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# Rules and Regulations

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 157

**[Docket No. RM81–19–000]**

### Natural Gas Pipelines; Project Cost and Annual Limits

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the authority delegated by the Commission's regulations, the Director of the Office of Energy Projects (OEP) computes and publishes the project cost and annual limits for natural gas pipelines blanket construction certificates for each calendar year.

**DATES:** This final rule is effective February 3, 2017 and establishes cost limits applicable from January 1, 2017 through December 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Marsha K. Palazzi, Chief, Certificates Branch 2, Division of Pipeline Certificates, (202) 502–6785.

**SUPPLEMENTARY INFORMATION:** Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the ''limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GDP implicit price deflator' published by the Department of Commerce for the previous calendar year.''

Pursuant to § 375.308(x)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Energy Projects. The cost limits for calendar year 2017, as published in Table I of § 157.208(d) and Table II of 157.215(a), are hereby issued.

**Effective Date**

This final rule is effective February 3, 2017. The provisions of 5 U.S.C. 804 regarding Congressional review of Final Rules does not apply to the Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights or obligations of non-agency parties. The Final Rule merely updates amounts published in the Code of Federal Regulations to reflect the Department of Commerce's latest annual determination of the Gross Domestic Product (GDP) implicit price deflator, a mathematical updating required by the Commission's existing regulations.

**List of Subjects in 18 CFR Part 157**

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

**Ann Miles,**

*Director, Office of Energy Projects.*

Accordingly, 18 CFR part 157 is amended as follows:

## PART 157—[AMENDED]

■ 1. The authority citation for part 157 is revised to read as follows:

**Authority:** 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 2. Table I in § 157.208(d) is revised to read as follows:

**§ 157.208 Construction, acquisition, operation, replacement, and miscellaneous rearrangement of facilities.**

* * * * *

(d) * * *

TABLE I

| Year | Limit | |
|---|---|---|
| | Auto. proj. cost limit (Col. 1) | Prior notice proj. cost limit (Col. 2) |
| 1982 | $4,200,000 | $12,000,000 |
| 1983 | 4,500,000 | 12,800,000 |
| 1984 | 4,700,000 | 13,300,000 |
| 1985 | 4,900,000 | 13,800,000 |
| 1986 | 5,100,000 | 14,300,000 |
| 1987 | 5,200,000 | 14,700,000 |
| 1988 | 5,400,000 | 15,100,000 |
| 1989 | 5,600,000 | 15,600,000 |
| 1990 | 5,800,000 | 16,000,000 |
| 1991 | 6,000,000 | 16,700,000 |
| 1992 | 6,200,000 | 17,300,000 |
| 1993 | 6,400,000 | 17,700,000 |
| 1994 | 6,600,000 | 18,100,000 |
| 1995 | 6,700,000 | 18,400,000 |
| 1996 | 6,900,000 | 18,800,000 |
| 1997 | 7,000,000 | 19,200,000 |
| 1998 | 7,100,000 | 19,600,000 |
| 1999 | 7,200,000 | 19,800,000 |
| 2000 | 7,300,000 | 20,200,000 |
| 2001 | 7,400,000 | 20,600,000 |
| 2002 | 7,500,000 | 21,000,000 |
| 2003 | 7,600,000 | 21,200,000 |
| 2004 | 7,800,000 | 21,600,000 |
| 2005 | 8,000,000 | 22,000,000 |
| 2006 | 9,600,000 | 27,400,000 |
| 2007 | 9,900,000 | 28,200,000 |
| 2008 | 10,200,000 | 29,000,000 |
| 2009 | 10,400,000 | 29,600,000 |
| 2010 | 10,500,000 | 29,900,000 |
| 2011 | 10,600,000 | 30,200,000 |
| 2012 | 10,800,000 | 30,800,000 |
| 2013 | 11,000,000 | 31,400,000 |
| 2014 | 11,200,000 | 31,900,000 |
| 2015 | 11,400,000 | 32,300,000 |
| 2016 | 11,600,000 | 32,800,000 |
| 2017 | 11,800,000 | 33,200,000 |

* * * * *

■ 3. Table II in § 157.215(a)(5) is revised to read as follows:

**§ 157.215 Underground storage testing and development.**

(a) * * *

(5) * * *

TABLE II

| Year | Limit |
|---|---|
| 1982 | $2,700,000 |
| 1983 | 2,900,000 |
| 1984 | 3,000,000 |
| 1985 | 3,100,000 |
| 1986 | 3,200,000 |
| 1987 | 3,300,000 |
| 1988 | 3,400,000 |
| 1989 | 3,500,000 |
| 1990 | 3,600,000 |
| 1991 | 3,800,000 |

TABLE II—Continued

| Year | Limit |
|---|---|
| 1992 | 3,900,000 |
| 1993 | 4,000,000 |
| 1994 | 4,100,000 |
| 1995 | 4,200,000 |
| 1996 | 4,300,000 |
| 1997 | 4,400,000 |
| 1998 | 4,500,000 |
| 1999 | 4,550,000 |
| 2000 | 4,650,000 |
| 2001 | 4,750,000 |
| 2002 | 4,850,000 |
| 2003 | 4,900,000 |
| 2004 | 5,000,000 |
| 2005 | 5,100,000 |
| 2006 | 5,250,000 |
| 2007 | 5,400,000 |
| 2008 | 5,550,000 |
| 2009 | 5,600,000 |
| 2010 | 5,700,000 |
| 2011 | 5,750,000 |
| 2012 | 5,850,000 |
| 2013 | 6,000,000 |
| 2014 | 6,100,000 |
| 2015 | 6,200,000 |
| 2016 | 6,300,000 |
| 2017 | 6,400,000 |

* * * * *

[FR Doc. 2017–02309 Filed 2–2–17; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 381

**[Docket No. RM17–6–000]**

## Annual Update of Filing Fees

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; annual update of Commission filing fees.

**SUMMARY:** In accordance with the Commission regulations, the Commission issues this update of its filing fees. This document provides the yearly update using data in the Commission's Financial System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2016.

**DATES:** *Effective Date:* March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Raymond D. Johnson Jr., Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Room 42–66, Washington, DC 20426, 202–502–8402.

**SUPPLEMENTARY INFORMATION:** *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

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**Annual Update of Filing Fees**

**(January 11, 2017)**

The Federal Energy Regulatory Commission (Commission) is issuing this document to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2016 costs. The adjusted fees announced in this document are effective March 6, 2017. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

| | |
|---|---|
| **Fees Applicable to the Natural Gas Policy Act** | |
| 1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403) | $ 12,760 |
| **Fees Applicable to General Activities** | |
| 1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a)) | 25,640 |
| 2. Review of a Department of Energy remedial order: | |
| *Amount in controversy:* | |
| $ 0–9,999. (18 CFR 381.303(b)) | 100 |
| $ 10,000–29,999. (18 CFR 381.303(b)) | 600 |
| $ 30,000 or more. (18 CFR 381.303(a)) | 37,430 |
| 3. Review of a Department of Energy denial of adjustment: | |
| *Amount in controversy:* | |
| $ 0–9,999. (18 CFR 381.304(b)) | 100 |
| $ 10,000–29,999. (18 CFR 381.304(b)) | 600 |
| $ 30,000 or more. (18 CFR 381.304(a)) | 19,630 |
| 4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a)) | 7,350 |
| **Fees Applicable to Natural Gas Pipelines** | |
| 1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b)) | *1,000 |
| **Fees Applicable to Cogenerators and Small Power Producers** | |
| 1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a)) | 22,050 |

| | |
|---|---|
| 2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a)) | 24,960 |

* This fee has not been changed.

**List of Subjects in 18 CFR Part 381**

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

**Anton C. Porter,**

*Executive Director.*

In consideration of the foregoing, the Commission amends part 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

## PART 381—FEES

■ 1. The authority citation for part 381 continues to read as follows:

**Authority:** 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

**§ 381.302 [Amended]**

■ 2. In § 381.302, paragraph (a) is amended by removing ''$ 24,980'' and adding ''$ 25,640'' in its place.

**§ 381.303 [Amended]**

■ 3. In § 381.303, paragraph (a) is amended by removing ''$ 36,460'' and adding ''$ 37,430'' in its place.

**§ 381.304 [Amended]**

■ 4. In § 381.304, paragraph (a) is amended by removing ''$ 19,120'' and adding ''$ 19,630'' in its place.

**§ 381.305 [Amended]**

■ 5. In § 381.305, paragraph (a) is amended by removing ''$ 7,160'' and adding ''$ 7,350'' in its place.

**§ 381.403 [Amended]**

■ 6. Section 381.403 is amended by removing ''$ 12,430'' and adding ''$ 12,760'' in its place.

