undergoes a physical change or is moved to a different location or source shall continue to be treated as the same unit. A unit (the replaced unit) that is replaced by another unit (the replacement unit) at the same or a different source shall continue to be treated as the same unit, and the replacement unit shall be treated as a separate unit.

Unit operating day means, with regard to a unit, a calendar day in which the unit combusts any fuel.

Unit operating hour or hour of unit operation means, with regard to a unit, an hour in which the unit combusts any fuel.

§ 97.903 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this subpart are defined as follows:

BART—best available retrofit technology
Btu—British thermal unit
CO_2—carbon dioxide
CSAPR—Cross-State Air Pollution Rule
H_2O—water
hr—hour
lb—pound
mmBtu—million Btu
MWe—megawatt electrical
NO_X—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SIP—State implementation plan
SO_2—sulfur dioxide

§ 97.904 Applicability.

(a) Each of the units in Texas listed in the table in § 97.911(a)(1) shall be a Texas SO_2 Trading Program unit, and each source that includes one or more such units shall be a Texas SO_2 Trading Program source, subject to the requirements of this subpart.

(b) *Opt-in provisions.* (1) The provisions of paragraph (b) of this section apply to each unit in Texas that:

(i) Is listed in the table entitled ''Unit Level Allocations under the CSAPR FIPs after Tolling,'' EPA–HQ–OAR–2009–0491–5028, available at *www.regulations.gov;*

(ii) Is not a Texas SO_2 Trading Program unit under paragraph (a) of this section; and

(iii) Has not received a determination of non-applicability under 40 CFR 97.404(c), 97.504(c), 97.704(c), or 97.804(c).

(2) The designated representative of a unit described in paragraph (b)(1) of this section may submit an opt-in application seeking authorization for the unit to participate in the Texas SO_2 Trading Program, provided that the unit has operated in the calendar year preceding submission of the opt-in application. Opt-in applications must be submitted in a format specified by the Administrator no later than October 1 of the year preceding the first control period for which authorization to participate in the Texas SO_2 Trading Program is sought.

(3) The Administrator shall review applications for opt-in units and respond in writing to the designated representative within 30 business days. The Administrator will authorize the unit to participate in the Texas SO_2 Trading Program if the provisions of paragraphs (b)(1) and (2) of this section are satisfied.

(4) Following submission of an opt-in application and authorization in accordance with paragraphs (b)(2) and (3) of this section, the unit shall be a Texas SO_2 Trading Program unit, and the source that includes the unit shall be a Texas SO_2 Trading Program source, subject to the requirements of this subpart starting on the next January 1. The unit shall remain subject to the requirements of this subpart for the life of the source, with the exception for retired units under § 97.905.

(5) Opt-in units shall receive allowance allocations as provided in § 97.911(b). These allocations shall be recorded into a source's compliance account per the recordation schedule in § 97.921.

(6) The Administrator will maintain a publicly accessible record of all units that become Texas SO_2 Trading Program units under paragraph (b) of this section and of all allocations of allowances to such units. Such public access may be provided through posting of information on a Web site.

§ 97.905 Retired unit exemptions.

(a)(1) Any Texas SO_2 Trading Program unit that is permanently retired shall be exempt from § 97.906(b) and (c)(1), § 97.924, and §§ 97.930 through 97.935.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Texas SO_2 Trading Program unit is permanently retired. Within 30 days of the unit's permanent retirement, the designated representative shall submit a statement to the Administrator. The statement shall state, in a format prescribed by the Administrator, that the unit was permanently retired on a specified date and will comply with the requirements of paragraph (b) of this section.

(b) *Special provisions.* (1) A unit exempt under paragraph (a) of this section shall not emit any SO_2, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Texas SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section shall lose its exemption on the first date on which the unit resumes operation. A retired unit that resumes operation will not receive an allowance allocation under § 97.911. The unit may receive allowances from the Supplemental Allowance Pool pursuant to § 97.912. All other provisions of Subpart FFFFF regarding monitoring, reporting, recordkeeping and compliance will apply on the first date on which the unit resumes operation.

§ 97.906 General provisions.

(a) *Designated representative requirements.* The owners and operators shall comply with the requirement to have a designated representative, and may have an alternate designated representative, in accordance with §§ 97.913 through 97.918.

(b) *Emissions monitoring, reporting, and recordkeeping requirements.* (1) The owners and operators, and the designated representative, of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§ 97.930 through 97.935.

(2) The emissions data determined in accordance with §§ 97.930 through 97.935 shall be used to calculate allocations of Texas SO_2 Trading Program allowances under § 97.912 and to determine compliance with the Texas SO_2 Trading Program emissions limitation under paragraph (c) of this

section, provided that, for each monitoring location from which mass emissions are reported, the mass emissions amount used in calculating such allocations and determining such compliance shall be the mass emissions amount for the monitoring location determined in accordance with §§ 97.930 through 97.935 and rounded to the nearest ton, with any fraction of a ton less than 0.50 being deemed to be zero and any fraction of a ton greater than or equal to 0.50 being deemed to be a whole ton.

(c) *SO_2 emissions requirements*—(1) *Texas SO_2 Trading Program emissions limitation.* (i) As of the allowance transfer deadline for a control period in a given year, the owners and operators of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall hold, in the source's compliance account, Texas SO_2 Trading Program allowances available for deduction for such control period under § 97.924(a) in an amount not less than the tons of total SO_2 emissions for such control period from all Texas SO_2 Trading Program units at the source.

(ii) If total SO_2 emissions during a control period in a given year from the Texas SO_2 Trading Program units at a Texas SO_2 Trading Program source are in excess of the Texas SO_2 Trading Program emissions limitation set forth in paragraph (c)(1)(i) of this section, then:

(A) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall hold the Texas SO_2 Trading Program allowances required for deduction under § 97.924(d); and

(B) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act, and each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart and the Clean Air Act.

(2) *Compliance periods.* A Texas SO_2 Trading Program unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2019 or the deadline for meeting the unit's monitor certification requirements under § 97.930(b) and for each control period thereafter.

(3) *Vintage of Texas SO_2 Trading Program allowances held for compliance.* (i) A Texas SO_2 Trading Program allowance held for compliance with the requirements under paragraph (c)(1)(i) of this section for a control period in a given year must be a Texas SO_2 Trading Program allowance that was allocated for such control period or a control period in a prior year.

(ii) A Texas SO_2 Trading Program allowance held for compliance with the requirements under paragraph (c)(1)(ii)(A) of this section for a control period in a given year must be a Texas SO_2 Trading Program allowance that was allocated for a control period in a prior year or the control period in the given year or in the immediately following year.

(4) *Allowance Management System requirements.* Each Texas SO_2 Trading Program allowance shall be held in, deducted from, or transferred into, out of, or between Allowance Management System accounts in accordance with this subpart.

(5) *Limited authorization.* A Texas SO_2 Trading Program allowance is a limited authorization to emit one ton of SO_2 during the control period in one year. Such authorization is limited in its use and duration as follows:

(i) Such authorization shall only be used in accordance with the Texas SO_2 Trading Program; and

(ii) Notwithstanding any other provision of this subpart, the Administrator has the authority to terminate or limit the use and duration of such authorization to the extent the Administrator determines is necessary or appropriate to implement any provision of the Clean Air Act.

(6) *Property right.* A Texas SO_2 Trading Program allowance does not constitute a property right.

(d) *Title V permit requirements.* (1) No title V permit revision shall be required for any allocation, holding, deduction, or transfer of Texas SO_2 Trading Program allowances in accordance with this subpart.

(2) A description of whether a unit is required to monitor and report SO_2 emissions using a continuous emission monitoring system (under subpart B of part 75 of this chapter), an excepted monitoring system (under appendices D and E to part 75 of this chapter), a low mass emissions excepted monitoring methodology (under § 75.19 of this chapter), or an alternative monitoring system (under subpart E of part 75 of this chapter) in accordance with §§ 97.930 through 97.935 may be added to, or changed in, a title V permit using minor permit modification procedures in accordance with §§ 70.7(e)(2) and 71.7(e)(1) of this chapter, provided that the requirements applicable to the described monitoring and reporting (as added or changed, respectively) are already incorporated in such permit. This paragraph explicitly provides that the addition of, or change to, a unit's description as described in the prior sentence is eligible for minor permit modification procedures in accordance with §§ 70.7(e)(2)(i)(B) and 71.7(e)(1)(i)(B) of this chapter.

(e) *Additional recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of each Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall keep on site at the source each of the following documents (in hardcopy or electronic format) for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Administrator.

(i) The certificate of representation under § 97.916 for the designated representative for the source and each Texas SO_2 Trading Program unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such certificate of representation and documents are superseded because of the submission of a new certificate of representation under § 97.916 changing the designated representative.

(ii) All emissions monitoring information, in accordance with this subpart.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under, or to demonstrate compliance with the requirements of, the Texas SO_2 Trading Program.

(2) The designated representative of a Texas SO_2 Trading Program source and each Texas SO_2 Trading Program unit at the source shall make all submissions required under the Texas SO_2 Trading Program, except as provided in § 97.918. This requirement does not change, create an exemption from, or otherwise affect the responsible official submission requirements under a title V operating permit program in parts 70 and 71 of this chapter.

(f) *Liability.* (1) Any provision of the Texas SO_2 Trading Program that applies to a Texas SO_2 Trading Program source or the designated representative of a Texas SO_2 Trading Program source shall also apply to the owners and operators of such source and of the Texas SO_2 Trading Program units at the source.

(2) Any provision of the Texas SO_2 Trading Program that applies to a Texas SO_2 Trading Program unit or the designated representative of a Texas SO_2

Trading Program unit shall also apply to the owners and operators of such unit.

(g) *Effect on other authorities.* No provision of the Texas SO_2 Trading Program or exemption under § 97.905 shall be construed as exempting or excluding the owners and operators, and the designated representative, of a Texas SO_2 Trading Program source or Texas SO_2 Trading Program unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 97.907 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Texas SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Texas SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Texas SO_2 Trading Program, is not a business day, the time period shall be extended to the next business day.

§ 97.908 Administrative appeal procedures.

The administrative appeal procedures for decisions of the Administrator under the Texas SO_2 Trading Program are set forth in part 78 of this chapter.

§ 97.909 [Reserved]

§ 97.910 Texas SO_2 Trading Program and Supplemental Allowance Pool Budgets.

(a) The budgets for the Texas SO_2 Trading Program and Supplemental Allowance Pool for the control periods in 2019 and thereafter are as follows:

(1) The Texas SO_2 Trading Program budget for the control period in 2019 and each future control period is 238,393 tons.

(2) The Texas SO_2 Trading Program Supplemental Allowance Pool budget for the control period in 2019 and each future control period is 10,000 tons.

(b) [reserved]

§ 97.911 Texas SO_2 Trading Program allowance allocations.

(a)(1) Except as provided in paragraph (a)(2) of this section, Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program budget will be allocated, for the control periods in 2019 and each year thereafter, as provided in the following table:

Texas SO_2 trading program units	ORIS code	Texas SO_2 trading program allocation
Big Brown Unit 1	3497	8,473
Big Brown Unit 2	3497	8,559
Coleto Creek Unit 1	6178	9,057
Fayette/Sam Seymour Unit 1	6179	7,979
Fayette/Sam Seymour Unit 2	6179	8,019
Graham Unit 2	3490	226
H W Pirkey Power Plant Unit 1	7902	8,882
Harrington Unit 061B	6193	5,361
Harrington Unit 062B	6193	5,255
Harrington Unit 063B	6193	5,055
JT Deely Unit 1	6181	6,170
JT Deely Unit 2	6181	6,082
Limestone Unit 1	298	12,081
Limestone Unit 2	298	12,293
Martin Lake Unit 1	6146	12,024
Martin Lake Unit 2	6146	11,580
Martin Lake Unit 3	6146	12,236
Monticello Unit 1	6147	8,598
Monticello Unit 2	6147	8,795
Monticello Unit 3	6147	12,216
Newman Unit 2	3456	1
Newman Unit 3	3456	1
Newman Unit 4	3456	2
Sandow Unit 4	6648	8,370
Sommers Unit 1	3611	55
Sommers Unit 2	3611	7
Stryker Unit ST2	3504	145
Tolk Station Unit 171B	6194	6,900
Tolk Station Unit 172B	6194	7,062
WA Parish Unit WAP4	3470	3
WA Parish Unit WAP5	3470	9,580
WA Parish Unit WAP6	3470	8,900
WA Parish Unit WAP7	3470	7,653
Welsh Power Plant Unit 1	6139	6,496
Welsh Power Plant Unit 2	6139	7,050
Welsh Power Plant Unit 3	6139	7,208
Wilkes Unit 1	3478	14
Wilkes Unit 2	3478	2
Wilkes Unit 3	3478	3

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation pursuant to the table in paragraph (a)(1) of this section does not operate, starting after 2018, during the control period in two consecutive years, such unit will not be allocated the Texas SO_2 Trading Program allowances provided in paragraph (a)(1) of this

section for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All Texas SO_2 Trading Program allowances that would otherwise have been allocated to such unit will be allocated under the Texas Supplemental Allowance Pool under 40 CFR 97.912.