**§ 381.505 [Amended]**

■ 7. In § 381.505, paragraph (a) is amended by removing ''$ 21,480'' and adding ''$ 22,050'' in its place and by removing ''$ 24,310'' and adding ''$ 24,960'' in its place.

[FR Doc. 2017–02308 Filed 2–2–17; 8:45 am]

BILLING CODE 6717–01–P

## AFRICAN DEVELOPMENT FOUNDATION

### 22 CFR Part 1502

**RIN 3005–AA01**

### Availability of Records

**AGENCY:** U.S. African Development Foundation.

**ACTION:** Final rule.

**SUMMARY:** The U.S. African Development Foundation (USADF) is revising its regulations on the availability of records in accordance with the FOIA Improvement Act of 2016, Public Law 114–185, and to make minor technical amendments and corrections.

**DATES:** This final rule is effective April 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** June B. Brown, 202–233–8882.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The U.S. African Development Foundation (USADF) is revising its regulations on the availability of records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, to conform to requirements of the FOIA Improvement Act of 2016, Public Law 114–185, and to make minor technical amendments and corrections to the regulations.

**II. Section-by-Section Analysis**

*Section 1502.1*

In § 1502.1(a) the rule adds ''United States'' before ''African Development Foundation'', adds ''(FOIA)'' after ''Freedom of Information Act'', and otherwise revises the section to read as set forth in the regulatory text.

In § 1502.1(c) the rule removes ''Director of Administration and Finance (A&F)'' and adds in its place ''Chief FOIA Officer''.

*Section 1502.2*

In § 1502.2(b) the rule adds ''United States'' before ''African Development Foundation''.

*Section 1502.3*

The rule revises § 1502.3 to read as set forth in the regulatory text.

*Section 1502.4*

In § 1502.4 the rule revises paragraphs (a) and (c), and in paragraph (b) removes the sentence: ''Blanket requests or requests for 'the entire file of' or 'all matters relating to' a specified subject will not be accepted.''

*Section 1502.5*

Section § 1502.5 is revised as set forth in the regulatory text.

*Section 1502.6*

The rule revises the first sentence of § 1502.6 to read as set forth in the regulatory text.

*Section 1502.7*

The rule amends § 1502.7 to add a new paragraph (a), to remove paragraph (c), to redesignate paragraphs (a) and (b) as paragraphs (b) and (c), and to revise paragraphs (b), (c)(2), (c)(3) and (c)(4) set forth in the regulatory text.

*Section 1502.8*

The rule revises § 1502.8 to read as set forth in the regulatory text.

*Section 1502.9*

The rule amends § 1502.9 to revise paragraphs (a), (b), and (c), and to add paragraphs (d) and (e) to read as set forth in the regulatory text.

**III. Matters of Regulatory Procedure**

*Executive Order 12866*

The regulations have been determined to be non-significant within the meaning of Executive Order 12866.

*Regulatory Flexibility Act*

The USADF President, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed the regulations and by approving them certifies that they will not have a significant economic impact on a substantial number of small entities. The regulations pertain to the availability of USADF records under the Freedom of Information Act.

*Unfunded Mandates Reform Act of 1995*

These regulations will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**List of Subjects in 22 CFR Part 1502**

Freedom of information.

Approved: January 30, 2017.

**June B. Brown,**

*Interim General Counsel, U.S. African Development Foundation.*

■ For the reasons set forth in the preamble, USADF revises 22 CFR part 1502 to read as follows:

## PART 1502—AVAILABILITY OF RECORDS

Sec.

1502.1 Introduction.
1502.2 Definitions.
1502.3 Access to Foundation records.
1502.4 Written requests.
1502.5 Records available at the Foundation.
1502.6 Records of other departments and agencies.
1502.7 Fees.
1502.8 Exemptions.
1502.9 Processing of requests.
1502.10 Judicial review.

**Authority:** Title V of the International Security and Development Cooperation Act of 1980, 22 U.S.C. 290h; 5 U.S.C. 552; FOIA Improvement Act of 2016, Public Law 114–185.

### § 1502.1 Introduction.

(a) The United States African Development Foundation makes information about its operations, procedures, and records freely available to the public in accordance with the provisions of the Freedom of Information Act (FOIA).

(b) The Foundation will make the fullest possible disclosure of its information and identifiable records consistent with the provisions of the Act and the regulations in this part.

(c) The Chief FOIA Officer shall be responsible for the Foundation's compliance with the processing requirements of the Freedom of Information Act.

### § 1502.2 Definitions.

As used in this part, the following words have the meanings set forth below:

(a) *Act* means the Act of June 5, 1967, sometimes referred to as the ''Freedom of Information Act'' or the Public Information Section of the Administrative Procedure Act, as amended, Public Law 90–23, 81 Stat. 54, codified at 5 U.S.C. 552.

(b) *Foundation* means the United States African Development Foundation.

(c) *President* means the President of the Foundation.

(d) *Record(s)* includes all books, papers, or other documentary materials made or received by the Foundation in connection with the transaction of its business which have been preserved or are appropriate for preservation by the Foundation as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities, or because of the informational value of the data contained therein. Library or other material acquired and preserved solely for reference or exhibition purposes, and stocks of publications and other documents provided by the Foundation to the public in the normal course of doing business are not included within the definition of the word ''records.'' The latter will continue to be made available to the public without charge.

### § 1502.3 Access to Foundation records.

Any person desiring to have access to Foundation records may call or apply in person between the hours of 10 a.m. and 4 p.m. on weekdays (holidays excluded) at the Foundation offices or mail a request to the Foundation at 1400 I Street NW., Suite 1000, Washington, DC 20005, or submit a request by email to ''info@usadf.gov'' on the Foundation's Web site, *www.usadf.gov*. Requests for access under the Freedom of Information Act should be made to the Chief FOIA Officer at the Foundation offices. If a request is made for copies of any record, the Chief FOIA Officer will assist the person making such request in seeing that such copies are provided according to the rules in this part.

### § 1502.4 Written requests.

In order to facilitate the processing of written requests, every petitioner should:

(a) Address his or her request to: Chief FOIA Officer, United States African Development Foundation, 1400 I Street NW., Suite 1000, Washington, DC 20005.

Both the envelope and the request itself, or the email, should be clearly marked: ''Freedom of Information Act Request.''

(b) Identify the desired record by name, title, author, a brief description, or number, and date, as applicable. The identification should be specific enough so that a record can be identified and found without unreasonably burdening or disrupting the operations of the Foundation. If the Foundation determines that a request does not reasonably describe the records sought, the requestor shall be advised what additional information is needed or informed why the request is insufficient.

(c) Include a check or money order to the order of the ''United States African Development Foundation'' covering the appropriate search and copying fees, or a request for determination of the fee, or a specified amount that the requestor is willing to pay in connection with the FOIA request.

### § 1502.5 Records available at the Foundation.

Records that the FOIA requires be made available for public inspection in an electronic format may be accessed through the Foundation's Web site.

### § 1502.6 Records of other departments and agencies.

Responsive records located by the Foundation which have been originated by, or are primarily the concerns of, another U.S. department or agency will be forwarded to the particular department or agency involved, and the requestor so notified. In response to requests for records or publications published by the Government Printing Office or other government printing activity, the Foundation will refer the petitioner to the appropriate sales office and refund any fee payments which accompanied the request.

### § 1502.7 Fees.

(a) *Authority.* USADF charges for processing FOIA requests in accordance with the Uniform Freedom of Information Act Fee Schedule and Guidelines of the Office of Management and Budget, 52 FR 10012–10020 (March 17, 1987).

(b) *When charged.* Fees shall be charged in accordance with the schedules contained in paragraph (c) of this section for services rendered in responding to requests for Foundation records under this subpart. Requestors may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor. Fees shall also not be charged where they would amount, in the aggregate, for a request or series of related requests, to $25 or less.

(c) *Services charged for and amount charged.* For the services listed below expended in locating or making available records or copies thereof, the following charges shall be assessed:

(1) *Copies.* For copies, $.10 per copy of each page.

(2) *Clerical searches.* For each one quarter hour spent by clerical personnel in excess of the first quarter hour in searching for and producing requested records, $4.75.

(3) *Non-routine, non-clerical searches.* Where the task of determining which

records fall within a request and collecting them requires the time of professional or managerial personnel, and where the time required is substantial, for each one quarter hour spent in excess of the first quarter hour, $10.00. No charge shall be made for the time spent in resolving legal or policy issues affecting access to records of known contents.

(4) *Other charges.* When a response to a request requires services or materials other than those described in paragraphs (c)(1) through (3) of this section, the direct cost of such services to the Foundation may be charged, providing the requestor has been given an estimate of such cost before it is incurred.

**§ 1502.8 Exemptions.**

The categories of records maintained by the Foundation which may be exempted from disclosure are described in 5 U.S.C. 552(b).

**§ 1502.9 Processing of requests.**

(a) *Processing.* A person who has made a written request for records which meets the requirements of § 1502.4 shall be informed by the Chief FOIA Officer within 20 working days after receipt of the request of the Foundation's decision whether to deny or grant access to the records and the right of the requestor to seek assistance from the Foundation's Chief Public Liaison.

(b) *Denials.* If the Chief FOIA Officer, with the concurrence of the General Counsel, denies a request for records, the requestor will be informed of the name and title of the official responsible for the denial, the reasons for it, and the right to appeal the decision to the President of the Foundation within 90 calendar days of receipt of the denial. The President shall determine any appeal within 20 days of receipt and notify the requestor within the time period of the decision. If the decision is to uphold the denial, the requestor will be informed of the reasons for the decision, of the right to a judicial review of the decision in the federal courts, and of the dispute resolution services offered by the FOIA Public Liaison of the Foundation or the Office of Government Information Services of the National Archives and Records Administration as a non-exclusive alternative to litigation.

(c) *Extension of time.* In unusual circumstances, as defined by the FOIA, to the extent reasonably necessary to the proper processing of requests, the time required to respond to a FOIA request or an appeal may be extended for an additional 10 working days upon written notification to the requestor providing the reasons for the extension. If the extension goes beyond 10 working days, USADF will notify the requestor of services provided by the FOIA Public Liaison and the Office of Government Information Services.

(d) *Expedited processing.* USADF shall process requests and appeals on an expedited basis where the requestor demonstrates a compelling need for the records, as defined in 5 U.S.C. 552(a)(6)(E)(v). USADF shall make a determination of whether to provide expedited processing, and shall notify the requestor of the determination, within 10 calendar days after the receipt of the request. USADF shall provide expeditious consideration of administrative appeals of determinations of whether to provide expedited processing.

(e) *Confidential commercial information.* Whenever records containing confidential commercial information are requested under the FOIA and USADF determines that it may be required to disclose the records, USADF shall promptly provide written notice to the submitter of the confidential commercial information, in conformity with the procedures set forth in Executive Order 12600, Predisclosure Notification Procedures for Confidential Commercial Information, 3 CFR, 1987 Comp., p. 235.

**§ 1502.10 Judicial review.**

On complaint, the district court of the United States in the district in which the complainant resides, or has his/her principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the Foundation from withholding Foundation records, and to order the production of any agency records improperly withheld from the complainant (5 U.S.C. 552(a)(4)(B)).

[FR Doc. 2017–02239 Filed 2–2–17; 8:45 am]

BILLING CODE 6117–01–P

## DEPARTMENT OF JUSTICE

### 28 CFR Part 85

**[Docket No. OAG 156; AG Order No. 3823–2017]**

## Civil Monetary Penalties Inflation Adjustment for 2017

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015.

**DATES:** *Effective date:* This rule is effective February 3, 2017.

*Applicability date:* The adjusted civil penalty amounts are applicable only to civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252 RFK Building, 950 Pennsylvania Avenue NW., Washington, DC 20530, telephone (202) 514–8059 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114–74 (Nov. 2, 2015), titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Amendments''), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101–410 (the ''Inflation Adjustment Act''), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the 2015 Amendments, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule (''2016 interim rule'') to adjust for inflation the civil monetary penalties assessed by components of the Department after August 1, 2016, whose associated violations occurred after November 2, 2015 (the so-called ''catch-up'' adjustments). See 28 CFR 85.5. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. After considering the public comments submitted in response to the 2016 interim rule, the Department will finalize the 2016 interim rule.

### II. Inflation Adjustments Made by This Rule

The 2015 Amendments also provide for agencies to adjust for inflation their civil penalty amounts by January 15,

2017, and not later than January 15 of each year thereafter. Accordingly, the Department is publishing this final rule to adjust the civil penalty amounts that were most recently adjusted as of August 1, 2016.

This rule provides the current inflation adjustments being made in 2017. This rule adjusts the civil penalty amounts as established in the 2016 interim rule (which added 28 CFR 85.5), rounded to the nearest dollar. This means that the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty is increased by the cost-of-living adjustment, which is the ''percentage (if any) for each civil monetary penalty by which—(A) the Consumer Price Index for the month of October preceding the date of [this] adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).'' Inflation Adjustment Act, as amended, sec. 5(b)(1), 28 U.S.C. 2461 note.

As provided in the 2015 Amendments, the adjustments made by this rule are based on the Bureau of Labor Statistics' Consumer Price Index for October 2016.[1] The inflation factor used in calculating the adjustments was provided to all federal agencies in the OMB Memorandum for the Heads of Executive Departments and Agencies M–17–11 (December 16, 2016). *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf* (last visited December 22, 2016). The applicable inflation factor for this adjustment is 1.01636.

An example of how the adjustment is calculated using this inflation factor is set forth below.

*Example:*

The Program Fraud Civil Remedies Act penalty was increased to $10,781 in 2016, in accordance with the catch-up adjustment requirement of the 2015 Amendments. This amount is then multiplied by the inflation factor, as shown below:

$10,781 × 1.01636 = $10,957.38

When rounded to the nearest dollar, the new penalty is $10,957.

This rule adjusts for inflation the civil monetary penalties assessed by components of the Department of Justice for purposes of the Inflation Adjustment Act, as amended. Other agencies are responsible for the inflation adjustments of certain other civil monetary penalties that the Department's litigating components bring suit to collect. The reader should consult the regulations of those other agencies for inflation adjustments to those penalties.

## III. Effective Date of Adjusted Civil Penalty Amounts

The adjusted civil penalty amounts added by this rule are applicable only to civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Amendments.

The penalty amounts set forth in 28 CFR 85.5, as added by the June 30, 2016, interim rule are applicable only to civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015. For convenient reference, this rule amends the table in 28 CFR 85.5 to include both the adjusted penalty amounts as added by the 2016 interim rule as well as the new adjusted civil penalty amounts being adopted in this final rule.

Violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016, whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in the Department's regulations 28 CFR parts 20, 22, 36, 68, 71, 76 and 85 as such regulations existed prior to August 1, 2016 (or as set forth by statute if the amount had not yet been adjusted by regulation prior to August 1, 2016).

### *Statutory and Regulatory Analyses*

#### *Administrative Procedure Act*

The Inflation Adjustment Act, as amended by the 2015 Amendments, provides that for the second adjustment made after the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and each adjustment thereafter, the head of an agency shall adjust civil monetary penalties and shall make the adjustment notwithstanding 5 U.S.C. 553. *See* Public Law 114–74, sec. 701(b)(1)(D) (amending section 4(b)(2) of the Inflation Adjustment Act). Accordingly, this rule is being issued as a final rule without prior notice and public comment, and without a 30-day delayed effective date.

#### *Regulatory Flexibility Act*

Only those entities that are determined to have violated federal law and regulations would be affected by the increase in the civil penalty amounts made by this rule. A Regulatory Flexibility Act analysis is not required for this rule because publication of a notice of proposed rulemaking was not required. *See* 5 U.S.C. 603(a).

#### *Executive Orders 12866 and 13563—Regulatory Review*

This final rule has been drafted in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), The Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review'' section 1, General Principles of Regulation. Executive Orders 12866 and 13563 direct agencies, in certain circumstances, to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, Regulatory Planning and Review, section 3(f), and, accordingly, this rule has not been reviewed by the Office of Management and Budget. This final rule implements the 2015 Amendments by making an across-the-board adjustment of the civil penalty amounts to account for inflation since the adoption of the 2016 interim rule. The 2016 interim rule itself was determined not to be a significant regulatory action under Executive Order 12866.

#### *Executive Order 13132—Federalism*

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

#### *Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

[1] For inflation adjustments *other* than the ''initial adjustment'' made in the 2016 rule, the adjustment will be determined by the difference in the Consumer Price Index between the October preceding the date of the new adjustment and the October the year before. *See* Public Law 114–74, sec. 701(b)(2)(B) (amending section 5(b) of the Inflation Adjustment Act).

private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**List of Subjects in 28 CFR Part 85**

Administrative practice and procedure, Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

## PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

■ 1. The authority citation for part 85 continues to read as follows:

**Authority:** 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321; Pub. L. 114–74, section 701, 28 U.S.C. 2461 note.