(b)(1) A unit that becomes a Texas SO_2 Trading Program unit pursuant to § 97.904(b) will receive an allocation of Texas SO_2 Trading Program allowances equal to the SO_2 allocation shown for the unit in the table referenced in § 97.404(b)(1) (ignoring the years shown in the column headings in the table) for the control period in each year while the unit is a Texas SO_2 Trading Program unit, provided that the unit has operated during the calendar year immediately preceding the year of each such control period.

(2) If a unit that becomes a Texas SO_2 Trading Program unit pursuant to § 97.904(b) does not operate during a given calendar year, no Texas SO_2 Trading Program allowances will be allocated to that unit for the control period in the following year or any subsequent year, nor will any allowances that would otherwise have been allocated to such unit under paragraph (b)(1) of this section be made available for use by any other unit under the Texas Supplemental Allowance Pool or otherwise.

(c) *Units incorrectly allocated Texas SO_2 Trading Program allowances.* (1) For each control period in 2019 and thereafter, if the Administrator determines that Texas SO_2 Trading Program allowances were incorrectly allocated under paragraph (a) or (b) of this section, or under a provision of a SIP revision approved by the Administrator, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such Texas SO_2 Trading Program allowances under § 97.921.

(3) If the Administrator already recorded such Texas SO_2 Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will deduct from the account in which such Texas SO_2 Trading Program allowances were recorded an amount of Texas SO_2 Trading Program allowances allocated for the same or a prior control period equal to the amount of such already recorded Texas SO_2 Trading Program allowances. The authorized account representative shall ensure that there are sufficient Texas SO_2 Trading Program allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such Texas SO_2 Trading Program allowances under § 97.921 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under § 97.924(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded Texas SO_2 Trading Program allowances.

(5) With regard to the Texas SO_2 Trading Program allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (a) of this section, the Administrator will transfer such Texas SO_2 Trading Program allowances to the Texas Supplemental Allowance Pool under 40 CFR 97.912. With regard to the Texas SO_2 Trading Program allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (b) of this section, the Administrator will retire such Texas SO_2 Trading Program allowances.

§ 97.912 Texas SO_2 Trading Program Supplemental Allowance Pool.

(a) For each control period in 2019 and thereafter, the Administrator will allocate Texas SO_2 Trading Program allowances from the Texas SO_2 Trading Program Supplemental Allowance Pool as follows:

(1) No later than February 15, 2020 and each subsequent February 15, the Administrator will review all the quarterly SO_2 emissions reports provided under § 97.934(d) for each Texas SO_2 Trading Program unit for the previous control period. The Administrator will identify each Texas SO_2 Trading Program source for which the total amount of emissions reported for the units at the source for that control period exceeds the total amount of allowances allocated to the units at the source for that control period under § 97.911.

(2) For each Texas SO_2 Trading Program source identified under paragraph (a)(1) of this section, the Administrator will calculate the amount by which the total amount of reported emissions for that control period exceeds the total amount of allowances allocated for that control period under § 97.911.

(3)(i) For Coleto Creek (ORIS 6178), if the source is identified under paragraph (a)(1) of this section, the Administrator will allocate and record in the source's compliance account an amount of allowances from the Supplemental Allowance Pool equal to the lesser of the amount calculated for the source under paragraph (a)(2) of this section or the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (b) of this section.

(ii) For any Texas SO_2 Trading Program sources identified under paragraph (a)(1) of this section other than Coleto Creek (ORIS 6178), the Administrator will allocate and record allowances from the Supplemental Allowance Pool as follows:

(A) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is less than or equal to the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (b) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will allocate and record in the compliance account for each such source an amount of allowances from the Supplemental Allowance Pool equal to the amount calculated for the source under paragraph (a)(2) of this section.

(B) If the total for all such sources of the amounts calculated under paragraph (a)(2) of this section is greater than the total number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (b) of this section that remain after any allocation under paragraph (a)(3)(i) of this section, then the Administrator will calculate each such source's allocation of allowances from the Supplemental Allowance Pool by dividing the amount calculated under paragraph (a)(2) of this section for the source by the sum of the amounts calculated under paragraph (a)(2) of this section for all such sources, then multiplying by the number of allowances in the Supplemental Allowance Pool available for allocation under paragraph (b) of this section that remain after any allocation under paragraph (a)(3)(i) of this section and rounding to the nearest allowance. The Administrator will then record the calculated allocations of allowances in the applicable compliance accounts.

(iii) Any unallocated allowances remaining in the Supplemental Allowance Pool after the allocations determined under paragraphs (a)(3)(i)

and (ii) of this section will be maintained in the Supplemental Allowance Pool. These allowances will be available for allocation by the Administrator in subsequent control periods to the extent consistent with paragraph (b) of this section.

(4) The Administrator will notify the designated representative of each Texas SO_2 Trading Program source when the allowances from the Supplemental Allowance Pool have been recorded.

(b) The total amount of allowances in the Texas SO_2 Trading Program Supplemental Allowance Pool available for allocation for a control period is equal to the sum of the Texas SO_2 Trading Program Supplemental Allowance Pool budget under § 97.910(a)(2), any allowances from retired units pursuant to § 97.911(a)(2) and from corrections pursuant to § 97.911(c)(5), and any allowances maintained in the Supplemental Allowance Pool pursuant to paragraph (a)(3)(iii) of this section, but cannot exceed by more than 44,711 tons the sum of the budget provided under § 97.910(a)(2) and any portion of the budget provided under § 97.910(a)(1) not otherwise allocated for that control period under § 97.911(a)(1). If the number of allowances in the Supplemental Allowance Pool exceeds this level then the Administrator may only allocate allowances up to this level for the control period.

§ 97.913 Authorization of designated representative and alternate designated representative.

(a) Except as provided under § 97.915, each Texas SO_2 Trading Program source, including all Texas SO_2 Trading Program units at the source, shall have one and only one designated representative, with regard to all matters under the Texas SO_2 Trading Program.

(1) The designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO_2 Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916:

(i) The designated representative shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the source and each Texas SO_2 Trading Program unit at the source in all matters pertaining to the Texas SO_2 Trading Program, notwithstanding any agreement between the designated representative and such owners and operators; and

(ii) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall be bound by any decision or order issued to the designated representative by the Administrator regarding the source or any such unit.

(b) Except as provided under § 97.915, each Texas SO_2 Trading Program source may have one and only one alternate designated representative, who may act on behalf of the designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) The alternate designated representative shall be selected by an agreement binding on the owners and operators of the source and all Texas SO_2 Trading Program units at the source and shall act in accordance with the certification statement in § 97.916(a)(4)(iii).

(2) Upon and after receipt by the Administrator of a complete certificate of representation under § 97.916,

(i) The alternate designated representative shall be authorized;

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the designated representative; and

(iii) The owners and operators of the source and each Texas SO_2 Trading Program unit at the source shall be bound by any decision or order issued to the alternate designated representative by the Administrator regarding the source or any such unit.