■ 2. Section 85.5 is revised to read as follows:

**§ 85.5 Adjustments to penalties for violations occurring after November 2, 2015.**

For civil penalties assessed after February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are adjusted as set forth in the fifth column of the following table. For civil penalties assessed after August 1, 2016, and on or before February 3, 2017, whose associated violations occurred after November 2, 2015, the civil monetary penalties provided by law within the jurisdiction of the Department are those set forth in the fourth column of the following table.

| U.S.C. citation | Name/description | CFR citation | DOJ penalty assessed after 8/1/2016 ($) [1] | DOJ penalty assessed after 2/3/2017 ($) [2] |
|---|---|---|---|---|
| | **ATF** | | | |
| 18 U.S.C. 922(t)(5) | Brady Law—Nat'l Instant Criminal Check System; Transfer of firearm without checking NICS. | | 8,162 | 8,296. |
| 18 U.S.C. 924(p) | Child Safety Lock Act; Secure gun storage or safety device, violation. | | 2,985 | 3,034. |
| | **Civil Division** | | | |
| 12 U.S.C. 1833a(b)(1) | Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Violation. | 28 CFR 85.3(a)(6) | 1,893,610 | 1,924,589. |
| 12 U.S.C. 1833a(b)(2) | FIRREA Violation (continuing) (per day) | 28 CFR 85.3(a)(7) | 1,893,610 | 1,924,589. |
| 12 U.S.C. 1833a(b)(2) | FIRREA Violation (continuing) | 28 CFR 85.3(a)(7) | 9,468,050 | 9,622,947. |
| 22 U.S.C. 2399b(a)(3)(A) | Foreign Assistance Act; Fraudulent Claim for Assistance (per act). | 28 CFR 85.3(a)(8) | 5,500 | 5,590. |
| 31 U.S.C. 3729(a) | False Claims Act; [3] Violations | 28 CFR 85.3(a)(9) | Min. 10,781 Max. 21,563 | Min. 10,957. Max. 21,916. |
| 31 U.S.C. 3802(a)(1) | Program Fraud Civil Remedies Act; Violations Involving False Claim (per claim). | 28 CFR 71.3(a) | 10,781 | 10,957. |
| 31 U.S.C. 3802(a)(2) | Program Fraud Civil Remedies Act; Violation Involving False Statement (per statement). | 28 CFR 71.3(f) | 10,781 | 10,957. |
| 40 U.S.C. 123(a)(1)(A) | Federal Property and Administrative Services Act; Violation Involving Surplus Government Property (per act). | 28 CFR 85.3(a)(12) | 5,500 | 5,590. |
| 41 U.S.C. 8706(a)(1)(B) | Anti-Kickback Act; Violation Involving Kickbacks [4] (per occurrence). | 28 CFR 85.3(a)(13) | 21,563 | 21,916. |
| 18 U.S.C. 2723(b) | Driver's Privacy Protection Act of 1994; Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records—Substantial Non-compliance (per day). | | 7,954 | 8,084. |
| 18 U.S.C. 216(b) | Ethics Reform Act of 1989; Penalties for Conflict of Interest Crimes [5] (per violation). | 28 CFR 85.3(c) | 94,681 | 96,230. |
| 41 U.S.C. 2105(b)(1) | Office of Federal Procurement Policy Act; [6] Violation by an individual (per violation). | | 98,935 | 100,554. |
| 41 U.S.C. 2105(b)(2) | Office of Federal Procurement Policy Act; [6] Violation by an organization (per violation). | | 989,345 | 1,005,531. |
| 42 U.S.C. 5157(d) | Disaster Relief Act of 1974; [7] Violation (per violation) | | 12,500 | 12,705. |
| | **Civil Rights Division (excluding immigration-related penalties)** | | | |
| 18 U.S.C. 248(c)(2)(B)(i) | Freedom of Access to Clinic Entrances Act of 1994 ("FACE Act"); Nonviolent physical obstruction, first violation. | 28 CFR 85.3(b)(1)(i) | 15,909 | 16,169. |
| 18 U.S.C. 248(c)(2)(B)(ii) | FACE Act; Nonviolent physical obstruction, subsequent violation. | 28 CFR 85.3(b)(1)(ii) | 23,863 | 24,253. |

| U.S.C. citation | Name/description | CFR citation | DOJ penalty assessed after 8/1/2016 ($) [1] | DOJ penalty assessed after 2/3/2017 ($) [2] |
|---|---|---|---|---|
| 18 U.S.C. 248(c)(2)(B)(i) ... | FACE Act; Violation other than a nonviolent physical obstruction, first violation. | 28 CFR 85.3(b)(2)(i) ..... | 23,863 ..... | 24,253. |
| 18 U.S.C. 248(c)(2)(B)(ii) .. | FACE Act; Violation other than a nonviolent physical obstruction, subsequent violation. | 28 CFR 85.3(b)(2)(ii) ..... | 39,772 ..... | 40,423. |
| 42 U.S.C. 3614(d)(1)(C)(i) | Fair Housing Act of 1968; first violation ..... | 28 CFR 85.3(b)(3)(i) ..... | 98,935 ..... | 100,554. |
| 42 U.S.C. 3614(d)(1)(C)(ii) | Fair Housing Act of 1968; subsequent violation ..... | 28 CFR 85.3(b)(3)(ii) ..... | 197,869 ..... | 201,106. |
| 42 U.S.C. 12188(b)(2)(C)(i) | Americans With Disabilities Act; Public accommodations for individuals with disabilities, first violation. | 28 CFR 36.504(a)(3)(i) ..... | 89,078 ..... | 90,535. |
| 42 U.S.C. 12188(b)(2)(C)(ii). | Americans With Disabilities Act; Public accommodations for individuals with disabilities, subsequent violation. | 28 CFR 36.504(a)(3)(ii) ..... | 178,156 ..... | 181,071. |
| 50 U.S.C. App. 597(b)(3) .. | Servicemembers Civil Relief Act of 2003; first violation. | 28 CFR 85.3(b)(4)(i) ..... | 59,810 ..... | 60,788. |
| 50 U.S.C. App. 597(b)(3) .. | Servicemembers Civil Relief Act of 2003; subsequent violation. | 28 CFR 85.3(b)(4)(ii) ..... | 119,620 ..... | 121,577. |
| **Criminal Division** | | | | |
| 18 U.S.C. 983(h)(1) ..... | Civil Asset Forfeiture Reform Act of 2000; Penalty for Frivolous Assertion of Claim. | ..... | Min. 342 ..... Max. 6,834 .. | Min. 348. Max. 6,946. |
| 18 U.S.C. 1956(b) ..... | Money Laundering Control Act of 1986; Violation [8] ..... | ..... | 21,563 ..... | 21,916. |
| **DEA** | | | | |
| 21 U.S.C. 844a(a) ..... | Anti-Drug Abuse Act of 1988; Possession of small amounts of controlled substances (per violation). | 28 CFR 76.3(a) ..... | 19,787 ..... | 20,111. |
| 21 U.S.C. 961(1) ..... | Controlled Substance Import Export Act; Drug abuse, import or export. | 28 CFR 85.3(d) ..... | 68,750 ..... | 69,875. |
| 21 U.S.C. 842(c)(1)(A) ..... | Controlled Substances Act (''CSA''); Violations of 842(a)—other than (5), (10) and (16)—Prohibited acts re: Controlled substances (per violation). | ..... | 62,500 ..... | 63,523. |
| 21 U.S.C. 842(c)(1)(B) ..... | CSA; Violations of 842(a)(5) and (10)—Prohibited acts re: Controlled substances. | ..... | 14,502 ..... | 14,739. |
| 21 U.S.C. 842(c)(1)(C) ..... | CSA; Violation of 825(e) by importer, exporter, manufacturer, or distributor—False labeling of anabolic steroids (per violation). | ..... | 500,855 ..... | 509,049. |
| 21 U.S.C. 842(c)(1)(D) ..... | CSA; Violation of 825(e) at the retail level—False labeling of anabolic steroids (per violation). | ..... | 1,002 ..... | 1,018. |
| 21 U.S.C. 842(c)(2)(C) ..... | CSA; Violation of 842(a)(11) by a business—Distribution of laboratory supply with reckless disregard [9]. | ..... | 375,613 ..... | 381,758. |
| 21 U.S.C. 856(d) ..... | Illicit Drug Anti-Proliferation Act of 2003; Maintaining drug-involved premises [10]. | ..... | 321,403 ..... | 326,661. |
| **Immigration-Related Penalties** | | | | |
| 8 U.S.C. 1324a(e)(4)(A)(i) | Immigration Reform and Control Act of 1986 (''IRCA''); Unlawful employment of aliens, first order (per unauthorized alien). | 28 CFR 68.52(c)(1)(i) ..... | Min. 539 ..... Max. 4,313 .. | Min. 548. Max. 4,384. |
| 8 U.S.C. 1324a(e)(4)(A)(ii) | IRCA; Unlawful employment of aliens, second order (per such alien). | 28 CFR 68.52(c)(1)(ii) ..... | Min. 4,313 ... Max. 10,781 | Min. 4,384. Max. 10,957. |
| 8 U.S.C. 1324a(e)(4)(A)(iii) | IRCA; Unlawful employment of aliens, subsequent order (per such alien). | 28 CFR 68.52(c)(1)(iii) ..... | Min. 6,469 ... Max. 21,563 | Min. 6,575. Max. 21,916. |
| 8 U.S.C. 1324a(e)(5) ..... | IRCA; Paperwork violation (per relevant individual) .... | 28 CFR 68.52(c)(5) ..... | Min. 216 ..... Max. 2,156 .. | Min. 220. Max. 2,191. |
| 8 U.S.C. 1324a (note) ..... | IRCA; Violation relating to participating employer's failure to notify of final nonconfirmation of employee's employment eligibility (per relevant individual). | 28 CFR 68.52(c)(6) ..... | Min. 751 ..... Max. 1,502 .. | Min. 763. Max. 1,527. |
| 8 U.S.C. 1324a(g)(2) ..... | IRCA; Violation/prohibition of indemnity bonds (per violation). | 28 CFR 68.52(c)(7) ..... | 2,156 ..... | 2,191. |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(I). | IRCA; Unfair immigration-related employment practices, first order (per individual discriminated against). | 28 CFR 68.52(d)(1)(viii) .... | Min. 445 ..... Max. 3,563 .. | Min. 452. Max. 3,621. |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(II). | IRCA; Unfair immigration-related employment practices, second order (per individual discriminated against). | 28 CFR 68.52(d)(1)(ix) ..... | Min. 3,563 ... Max. 8,908 .. | Min. 3,621. Max. 9,054. |
| 8 U.S.C. 1324b(g)(2)(B)(iv)(III). | IRCA; Unfair immigration-related employment practices, subsequent order (per individual discriminated against). | 28 CFR 68.52(d)(1)(x) ..... | Min. 5,345 ... Max. 17,816 | Min. 5,432. Max 18,107. |

| U.S.C. citation | Name/description | CFR citation | DOJ penalty assessed after 8/1/2016 ($) [1] | DOJ penalty assessed after 2/3/2017 ($) [2] |
|---|---|---|---|---|
| 8 U.S.C. 1324b(g)(2)(B)(iv)(IV). | IRCA; Unfair immigration-related employment practices, document abuse (per individual discriminated against). | 28 CFR 68.52(d)(1)(xii) ..... | Min. 178 ..... Max. 1,782 .. | Min. 181. Max. 1,811. |
| 8 U.S.C. 1324c(d)(3)(A) .... | IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document). | 28 CFR 68.52(e)(1)(i) ..... | Min. 445 ..... Max. 3,563 .. | Min. 452. Max. 3,621. |
| 8 U.S.C. 1324c(d)(3)(B) .... | IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(1)–(4) (per document). | 28 CFR 68.52(e)(1)(iii) ..... | Min. 3,563 ... Max. 8,908 .. | Min. 3,621. Max. 9,054. |
| 8 U.S.C. 1324c(d)(3)(A) .... | IRCA; Document fraud, first order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document). | 28 CFR 68.52(e)(1)(ii) ..... | Min. 376 ..... Max. 3,005 .. | Min. 382. Max. 3,054. |
| 8 U.S.C. 1324c(d)(3)(B) .... | IRCA; Document fraud, subsequent order—for violations described in U.S.C. 1324c(a)(5)–(6) (per document). | 28 CFR 68.52(e)(1)(iv) ..... | Min. 3,005 ... Max. 7,512 .. | Min. 3,054. Max. 7,635. |
| **FBI** | | | | |
| 49 U.S.C. 30505(a) ..... | National Motor Vehicle Title Identification System; Violation (per violation). | ..... | 1,591 ..... | 1,617. |
| **Office of Justice Programs** | | | | |
| 42 U.S.C. 3789g(d) ..... | Confidentiality of information; State and Local Criminal History Record Information Systems—Right to Privacy Violation. | 28 CFR 20.25 ..... | 27,500 ..... | 27,950. |

[1] The figures set forth in the fourth column represent the civil penalty amounts as last adjusted by the Department of Justice, effective August 1, 2016.

[2] All figures set forth in this table are maximum penalties, unless otherwise indicated.

[3] Section 3729(a)(1) of Title 31 provides that any person who violates this section is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the Government sustains because of the act of that person. 31 U.S.C. 3729(a)(1) (2015). Section 3729(a)(2) permits the court to reduce the damages under certain circumstances to not less than 2 times the amount of damages which the Government sustains because of the act of that person. *Id.* section 3729(a)(2). The adjustment made by this regulation is only applicable to the specific statutory penalty amounts stated in subsection (a)(1), which is only one component of the civil penalty imposed under section 3729(a)(1).

[4] Section 8706(a)(1) of Title 41 provides that the Federal Government in a civil action may recover from a person that knowingly engages in conduct prohibited by section 8702 of Title 44 a civil penalty equal to twice the amount of each kickback involved in the violation and not more than $10,000 for each occurrence of prohibited conduct. 41 U.S.C. 8706(a)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (a)(1)(B), which is only one component of the civil penalty imposed under section 8706.

[5] Section 216(b) of Title 18 provides that the civil penalty should be no more than $50,000 for each violation or the amount of compensation which the person received or offered for the prohibited conduct, whichever amount is greater. 18 U.S.C. 216(b) (2015). Therefore, the adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b), which is only one aspect of the possible civil penalty imposed under section 216(b).

[6] Section 2105(b) of Title 41 provides that the Attorney General may bring a civil action in an appropriate district court of the United States against a person that engages in conduct that violates section 2102, 2103, or 2104 of Title 41. 41 U.S.C. 2105(b) (2015). Section 2105(b) further provides that on proof of that conduct by a preponderance of the evidence, an individual is liable to the Federal Government for a civil penalty of not more than $50,000 for each violation plus twice the amount of compensation that the individual received or offered for the prohibited conduct, and an organization is liable to the Federal Government for a civil penalty of not more than $500,000 for each violation plus twice the amount of compensation that the organization received or offered for the prohibited conduct. *Id.* section 2105(b). The adjustments made by this regulation are only applicable to the specific statutory penalty amounts stated in subsections (b)(1) and (b)(2), which are each only one component of the civil penalties imposed under sections 2105(b)(1) and (b)(2).

[7] The Attorney General has authority to bring a civil action when a person has violated or is about to violate a provision under this statute. 42 U.S.C. 5157(b) (2015). The Federal Emergency Management Agency has promulgated regulations regarding this statute and has adjusted the penalty in its regulation. 44 CFR 206.14(d) (2015). The Department of Health and Human Services (HHS) has also promulgated a regulation regarding the penalty under this statute. 42 CFR 38.8 (2015).

[8] Section 1956(b)(1) of Title 18 provides that whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of the value of the property, funds, or monetary instruments involved in the transaction; or $10,000. 18 U.S.C. 1956(b)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (b)(1)(B), which is only one aspect of the possible civil penalty imposed under section 1956(b).

[9] Section 842(c)(2)(C) of Title 21 provides that in addition to the penalties set forth elsewhere in the subchapter or subchapter II of the chapter, any business that violates paragraph (11) of subsection (a) of the section shall, with respect to the first such violation, be subject to a civil penalty of not more than $250,000, but shall not be subject to criminal penalties under the section, and shall, for any succeeding violation, be subject to a civil fine of not more than $250,000 or double the last previously imposed penalty, whichever is greater. 21 U.S.C. 842(c)(2)(C) (2015). The adjustment made by this regulation regarding the penalty for a succeeding violation is only applicable to the specific statutory penalty amount stated in subsection (c)(2)(C), which is only one aspect of the possible civil penalty for a succeeding violation imposed under section 842(c)(2)(C).

[10] Section 856(d)(1) of Title 21 provides that any person who violates subsection (a) of the section shall be subject to a civil penalty of not more than the greater of $250,000; or 2 times the gross receipts, either known or estimated, that were derived from each violation that is attributable to the person. 21 U.S.C. 856(d)(1) (2015). The adjustment made by this regulation is only applicable to the specific statutory penalty amount stated in subsection (d)(1)(A), which is only one aspect of the possible civil penalty imposed under section 856(d)(1).

Dated: January 13, 2017.

**Loretta E. Lynch,**

*Attorney General.*

[FR Doc. 2017–01306 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–19–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement

### 30 CFR Part 250

**[Docket ID: BSEE–2017–0001; 17XE1700DX EX1SF0000.DAQ000 EEEE50000]**

**RIN 1014–AA34**

### Civil Penalty Inflation Adjustment

**AGENCY:** Bureau of Safety and Environmental Enforcement, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of the maximum civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and Office of Management and Budget (OMB) guidance. The civil penalty inflation adjustment using a 1.01636 multiplier accounts for one year of inflation spanning from October 2015 to October 2016.