(c) Except in this section, § 97.902, and §§ 97.914 through 97.918, whenever the term ''designated representative'' is used in this subpart, the term shall be construed to include the designated representative or any alternate designated representative.

§ 97.914 Responsibilities of designated representative and alternate designated representative.

(a) Except as provided under § 97.918 concerning delegation of authority to make submissions, each submission under the Texas SO_2 Trading Program shall be made, signed, and certified by the designated representative or alternate designated representative for each Texas SO_2 Trading Program source and Texas SO_2 Trading Program unit for which the submission is made. Each such submission shall include the following certification statement by the designated representative or alternate designated representative: ''I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(b) The Administrator will accept or act on a submission made for a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit only if the submission has been made, signed, and certified in accordance with paragraph (a) of this section and § 97.918.

§ 97.915 Changing designated representative and alternate designated representative; changes in owners and operators; changes in units at the source.

(a) *Changing designated representative.* The designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new designated representative and the owners and operators of the Texas SO_2 Trading Program source and the Texas SO_2 Trading Program units at the source.

(b) *Changing alternate designated representative.* The alternate designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 97.916. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate designated representative, the designated representative, and the owners and operators of the Texas SO_2 Trading Program source and the Texas

SO_2 Trading Program units at the source.

(c) *Changes in owners and operators.* (1) In the event an owner or operator of a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at the source is not included in the list of owners and operators in the certificate of representation under § 97.916, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the source or unit, and the decisions and orders of the Administrator, as if the owner or operator were included in such list.

(2) Within 30 days after any change in the owners and operators of a Texas SO_2 Trading Program source or a Texas SO_2 Trading Program unit at the source, including the addition or removal of an owner or operator, the designated representative or any alternate designated representative shall submit a revision to the certificate of representation under § 97.916 amending the list of owners and operators to reflect the change.

(d) *Changes in units at the source.* Within 30 days of any change in which units are located at a Texas SO_2 Trading Program source (including the addition (see § 97.904(b)) or removal of a unit), the designated representative or any alternate designated representative shall submit a certificate of representation under § 97.916 amending the list of units to reflect the change.

(1) If the change is the addition of a unit (see § 97.904(b)) that operated (other than for purposes of testing by the manufacturer before initial installation) before being located at the source, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity from whom the unit was purchased or otherwise obtained (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was purchased or otherwise obtained, and the date on which the unit became located at the source.

(2) If the change is the removal of a unit, then the certificate of representation shall identify, in a format prescribed by the Administrator, the entity to which the unit was sold or that otherwise obtained the unit (including name, address, telephone number, and facsimile number (if any)), the date on which the unit was sold or otherwise obtained, and the date on which the unit became no longer located at the source.

§ 97.916 Certificate of representation.

(a) A complete certificate of representation for a designated representative or an alternate designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Texas SO_2 Trading Program source, and each Texas SO_2 Trading Program unit at the source, for which the certificate of representation is submitted, including source name, source category and NAICS code (or, in the absence of a NAICS code, an equivalent code), State, plant code, county, latitude and longitude, unit identification number and type, identification number and nameplate capacity (in MWe, rounded to the nearest tenth) of each generator served by each such unit, and actual date of commencement of commercial operation, and a statement of whether such source is located in Indian country.

(2) The name, address, email address (if any), telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) A list of the owners and operators of the Texas SO_2 Trading Program source and of each Texas SO_2 Trading Program unit at the source.

(4) The following certification statements by the designated representative and any alternate designated representative—

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Texas SO_2 Trading Program unit at the source.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas SO_2 Trading Program on behalf of the owners and operators of the source and of each Texas SO_2 Trading Program unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the source or unit.''

(iii) ''Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Texas SO_2 Trading Program unit, or where a utility or industrial customer purchases power from a Texas SO_2 Trading Program unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Texas SO_2 Trading Program unit at the source; and Texas SO_2 Trading Program allowances and proceeds of transactions involving Texas SO_2 Trading Program allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Texas SO_2 Trading Program allowances by contract, Texas SO_2 Trading Program allowances and proceeds of transactions involving Texas SO_2 Trading Program allowances will be deemed to be held or distributed in accordance with the contract.''

(5) The signature of the designated representative and any alternate designated representative and the dates signed.

(b) Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 97.917 Objections concerning designated representative and alternate designated representative.

(a) Once a complete certificate of representation under § 97.916 has been submitted and received, the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 97.916 is received by the Administrator.

(b) Except as provided in paragraph (a) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of a designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative or the finality of any decision or order by the Administrator under the Texas SO_2 Trading Program.

(c) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative, including private legal disputes concerning the proceeds of Texas SO_2 Trading Program allowance transfers.

§ 97.918 Delegation by designated representative and alternate designated representative.

(a) A designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(b) An alternate designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(c) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the designated representative or alternate designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, email address, telephone number, and facsimile transmission number (if any) of such designated representative or alternate designated representative;

(2) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such designated representative or alternate designated representative:

(i) ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a designated representative or alternate designated representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(d) shall be deemed to be an electronic submission by me.''

(ii) ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.918(d), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.918 is terminated.''

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the designated representative or alternate designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such designated representative or alternate designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the designated representative or alternate designated representative submitting such notice of delegation.

§ 97.919 [Reserved]

§ 97.920 Establishment of compliance accounts and general accounts.

(a) *Compliance accounts.* Upon receipt of a complete certificate of representation under § 97.916, the Administrator will establish a compliance account for the Texas SO_2 Trading Program source for which the certificate of representation was submitted, unless the source already has a compliance account. The designated representative and any alternate designated representative of the source shall be the authorized account representative and the alternate authorized account representative respectively of the compliance account.

(b) *General accounts*—(1) *Application for general account.* (i) Any person may apply to open a general account, for the purpose of holding and transferring Texas SO_2 Trading Program allowances, by submitting to the Administrator a complete application for a general account. Such application shall designate one and only one authorized account representative and may designate one and only one alternate authorized account representative who may act on behalf of the authorized account representative.

(A) The authorized account representative and alternate authorized account representative shall be selected by an agreement binding on the persons who have an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account.

(B) The agreement by which the alternate authorized account representative is selected shall include a procedure for authorizing the alternate authorized account representative to act in lieu of the authorized account representative.

(ii) A complete application for a general account shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, email address (if any), telephone number, and facsimile transmission number (if any) of the authorized account representative and any alternate authorized account representative;

(B) An identifying name for the general account;

(C) A list of all persons subject to a binding agreement for the authorized account representative and any alternate authorized account representative to represent their ownership interest with respect to the Texas SO_2 Trading Program allowances held in the general account;

(D) The following certification statement by the authorized account representative and any alternate authorized account representative: ''I certify that I was selected as the authorized account representative or the alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Texas SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Administrator regarding the general account.''