**DATES:** This rule is effective on February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Robert Fisher, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208–3955 or by email: *regs@bsee.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background and Legal Authority
II. Calculation of Adjustments
III. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866 and 13563)
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. Unfunded Mandates Reform Act
E. Takings (E.O. 12630)
F. Federalism (E.O. 13132)
G. Civil Justice Reform (E.O. 12988)
H. Consultation with Indian Tribes (E.O. 13175 and Departmental Policy)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Effects on the Energy Supply (E.O. 13211)

## I. Background and Legal Authority

The OCSLA, at 43 U.S.C. 1350(b)(1), directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index to account for inflation. On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (FCPIA of 2015). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through rulemaking, if warranted, and then to make subsequent annual adjustments for inflation. Agencies are required to publish the annual inflation adjustments in the **Federal Register** by no later than January 15, 2017, and by no later than January 15 each subsequent year. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

BSEE last updated civil penalty amounts in BSEE regulations through RIN 1014–AA30 [81 FR 41801] effective July 28, 2016. Consistent with OMB guidance, BSEE's interim final rule (IFR) implemented the catch-up adjustments required by the FCPIA of 2015, through October 2015. No public comments were received on the IFR, and BSEE published the final rule on November 17, 2016 [81 FR 80994].

The OMB Memorandum M–17–11 (Implementation of the 2017 annual adjustment pursuant to the FCPIA of 2015; *https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf*) explains agency responsibilities for: Identifying applicable penalties and performing the annual adjustment; publishing in the **Federal Register**; finalizing 2016 interim final rules; applying adjusted penalty levels; and performing agency oversight of inflation adjustments.

BSEE is promulgating this 2017 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the FCPIA of 2015 and OMB guidance. A proposed rule is not required because the FCPIA of 2015 states that agencies shall adjust civil monetary penalties ''notwithstanding Section 553 of the Administrative Procedure Act.'' (FCPIA of 2015 at § 4(b)(2)). Accordingly, Congress expressly exempted the annual inflation adjustments implemented pursuant to the FCPIA of 2015 from the pre-promulgation notice and comment requirements of the Administrative Procedure Act (APA), allowing them to be published as a final rule. This interpretation of the statute is confirmed by OMB Memorandum M–17–11. (OMB Memorandum M–17–11 at 3 (''This means that the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'')).

## II. Calculation of Adjustments

Under the FCPIA of 2015 and the guidance provided in OMB Memorandum M–17–11, BSEE has identified the applicable civil monetary penalty and calculated the necessary inflation adjustment. The previous OCSLA civil penalty inflation adjustment accounted for inflation through October 2015. The required annual civil penalty inflation adjustment promulgated through this rule accounts for inflation through October 2016.

Annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment, and the prior year's October CPI–U. Consistent with the guidance in OMB Memorandum M–17–11, BSEE divided the October 2016 CPI–U by the October 2015 CPI–U to calculate the multiplying factor. In this case, October 2016 CPI–U (241.729)/October 2015 CPI–U (237.838) = 1.01636.

For 2017, OCSLA and the FCPIA of 2015 require that BSEE adjust the OCSLA maximum civil penalty amount. To accomplish this, BSEE multiplied the existing OCSLA maximum civil penalty amount ($42,017) by the multiplying factor ($42,017 × 1.01636 = $42,704.40). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is $42,704.

Pursuant to the FCPIA of 2015, the increase in the OCSLA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predates such increase. Consistent with the provisions of OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalty per day per violation:

| CFR citation | Description of the penalty | Current maximum penalty | Multiplier | Adjusted maximum penalty |
|---|---|---|---|---|
| 30 CFR 250.1403 | Failure to comply per-day, per-violation | $42,017 | 1.01636 | $42,704 |

## III. Procedural Requirements

*A. Regulatory Planning and Review (E.O. 12866 and 13563)*

Executive Order (E.O.) 12866 provides that the OMB Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. (*See* OMB Memorandum M–17–11 at 3).

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 further emphasizes that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (*See* 5 U.S.C. 603(a) and 604(a)). The FCPIA of 2015 expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment. (*See* FCPIA of 2015 at § 4(b)(2); OMB Memorandum M–17–11 at 3). Thus, the RFA does not apply to this rulemaking.

*C. Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*D. Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*E. Takings (E.O. 12630)*

This rule does not affect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

*F. Federalism (E.O. 13132)*

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

*G. Civil Justice Reform (E.O. 12988)*

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)*

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175. We have determined that it has no substantial direct effects on Federally-recognized Indian tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department of the Interior's tribal and ANCSA consultation policies is not required.

*I. Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*J. National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

*K. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

**List of Subjects in 30 CFR Part 250**

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Penalties, Pipelines, Continental Shelf—mineral resources, Continental Shelf—

rights-of-way, Reporting and recordkeeping requirements, Sulfur.

For the reasons given in the preamble, the Bureau of Safety and Environmental Enforcement amends Title 30, Chapter II, Subchapter B, Part 250 Code of Federal Regulations as follows.

## PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

**Authority:** 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

■ 2. Revise § 250.1403 to read as follows:

### § 250.1403 What is the maximum civil penalty?

The maximum civil penalty is $42,704 per day per violation.

**Richard T. Cardinale,**

*Acting Assistant Secretary for Land and Minerals Management.*

[FR Doc. 2017–02326 Filed 2–2–17; 8:45 am]

**BILLING CODE 4310–MR–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2016–0620; FRL–9958–28–Region 8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to Nonattainment Permitting Regulations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The EPA is taking final action to conditionally approve all but one of the State Implementation Plan (SIP) revisions submitted by the State of Utah on August 20, 2013, with supporting administrative documentation submitted on September 12, 2013. These submittals revise the Utah Administrative Code (UAC) that pertain to the issuance of Utah air quality permits for major sources in nonattainment areas. The EPA is not taking final action on the portion of the August 20, 2013 submittal that revised rule R307–420 at this time. The EPA is taking final action to conditionally approve the other revisions because, while the submitted revisions to Utah's nonattainment permitting rules do not fully address the deficiencies in the state's program, Utah has committed to address additional remaining deficiencies in the state's nonattainment permitting program no later than a year from the EPA finalizing this conditional approval. Upon the EPA finding of a timely meeting of this commitment in full, the final conditional approval of the SIP revisions would convert to a final approval of Utah's plan. This action is being taken under section 110 of the Clean Air Act (CAA) (Act).

**DATES:** This final rule is effective March 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2016–0620. All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

### I. Background

On August 20, 2013, with supporting administrative documentation submitted on September 12, 2013, Utah sent the EPA revisions to their nonattainment permitting regulations, specifically to address deficiencies the EPA identified in their nonattainment permitting regulations that affected the EPA's ability to approve Utah's $PM_{10}$ maintenance plan and that may affect the EPA's ability to approve Utah's $PM_{2.5}$ SIP. These revisions addressed R307–403–1 (Purpose and Definitions), R307–403–2 (Applicability), R307–403–11 (Actual Plant-wide Applicability Limits (PALs)), and R307–420 (Ozone Offset Requirements in Davis and Salt Lake Counties). In addition, Utah moved R307–401–19 (Analysis of Alternatives) to R307–403–10 and moved R307–401–20 (Relaxation of Limits) to R307–403–2. On June 2, 2016, the EPA entered into a consent decree with the Center for Biological Diversity, Center for Environmental Health, and Neighbors for Clean Air regarding a failure to act, pursuant to CAA sections 110(k)(2)–(4), on certain complete SIP submissions from states intended to address specific requirements related to the 2006 $PM_{2.5}$ national ambient air quality standard (NAAQS) for certain nonattainment areas, including the submittal from the Governor of Utah dated August 20, 2013.

The SIP revisions submitted by the Utah Department of Air Quality (UDAQ) on August 20, 2013, establish specific nonattainment new source review (NNSR) permitting requirements. In this revision, the UDAQ has incorporated federal regulatory language—establishing permitting requirements for new and modified major stationary sources in a nonattainment area—from portions of 40 CFR 51.165 and reformatted it into state-specific requirements for sources in Utah under R307–403–1 (Purpose and Definitions) and R307–403–2 (Applicability), including provisions relevant to NNSR programs for $PM_{2.5}$ nonattainment areas. Additionally, UDAQ incorporated by reference the provisions of 40 CFR 51.165(f)(1)—(f)(14) into 307–403–11 (Actual PALs), and revised R307–420 to state that the definitions and applicability provisions in R307–403–1 apply to this section.

CAA section 110(a)(2)(C) requires each state plan to include ''a program to provide for . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in parts C and D of this subchapter,'' and CAA section 172(c)(5) provides that the plan ''shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section [173].'' CAA section 173 lays out the requirements for obtaining a permit that must be included in a state's SIP-approved permit program. CAA section 110(a)(2)(A) requires that SIPs contain enforceable emissions limitations and other control measures. Under section CAA section 110(a)(2), the enforceability requirement in section 110(a)(2)(A) applies to all plans submitted by a state. CAA section 110(i) (with certain limited exceptions) prohibits states from modifying SIP requirements for stationary sources except through the SIP revision process. CAA section 172(c)(7) requires that nonattainment plans, including NNSR programs required by section 172(c)(5),

meet the applicable provisions of section 110(a)(2), including the requirement in section 110(a)(2)(A) for enforceable emission limitations and other control measures. CAA section 110(l) provides that the EPA cannot approve a SIP revision that interferes with any applicable requirement of the Act.

Section 51.165 in title 40 of the CFR (Permit Requirements) sets out the minimum plan requirements states are to meet within each SIP NNSR permitting program. Generally, 40 CFR 51.165 consists of a set of definitions, minimum plan requirements regarding procedures for determining applicability of NNSR and use of offsets, and minimum plan requirements regarding other source obligations, such as recordkeeping.

Specifically, subparagraphs 51.165(a)(1)(i) through (xlvi) enumerate a set of definitions which states must either use or replace with definitions that a state demonstrates are more stringent or at least as stringent in all respects. Subparagraph 51.165(a)(2) sets minimum plan requirements for procedures to determine the applicability of the NNSR program to new and modified sources. Subparagraph 51.165(a)(3), (a)(9) and (a)(11) set minimum plan requirements for the use of offsets by sources subject to NNSR requirements. Subparagraphs (a)(8) and (a)(10) regard precursors, and subparagraphs (a)(6) and (a)(7) regard recordkeeping obligations. Subparagraph 51.165(a)(4) allows NNSR programs to treat fugitive emissions in certain ways. Subparagraph 51.165(a)(5) regards enforceable procedures for after approval to construct has been granted. Subparagraph 51.165(b) sets minimum plan requirements for new major stationary sources and major modifications in attainment and unclassifiable areas that would cause or contribute to violations of the NAAQS. Finally, subparagraph 51.165(f) sets minimum plan requirements for the use of PALs. Please refer to docket EPA–R08–OAR–2016–0620 to view a cross-walk table which outlines how Utah's nonattainment permitting rules correlate with the requirements of 40 CFR 51.165.

Clean Air Act section 189(e) requires that state SIPs apply the same control requirements that apply to major stationary sources of $PM_{10}$ to major stationary sources of $PM_{10}$ precursors, ''except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area.'' On January 4, 2013, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013), issued a decision that remanded the EPA's 2008 $PM_{2.5}$ NSR Implementation Rule (73 FR 28321). The court found that the EPA erred in implementing the $PM_{2.5}$ NAAQS in these rules solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA, rather than pursuant to the additional implementation provisions specific to particulate matter nonattainment areas in subpart 4. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of $PM_{10}$ precursors (and hence under the court decision, $PM_{2.5}$ precursors) ''except where the Administrator determines that such sources do not contribute significantly to $PM_{10}$ levels which exceed the standard in the area.'' Accordingly, NNSR programs that are submitted for $PM_{2.5}$ nonattainment areas must regulate all $PM_{2.5}$ precursors, *i.e.,* sulfur dioxide ($SO_2$), nitrogen oxides ($NO_X$), volatile organic compounds (VOC), and ammonia, unless the Administrator determines that such sources of a particular precursor do not contribute significantly to nonattainment in the nonattainment area. The EPA recently finalized a new provision at 40 CFR 51.165(a)(13) that codifies this requirement, as it applies to $PM_{2.5}$, in the federal regulations.

As a result of this court decision, Utah needed to submit further revisions to address remaining deficiencies in the nonattainment permitting program in order for the EPA to approve the August 20, 2013, submittal. Included as part of those deficiencies was that Utah has not submitted an analysis demonstrating that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State. On September 30, 2016, Utah submitted to the EPA a commitment letter (see docket EPA–R08–OAR–2016–0620) in which Utah commits to address additional remaining deficiencies in the State's nonattainment permitting program in R307–403 by December 8, 2017, that were not addressed in the August 20, 2013, submittal, including revisions to R307–403–2, R307–403–3, and R307–403–4. In Utah's commitment letter, Utah specifies that:

1. UDAQ commits to submit a SIP revision that either regulates major stationary sources pursuant to Utah's NNSR permitting program, consistent with all applicable federal regulatory requirements or demonstrates that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the state, consistent with new provisions at 40 CFR 51.1006(a)(3);

2. UDAQ commits to revise R307–403–2 consistent with the new definitions in 40 CFR 51.165 that the EPA recently finalized in the $PM_{2.5}$ SIP Requirements Rules;

3. UDAQ commits to revise R307–403–3, including R307–403–3(3), to remove the reference to NNSR determinations being made ''at the time of the source's proposed start-up date'';

4. UDAQ commits to revise R307–403–3, including R307–403–3(2) and R307–403–3(3), to specify that NNSR permit requirements are applicable to all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;

5. UDAQ commits to revise R307–403–3, in addition to the previously adopted definition of lowest achievable emission rate (LAER) in R307–403–1, to explicitly state that LAER applies to all major new sources and major modifications for the relevant pollutants in nonattainment areas;

6. UDAQ commits to revise R307–403–4 to incorporate the requirements from 40 CFR 51.165 to establish that all general offset permitting requirements apply for all offsets regardless of the pollutant at issue, and to revise the provision to impose immediate and direct general offset permitting requirements on all new major stationary sources or major modifications located in a nonattainment area that are major for the pollutant for which the area is designated nonattainment;

7. UDAQ commits to work with the Utah Air Quality Board to revise R307–403–4 to reference the criteria discussed in section IV.D. of 40 CFR 51, Appendix S; and

8. UDAQ will update R307–403 to include a new section that imposes requirements that address emission offsets for $PM_{2.5}$ nonattainment areas (as required in 40 CFR 51.165(a)(11)) on NNSR sources in Utah. UDAQ will revise R307–403–3, including R307–403–3(3)(c), to cross reference this new section, as well as the requirements in R307–403–4, R307–403–5, and R307–403–6; and UDAQ commits to work with the Utah Air Quality Board to revise this section to include the requirements of CAA Section 173(c)(1) and 40 CFR 51.165 (specifically 40 CFR 51.165(a)(3)) concerning the requirement that creditable reductions be calculated based on actual emissions for offset purposes.

Under CAA section 110(k)(4), the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. Under a conditional approval, the state must adopt and submit the specific revisions it has committed to within one year of the EPA's finalization. If the EPA fully approves the submittal of the revisions specified in the commitment letter, the conditional nature of the approval would be removed and the submittal would become fully approved. If the state does not submit these revisions within one year, or if the EPA finds the state's revisions to be incomplete, or the EPA disapproves the state's revisions, a conditional approval will convert to a disapproval. If any of these occur and the EPA's conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which starts an 18-month clock for sanctions, see section 179(a)(2), and a two-year clock for a federal implementation plan (FIP), see section 110(c)(1)(B).

## II. What are the changes that EPA is taking final action to approve?

As proposed in our October 31, 2016 proposed action (81 FR 75361), we are finalizing conditional approval of the following revisions to the UAC: R307–403–1 (Purpose and Definitions); R307–403–2 (Applicability); R307–403–11 (Actual PALs); and the relocation of R307–401–19 (Analysis of Alternatives), which was originally approved in 79 FR 7072 on February 6, 2014, to R307–403–10 and R307–401–20 (Relaxation of Limits) to R307–403–2, which was originally approved in 79 FR 7072 on February 6, 2014.

In our October 31, 2016 proposed rulemaking (see 81 FR 75361), we proposed to approve R307–420 (Ozone Offset Requirements in Davis and Salt Lake Counties.) In that rulemaking, we stated: ''This rule is being revised to include the definitions and applicability provisions of R307–403–1. This rule change will ensure that the definitions and applicability provisions in R307–420 are consistent with related permitting rules in R307–403.'' However, we are not taking final action at this time on the revisions to R307–420, as submitted by Utah on August 20, 2013. Merely approving the phrase ''Except as provided in R307–420–2, the definitions in R307–403–1 apply to R307–420'' in R307–420–2 (Definitions), and the phrase ''The applicability provisions in R307–403–2(1)(a) through (f) and R307–403–2(2) through (7) apply in R307–420'' in R307–420–3(3) (Applicability) would not meet the requirements of CAA section 110(a)(2)(A), which requires that SIPs contain enforceable emissions limitations and other control measures. The EPA has determined that it should not take action on these revisions because the rest of R307–420 is not a part of Utah's federally enforceable SIP, and approving it into the SIP would create confusion for the regulatory authorities, the sources and the public. However, once Utah does submit a fully approvable revision incorporating all of R307–420, the EPA will be able to undertake future rulemaking action on this section at that time.