(E) The signature of the authorized account representative and any alternate authorized account representative and the dates signed.

(iii) Unless otherwise required by the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of authorized account representative and alternate authorized account representative.* (i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, the Administrator will establish a general account for the person or persons for whom the application is submitted, and upon and after such receipt by the Administrator:

(A) The authorized account representative of the general account shall be authorized and shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account in all matters pertaining to the Texas SO_2 Trading Program, notwithstanding any agreement between the authorized account representative and such person.

(B) Any alternate authorized account representative shall be authorized, and any representation, action, inaction, or submission by any alternate authorized account representative shall be deemed to be a representation, action, inaction, or submission by the authorized account representative.

(C) Each person who has an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account shall be bound by any decision or order issued to the authorized account representative or alternate authorized account representative by the Administrator regarding the general account.

(ii) Except as provided in paragraph (b)(5) of this section concerning delegation of authority to make submissions, each submission concerning the general account shall be made, signed, and certified by the authorized account representative or any alternate authorized account representative for the persons having an ownership interest with respect to Texas SO_2 Trading Program allowances held in the general account. Each such submission shall include the following certification statement by the authorized account representative or any alternate authorized account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Texas SO_2 Trading Program allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(iii) Except in this section, whenever the term ''authorized account representative'' is used in this subpart, the term shall be construed to include the authorized account representative or any alternate authorized account representative.

(3) *Changing authorized account representative and alternate authorized account representative; changes in persons with ownership interest.* (i) The authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new authorized account representative and the persons with an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account.

(ii) The alternate authorized account representative of a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate authorized account representative, the authorized account representative, and the persons with an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account.

(iii)(A) In the event a person having an ownership interest with respect to Texas SO_2 Trading Program allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the authorized account representative and any alternate authorized account representative of the account, and the decisions and orders of the Administrator, as if the person were included in such list.

(B) Within 30 days after any change in the persons having an ownership interest with respect to Texas SO_2 Trading Program allowances in the general account, including the addition or removal of a person, the authorized account representative or any alternate authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Texas SO_2 Trading Program allowances in the general account to include the change.

(4) *Objections concerning authorized account representative and alternate authorized account representative.* (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(4)(i) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account shall affect any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative or the finality of any decision or order by the Administrator under the Texas SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the authorized account representative or any alternate authorized account representative of a general account, including private legal disputes concerning the proceeds of Texas SO_2 Trading Program allowance transfers.

(5) *Delegation by authorized account representative and alternate authorized account representative.* (i) An authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(ii) An alternate authorized account representative of a general account may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this subpart.

(iii) In order to delegate authority to a natural person to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the authorized

account representative or alternate authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(A) The name, address, email address, telephone number, and facsimile transmission number (if any) of such authorized account representative or alternate authorized account representative;

(B) The name, address, email address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to in this section as an ''agent'');

(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;

(D) The following certification statement by such authorized account representative or alternate authorized account representative: ''I agree that any electronic submission to the Administrator that is made by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am an authorized account representative or alternate authorized account representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(b)(5)(iv) shall be deemed to be an electronic submission by me.''; and

(E) The following certification statement by such authorized account representative or alternate authorized account representative: ''Until this notice of delegation is superseded by another notice of delegation under 40 CFR 97.920(b)(5)(iv), I agree to maintain an email account and to notify the Administrator immediately of any change in my email address unless all delegation of authority by me under 40 CFR 97.920(b)(5) is terminated.''

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the authorized account representative or alternate authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such authorized account representative or alternate authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the authorized account representative or alternate authorized account representative submitting such notice of delegation.

(6) *Closing a general account.* (i) The authorized account representative or alternate authorized account representative of a general account may submit to the Administrator a request to close the account. Such request shall include a correctly submitted Texas SO_2 Trading Program allowance transfer under § 97.922 for any Texas SO_2 Trading Program allowances in the account to one or more other Allowance Management System accounts.

(ii) If a general account has no Texas SO_2 Trading Program allowance transfers to or from the account for a 12-month period or longer and does not contain any Texas SO_2 Trading Program allowances, the Administrator may notify the authorized account representative for the account that the account will be closed after 30 days after the notice is sent. The account will be closed after the 30-day period unless, before the end of the 30-day period, the Administrator receives a correctly submitted Texas SO_2 Trading Program allowance transfer under § 97.922 to the account or a statement submitted by the authorized account representative or alternate authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

(d) *Responsibilities of authorized account representative and alternate authorized account representative.* After the establishment of a compliance account or general account, the Administrator will accept or act on a submission pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Texas SO_2 Trading Program allowances in the account, only if the submission has been made, signed, and certified in accordance with §§ 97.914(a) and 97.918 or paragraphs (b)(2)(ii) and (b)(5) of this section.

§ 97.921 Recordation of Texas SO_2 Trading Program allowance allocations.

(a) By November 1, 2018, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control periods in 2019, 2020, 2021, and 2022. The Administrator may delay recordation of Texas SO_2 Trading Program allowances for the specified control periods if the State of Texas submits a SIP revision before the recordation deadline.

(b) By July 1, 2019 and July 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(a) for the control period in the fourth year after the year of the applicable recordation deadline under this paragraph. The Administrator may delay recordation of the Texas SO_2 Trading Program allowances for the applicable control periods if the State of Texas submits a SIP revision by May 1 of the year of the applicable recordation deadline under this paragraph.

(c) By February 15, 2020, and February 15 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the allowances allocated from the Texas SO_2 Trading Program Supplemental Allowance Pool in accordance with § 97.912 for the control period in the year of the applicable recordation deadline under this paragraph, .

(d) By July 1, 2019 and July 1 of each year thereafter, the Administrator will record in each Texas SO_2 Trading Program source's compliance account the Texas SO_2 Trading Program allowances allocated to the Texas SO_2 Trading Program units at the source in accordance with § 97.911(b).

(e) When recording the allocation of Texas SO_2 Trading Program allowances to a Texas SO_2 Trading Program unit in an Allowance Management System account, the Administrator will assign each Texas SO_2 Trading Program allowance a unique identification number that will include digits identifying the year of the control period for which the Texas SO_2 Trading Program allowance is allocated.

§ 97.922 Submission of Texas SO_2 Trading Program allowance transfers.

(a) An authorized account representative seeking recordation of a Texas SO_2 Trading Program allowance transfer shall submit the transfer to the Administrator.

(b) A Texas SO_2 Trading Program allowance transfer shall be correctly submitted if:

(1) The transfer includes the following elements, in a format prescribed by the Administrator:

(i) The account numbers established by the Administrator for both the transferor and transferee accounts;

(ii) The serial number of each Texas SO_2 Trading Program allowance that is in the transferor account and is to be transferred; and

(iii) The name and signature of the authorized account representative of the transferor account and the date signed; and

(2) When the Administrator attempts to record the transfer, the transferor account includes each Texas SO_2 Trading Program allowance identified by serial number in the transfer.

§ 97.923 Recordation of Texas SO_2 Trading Program allowance transfers.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Texas SO_2 Trading Program allowance transfer that is correctly submitted under § 97.922, the Administrator will record a Texas SO_2 Trading Program allowance transfer by moving each Texas SO_2 Trading Program allowance from the transferor account to the transferee account as specified in the transfer.

(b) A Texas SO_2 Trading Program allowance transfer to or from a compliance account that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Texas SO_2 Trading Program allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions from such compliance account under § 97.924 for the control period immediately before such allowance transfer deadline.

(c) Where a Texas SO_2 Trading Program allowance transfer is not correctly submitted under § 97.922, the Administrator will not record such transfer.

(d) Within 5 business days of recordation of a Texas SO_2 Trading Program allowance transfer under paragraphs (a) and (b) of the section, the Administrator will notify the authorized account representatives of both the transferor and transferee accounts.

(e) Within 10 business days of receipt of a Texas SO_2 Trading Program allowance transfer that is not correctly submitted under § 97.922, the Administrator will notify the authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

§ 97.924 Compliance with Texas SO_2 Trading Program emissions limitations.

(a) *Availability for deduction for compliance.* Texas SO_2 Trading Program allowances are available to be deducted for compliance with a source's Texas SO_2 Trading Program emissions limitation for a control period in a given year only if the Texas SO_2 Trading Program allowances:

(1) Were allocated for such control period or a control period in a prior year; and

(2) Are held in the source's compliance account as of the allowance transfer deadline for such control period.

(b) *Deductions for compliance.* After the recordation, in accordance with § 97.923, of Texas SO_2 Trading Program allowance transfers submitted by the allowance transfer deadline for a control period in a given year, the Administrator will deduct from each source's compliance account Texas SO_2 Trading Program allowances available under paragraph (a) of this section in order to determine whether the source meets the Texas SO_2 Trading Program emissions limitation for such control period, as follows:

(1) Until the amount of Texas SO_2 Trading Program allowances deducted equals the number of tons of total SO_2 emissions from all Texas SO_2 Trading Program units at the source for such control period; or

(2) If there are insufficient Texas SO_2 Trading Program allowances to complete the deductions in paragraph (b)(1) of this section, until no more Texas SO_2 Trading Program allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of Texas* SO_2 Trading Program allowances by serial number. The authorized account representative for a source's compliance account may request that specific Texas SO_2 Trading Program allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in a given year in accordance with paragraph (b) or (d) of this section. In order to be complete, such request shall be submitted to the Administrator by the allowance transfer deadline for such control period and include, in a format prescribed by the Administrator, the identification of the Texas SO_2 Trading Program source and the appropriate serial numbers.

(2) *First-in, first-out.* The Administrator will deduct Texas SO_2 Trading Program allowances under paragraph (b) or (d) of this section from the source's compliance account in accordance with a complete request under paragraph (c)(1) of this section or, in the absence of such request or in the case of identification of an insufficient amount of Texas SO_2 Trading Program allowances in such request, on a first-in, first-out accounting basis in the following order:

(i) Any Texas SO_2 Trading Program allowances that were recorded in the compliance account pursuant to § 97.921 and not transferred out of the compliance account, in the order of recordation; and then

(ii) Any other Texas SO_2 Trading Program allowances that were transferred to and recorded in the compliance account pursuant to this subpart, in the order of recordation.

(d) *Deductions for excess emissions.* After making the deductions for compliance under paragraph (b) of this section for a control period in a year in which the Texas SO_2 Trading Program source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Texas SO_2 Trading Program allowances, allocated for a control period in a prior year or the control period in the year of the excess emissions or in the immediately following year, equal to three times the number of tons of the source's excess emissions.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section.

§ 97.925 [Reserved]

§ 97.926 Banking.

(a) A Texas SO_2 Trading Program allowance may be banked for future use or transfer in a compliance account or general account in accordance with paragraph (b) of this section.

(b) Any Texas SO_2 Trading Program allowance that is held in a compliance account or a general account will remain in such account unless and until the Texas SO_2 Trading Program allowance is deducted or transferred under § 97.911(c), § 97.923, § 97.924, § 97.927, or § 97.928.

§ 97.927 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Allowance Management System account. Within 10 business days of

making such correction, the Administrator will notify the authorized account representative for the account.

§ 97.928 Administrator's action on submissions.

(a) The Administrator may review and conduct independent audits concerning any submission under the Texas SO_2 Trading Program and make appropriate adjustments of the information in the submission.

(b) The Administrator may deduct Texas SO_2 Trading Program allowances from or transfer Texas SO_2 Trading Program allowances to a compliance account, based on the information in a submission, as adjusted under paragraph (a) of this section, and record such deductions and transfers.

§ 97.929 [Reserved]

§ 97.930 General monitoring, recordkeeping, and reporting requirements.

The owners and operators, and to the extent applicable, the designated representative, of a Texas SO_2 Trading Program unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and subparts F and G of part 75 of this chapter. For purposes of applying such requirements, the definitions in § 97.902 and in § 72.2 of this chapter shall apply, the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''Texas SO_2 Trading Program unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively as defined in § 97.902. The owner or operator of a unit that is not a Texas SO_2 Trading Program unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Texas SO_2 Trading Program unit.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Texas SO_2 Trading Program unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 97.931 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* Except as provided in paragraph (e) of this section, the owner or operator of a Texas SO_2 Trading Program unit shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the later of the following dates and shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after:

(1) For a Texas SO_2 Trading Program unit under § 97.904(a), January 1, 2019; or

(2) For a Texas SO_2 Trading Program unit under § 97.904(b), January 1 of the first control period for which the unit is a Texas SO_2 Trading Program unit.

(3) The owner or operator of a Texas SO_2 Trading Program unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1) or (2) of this section shall meet the requirements of § 75.4(e)(1) through (4) of this chapter, except that:

(i) Such requirements shall apply to the monitoring systems required under § 97.930 through § 97.935, rather than the monitoring systems required under part 75 of this chapter;

(ii) SO_2 concentration, stack gas moisture content, stack gas volumetric flow rate, and O_2 or CO_2 concentration data shall be determined and reported, rather than the data listed in § 75.4(e)(2) of this chapter; and

(iii) Any petition for another procedure under § 75.4(e)(2) of this chapter shall be submitted under § 97.935, rather than § 75.66 of this chapter.

(c) *Reporting data.* The owner or operator of a Texas SO_2 Trading Program unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(d) *Prohibitions.* (1) No owner or operator of a Texas SO_2 Trading Program unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 97.935.

(2) No owner or operator of a Texas SO_2 Trading Program unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 to the atmosphere without accounting for all such SO_2 in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a Texas SO_2 Trading Program unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a Texas SO_2 Trading Program unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 97.905 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the Administrator for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 97.931(d)(3)(i).

(e) *Long-term cold storage.* The owner or operator of a Texas SO_2 Trading Program unit is subject to the applicable provisions of § 75.4(d) of this chapter concerning units in long-term cold storage.

§ 97.931 Initial monitoring system certification and recertification procedures.

(a) The owner or operator of a Texas SO_2 Trading Program unit shall be exempt from the initial certification

requirements of this section for a monitoring system under § 97.930(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendices B and D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 97.930(a)(1) that is exempt from initial certification requirements under paragraph (a) of this section.

(c) [Reserved]

(d) Except as provided in paragraph (a) of this section, the owner or operator of a Texas SO_2 Trading Program unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (*i.e.,* a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 97.930(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) *Requirements for initial certification.* The owner or operator shall ensure that each continuous monitoring system under § 97.930(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 97.930(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 97.930(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 97.930(a)(1) is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) *Approval process for initial certification and recertification.* For initial certification of a continuous monitoring system under § 97.930(a)(1), paragraphs (d)(3)(i) through (v) of this section apply. For recertifications of such monitoring systems, paragraphs (d)(3)(i) through (iv) of this section and the procedures in § 75.20(b)(5) and (g)(7) of this chapter (in lieu of the procedures in paragraph (d)(3)(v) of this section) apply, provided that in applying paragraphs (d)(3)(i) through (iv) of this section, the words ''certification'' and ''initial certification'' are replaced by the word ''recertification'' and the word ''certified'' is replaced by with the word ''recertified''.

(i) *Notification of certification.* The designated representative shall submit to the appropriate EPA Regional Office and the Administrator written notice of the dates of certification testing, in accordance with § 97.933.

(ii) *Certification application.* The designated representative shall submit to the Administrator a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Texas SO_2 Trading Program for a period not to exceed 120 days after receipt by the Administrator of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the Administrator does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the Administrator.

(iv) *Certification application approval process.* The Administrator will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the Administrator does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Texas SO_2 Trading Program.

(A) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the Administrator will issue a written notice of approval of the certification application within 120 days of receipt.

(B) *Incomplete application notice.* If the certification application is not complete, then the Administrator will issue a written notice of incompleteness that sets a reasonable date by which the designated representative must submit the additional information required to complete the certification application. If the designated representative does not comply with the notice of incompleteness by the specified date, then the Administrator may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section.

(C) *Disapproval notice.* If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the Administrator will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the Administrator and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of

provisional certification (as defined under § 75.20(a)(3) of this chapter).

(D) *Audit decertification.* The Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 97.932(b).

(v) *Procedures for loss of certification.* If the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) The designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 97.932 Monitoring system out-of-control periods.

(a) *General provisions.* Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or appendix D to part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 97.931 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the Administrator or any State or permitting authority. By issuing the notice of disapproval, the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 97.931 for each disapproved monitoring system.

§ 97.933 Notifications concerning monitoring.

The designated representative of a Texas SO_2 Trading Program unit shall submit written notice to the Administrator in accordance with § 75.61 of this chapter.

§ 97.934 Recordkeeping and reporting.

(a) *General provisions.* The designated representative of a Texas SO_2 Trading Program unit shall comply with all recordkeeping and reporting requirements in paragraphs (b) through (e) of this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 97.914(a).

(b) *Monitoring plans.* The owner or operator of a Texas SO_2 Trading Program unit shall comply with the requirements of § 75.62 of this chapter.

(c) *Certification applications.* The designated representative shall submit an application to the Administrator within 45 days after completing all initial certification or recertification tests required under § 97.931, including the information required under § 75.63 of this chapter.

(d) *Quarterly reports.* The designated representative shall submit quarterly reports, as follows:

(1) The designated representative shall report the SO_2 mass emissions data and heat input data for a Texas SO_2 Trading Program unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with the later of:

(i) The calendar quarter covering January 1, 2019 through March 31, 2019; or

(ii) The calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 97.930(b).

(2) The designated representative shall submit each quarterly report to the Administrator within 30 days after the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For Texas SO_2 Trading Program units that are also subject to the Acid Rain Program or CSAPR NO_X Ozone Season Group 2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.

(4) The Administrator may review and conduct independent audits of any quarterly report in order to determine whether the quarterly report meets the requirements of this subpart and part 75

of this chapter, including the requirement to use substitute data.

(i) The Administrator will notify the designated representative of any determination that the quarterly report fails to meet any such requirements and specify in such notification any corrections that the Administrator believes are necessary to make through resubmission of the quarterly report and a reasonable time period within which the designated representative must respond. Upon request by the designated representative, the Administrator may specify reasonable extensions of such time period. Within the time period (including any such extensions) specified by the Administrator, the designated representative shall resubmit the quarterly report with the corrections specified by the Administrator, except to the extent the designated representative provides information demonstrating that a specified correction is not necessary because the quarterly report already meets the requirements of this subpart and part 75 of this chapter that are relevant to the specified correction.

(ii) Any resubmission of a quarterly report shall meet the requirements applicable to the submission of a quarterly report under this subpart and part 75 of this chapter, except for the deadline set forth in paragraph (d)(2) of this section.

(e) *Compliance certification.* The designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.

§ 97.935 Petitions for alternatives to monitoring, recordkeeping, or reporting requirements.

(a) The designated representative of a Texas SO_2 Trading Program unit may submit a petition under § 75.66 of this chapter to the Administrator, requesting approval to apply an alternative to any requirement of §§ 97.930 through 97.934.

(b) A petition submitted under paragraph (a) of this section shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(1) Identification of each unit and source covered by the petition;

(2) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(3) A description and diagram of any equipment and procedures used in the proposed alternative;

(4) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and with the purposes of this subpart and part 75 of this chapter and that any adverse effect of approving the alternative will be *de minimis;* and

(5) Any other relevant information that the Administrator may require.

(c) Use of an alternative to any requirement referenced in paragraph (a) of this section is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator and that such use is in accordance with such approval.

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FEDERAL REGISTER

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Part III

The President

Federal Register
Vol. 82, No. 199
Tuesday, October 17, 2017

Presidential Documents

Title 3—

The President

Proclamation 9659 of October 12, 2017

National Energy Awareness Month, 2017

By the President of the United States of America

A Proclamation

During National Energy Awareness Month, we commit to achieving an America First energy policy that will lower energy costs for hardworking Americans, protect our national security, and promote responsible stewardship of the environment. The United States is blessed with extraordinary energy abundance, and we must encourage policies that allow innovative Americans to unleash our Nation's energy potential and drive robust job growth and expansion in every sector of our economy.

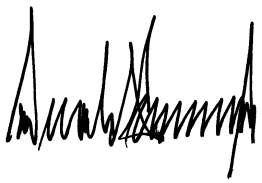
It is time we make America's energy dominance a priority. Since 1954, America has been a net importer of energy. My Administration is working to change that and make America become a net energy exporter by 2026. We must empower Americans to access the vast reserves of coal, oil, and natural gas stored across our land, and to develop nuclear, hydropower, and all other types of clean and renewable energy. Recently, the Department of Energy approved applications to expand our exports of liquefied natural gas (LNG) and establish our Nation as a top LNG supplier to the world. We are also starting to see the effects of ending the war on coal. In the first months of my Administration, United States coal exports have increased by nearly 60 percent from the same time period last year. Together with the Congress and with our State and local partners, we can better enable improvements in energy infrastructure, streamline our Nation's complex regulations, and we can become energy dominant.

An America First energy policy goes hand-in-hand with responsible environmental protection. Protecting our streams, lakes, and air, and preserving all of our natural habitats, will always be high priority for my Administration. Since 1970, aggregate emissions of six common air pollutants have fallen by 73 percent. We have aggressively fought pollution and reduced emissions even as our population, energy use, and energy production have all grown. Innovative technologies focused on achieving affordable and reliable energy—from Alaska's North Slope to the Great Plains and the Gulf of Mexico—will continue to allow our country to protect our environment, while also reducing our trade deficits, strengthening energy security, raising wages, and supporting job growth for the hundreds of thousands of Americans currently employed in the energy sector.

During National Energy Awareness Month, we are mindful of our energy use and determined to safeguard our energy security. We must remember that some countries do not share our belief in universal access to clean and affordable energy. We thus recommit to freeing our Nation from reliance on the Organization of Petroleum Exporting Countries (OPEC) cartel and to helping our friends and allies overseas reduce their dependence on those who seek to use energy as a weapon. An energy dominant America is good for Americans—and good for the world.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2017 as National Energy Awareness Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



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Presidential Documents

Executive Order 13813 of October 12, 2017

Promoting Healthcare Choice and Competition Across the United States

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) It shall be the policy of the executive branch, to the extent consistent with law, to facilitate the purchase of insurance across State lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people. The Patient Protection and Affordable Care Act (PPACA), however, has severely limited the choice of healthcare options available to many Americans and has produced large premium increases in many State individual markets for health insurance. The average exchange premium in the 39 States that are using www.healthcare.gov in 2017 is more than double the average overall individual market premium recorded in 2013. The PPACA has also largely failed to provide meaningful choice or competition between insurers, resulting in one-third of America's counties having only one insurer offering coverage on their applicable government-run exchange in 2017.

(b) Among the myriad areas where current regulations limit choice and competition, my Administration will prioritize three areas for improvement in the near term: association health plans (AHPs), short-term, limited-duration insurance (STLDI), and health reimbursement arrangements (HRAs).

(i) Large employers often are able to obtain better terms on health insurance for their employees than small employers because of their larger pools of insurable individuals across which they can spread risk and administrative costs. Expanding access to AHPs can help small businesses overcome this competitive disadvantage by allowing them to group together to self-insure or purchase large group health insurance. Expanding access to AHPs will also allow more small businesses to avoid many of the PPACA's costly requirements. Expanding access to AHPs would provide more affordable health insurance options to many Americans, including hourly wage earners, farmers, and the employees of small businesses and entrepreneurs that fuel economic growth.

(ii) STLDI is exempt from the onerous and expensive insurance mandates and regulations included in title I of the PPACA. This can make it an appealing and affordable alternative to government-run exchanges for many people without coverage available to them through their workplaces. The previous administration took steps to restrict access to this market by reducing the allowable coverage period from less than 12 months to less than 3 months and by preventing any extensions selected by the policyholder beyond 3 months of total coverage.

(iii) HRAs are tax-advantaged, account-based arrangements that employers can establish for employees to give employees more flexibility and choices regarding their healthcare. Expanding the flexibility and use of HRAs would provide many Americans, including employees who work at small businesses, with more options for financing their healthcare.

(c) My Administration will also continue to focus on promoting competition in healthcare markets and limiting excessive consolidation throughout the healthcare system. To the extent consistent with law, government rules and guidelines affecting the United States healthcare system should:

(i) expand the availability of and access to alternatives to expensive, mandate-laden PPACA insurance, including AHPs, STLDI, and HRAs;

(ii) re-inject competition into healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; and

(iii) improve access to and the quality of information that Americans need to make informed healthcare decisions, including data about healthcare prices and outcomes, while minimizing reporting burdens on affected plans, providers, or payers.

Sec. 2. *Expanded Access to Association Health Plans.* Within 60 days of the date of this order, the Secretary of Labor shall consider proposing regulations or revising guidance, consistent with law, to expand access to health coverage by allowing more employers to form AHPs. To the extent permitted by law and supported by sound policy, the Secretary should consider expanding the conditions that satisfy the commonality-of-interest requirements under current Department of Labor advisory opinions interpreting the definition of an ''employer'' under section 3(5) of the Employee Retirement Income Security Act of 1974. The Secretary of Labor should also consider ways to promote AHP formation on the basis of common geography or industry.

Sec. 3. *Expanded Availability of Short-Term, Limited-Duration Insurance.* Within 60 days of the date of this order, the Secretaries of the Treasury, Labor, and Health and Human Services shall consider proposing regulations or revising guidance, consistent with law, to expand the availability of STLDI. To the extent permitted by law and supported by sound policy, the Secretaries should consider allowing such insurance to cover longer periods and be renewed by the consumer.

Sec. 4. *Expanded Availability and Permitted Use of Health Reimbursement Arrangements.* Within 120 days of the date of this order, the Secretaries of the Treasury, Labor, and Health and Human Services shall consider proposing regulations or revising guidance, to the extent permitted by law and supported by sound policy, to increase the usability of HRAs, to expand employers' ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage.

Sec. 5. *Public Comment.* The Secretaries shall consider and evaluate public comments on any regulations proposed under sections 2 through 4 of this order.

Sec. 6. *Reports.* Within 180 days of the date of this order, and every 2 years thereafter, the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor and the Federal Trade Commission, shall provide a report to the President that:

(a) details the extent to which existing State and Federal laws, regulations, guidance, requirements, and policies fail to conform to the policies set forth in section 1 of this order; and

(b) identifies actions that States or the Federal Government could take in furtherance of the policies set forth in section 1 of this order.

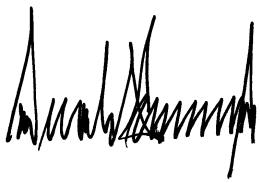
Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
October 12, 2017.

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