The EPA has determined that these final revisions, when combined with the changes in Utah's September 30, 2016 commitment letter, create enforceable obligations for sources and are consistent with the CAA and EPA regulations, including the requirements of CAA section 110(a)(2)(A), 110(a)(2)(C), 110(i), 110(l), 172(c)(5), 172(c)(7), 173. While the August 20, 2013, submittal states that ammonia is not a precursor to $PM_{2.5}$,[1] and UDAQ has not submitted an analysis demonstrating that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State, UDAQ committed to submit a SIP revision that either (1) regulates major stationary sources of ammonia pursuant to Utah's NNSR permitting program, consistent with all applicable federal regulatory requirements, or (2) demonstrates that sources of ammonia, as a $PM_{2.5}$ precursor, do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in nonattainment areas in the State, consistent with new provisions at 40 CFR 51.1006(a)(3). Therefore, we are conditionally approving the submittal's $PM_{2.5}$ precursor provisions.

Utah also committed to address additional remaining deficiencies in the State's nonattainment permitting program in R307–403 by December 8, 2017, that were not addressed in the August 20, 2013, submittal, including revisions to R307–403–2, R307–403–3, and R307–403–4. Therefore, the EPA's final conditional approval of these revisions allows Utah to apply R307–403 as permitting authority in all nonattainment areas for $PM_{2.5}$, $PM_{10}$, and $SO_2$ as well as maintenance areas for ozone and CO for new major sources and major modifications.

We provided a detailed explanation of the basis of our proposed conditional approval in our proposed rulemaking (see 81 FR 75361). We invited comment on all aspects of our proposal and provided a 30-day comment period. The comment period ended on November 30, 2016.

## III. Response to Comments

*Comment:* We received one (1) comment from Caitlin Whittaker. The commenter stated the importance of addressing emission offsets in Utah's SIP, and that it is important for the air quality in Utah.

*Response:* The EPA agrees with the commenter that emissions offset programs for nonattainment areas are an important component for improving air quality, and we acknowledge the Utah Department of Environmental Quality's work with the EPA to improve their air quality regulations, particularly with concern to their nonattainment area rules.

## IV. What action is EPA taking today?

The EPA is taking final action to conditionally approve Utah's August 20, 2013, submittal. As discussed in our proposal and this notice, our action is based on an evaluation of Utah's rules against the requirements of CAA sections 110(a)(2)(C), 110(a)(2)(A), 110(i), 110(l), 172(c)(5), 172(c)(7), 173, and regulations at 40 CFR 51.165.

As described in our proposed rulemaking, and in Section II of this notice, the EPA is conditionally approving the revisions of R307–403–1 (Purpose and Definitions), R307–403–2 (Applicability), R307–403–11 (Actual PALs), and the relocation of R307–401–19 (Analysis of Alternatives) to R307–403–10 and R307–401–20 (Relaxation of Limits) to R307–403–2. We are also determining that if the commitments outlined in Utah's September 30, 2016 commitment letter (see docket EPA–R08–OAR–2016–0620) are met, those revisions combined with the August 20, 2013, submittal would address the deficiencies in Utah's nonattainment permitting program, as identified by the EPA in our proposed rulemaking for this action.

## V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the UDAQ rules as described in the amendments to 40 CFR part 52 set forth in this

[1] R307–403–1(4)(b) states that ''ammonia is not a precursor to $PM_{2.5}$ in the Logan, Salt Lake City, and Provo $PM_{2.5}$ nonattainment areas as defined in the July 1, 2010 version of 40 CFR 81.345,''

document. Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[2] The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 8 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

## VI. Statutory and Executive Orders Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

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

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

Dated: December 27, 2016.

**Shaun L. McGrath,**

*Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart TT—Utah

■ 2. In § 52.2320, the table in paragraph (c) is amended by:

■ a. Removing, under the center heading ''R307–401. Permit: New and Modified Sources,'' the entries ''R307–401–19'' and ''R307–401–20.''

■ b. Revising, under the center heading ''R307–403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas,'' the entry ''R307–403.''

■ c. Adding, under the center heading ''R307–403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas,'' the entries ''R307–403–1,'' ''R307–403–2,'' ''R307–403–10,'' and ''R307–403–11'' in numerical order.

The additions and revision read as follows:

**§ 52.2320 Identification of plan.**

* * * * *

(c) * * *

[2] 62 FR 27968 (May 22, 1997).

| Rule No. | Rule title | State effective date | Final rule citation, date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| **R307–403 Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas** | | | | |
| R307–403 ..... | Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas. | 9/15/1998 | 71 FR 7679, 2/14/06 ..... | Except for R307–403–1, R307–403–2, R307–403–10, R307–403–11. |
| R307–403–1 ..... | Purpose and Definitions ..... | 7/1/2013 | [insert **Federal Register** citation], 2/3/2017. | Conditionally approved through 2/5/2018. |
| R307–403–2 ..... | Applicability ..... | 7/1/2013 | [insert **Federal Register** citation], 2/3/2017. | Conditionally approved through 2/5/2018. |
| R307–403–10 .... | Analysis of Alternatives ..... | 7/1/2013 | [insert **Federal Register** citation], 2/3/2017. | Conditionally approved through 2/5/2018. |
| R307–403–11 .... | Actuals PALS ..... | 7/1/2013 | [insert **Federal Register** citation], 2/3/2017. | Conditionally approved through 2/5/2018. |
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[FR Doc. 2017–02189 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2016–0521; FRL–9959–15–Region 8]**

## Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Interstate Transport for Wyoming

**AGENCY:** The Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on portions of six submissions from the state of Wyoming that are intended to demonstrate that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA). These submissions address the 2006 and 2012 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS), 2008 ozone NAAQS, 2008 lead (Pb) NAAQS, 2010 sulfur dioxide ($SO_2$) NAAQS and 2010 nitrogen dioxide ($NO_2$) NAAQS. The interstate transport requirements under the CAA consist of four elements (or prongs): Significant contribution to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states; and interference with measures required to be included in the plan for other states to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Specifically, the EPA is approving Wyoming's submissions for interstate transport prongs 1 and 2 for the 2008 Pb and 2010 $NO_2$ NAAQS, and approving prong 1 and disapproving prong 2 for the 2008 ozone NAAQS. The EPA is also approving interstate transport prong 4 for the 2008 Pb and 2010 $SO_2$ NAAQS, and disapproving prong 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 $NO_2$ and 2012 $PM_{2.5}$ NAAQS.

**DATES:** This final rule is effective on March 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2016–0521. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 the Air Program, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

### I. Background

On November 18, 2016, the EPA proposed action on six submittals from Wyoming intended to address the interstate transport requirements of CAA section 110(a)(2)(D)(i) for the 2008 Pb, 2008 ozone, 2010 $NO_2$, 2010 $SO_2$, and 2006 and 2012 $PM_{2.5}$ NAAQS. 81 FR 81712. In that action, the EPA proposed to approve CAA section 110(a)(2)(D)(i)(I) prongs 1, 2 and 4 for the 2008 Pb NAAQS, prong 1 for the 2008 ozone NAAQS, prongs 1 and 2 for $NO_2$, and prong 4 for the 2010 $SO_2$ NAAQS, and proposed to disapprove prong 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 $NO_2$ and 2012 $PM_{2.5}$ NAAQS, and prong 2 for the 2008 ozone NAAQS. An explanation of the CAA requirements, a detailed analysis of the State's submittals, and the EPA's rationale for all proposed actions were provided in the notice of proposed rulemaking, and will not generally be restated here.

The public comment period for this proposed rule ended on December 19, 2016. The EPA received seven comments on the proposal, which will be addressed in the ''Response to Comments'' section, below. All of the comments relate to the EPA's proposed action with respect to prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS. We had proposed to approve the portion of the Wyoming SIP submittal pertaining to the CAA requirement that the State prohibit any emissions activity within the State from emitting air pollutants which will significantly contribute to nonattainment (prong 1) of the 2008 ozone NAAQS in other states and proposed to disapprove the portion of the Wyoming SIP submittal pertaining to the requirement that the state prohibit any emissions activity within the state interfering with maintenance (prong 2) of the 2008 ozone NAAQS in other states. In proposing to take this action, we noted two deficiencies in Wyoming's submittal: (1) Wyoming limited its

technical analysis to a discussion on general wind patterns relative to areas designated nonattainment in certain states that are geographically closest to Wyoming, and did not consider whether emission activity in the State specifically contributed to such areas on days with measured exceedances of the NAAQS or in other areas not designated nonattainment; and (2) Wyoming did not give the ''interfere with maintenance'' clause of CAA section 110(a)(2)(D)(i)(I) independent significance because its analysis did not attempt to evaluate the potential impact of Wyoming's emissions on ozone in areas that may have issues maintaining air quality.

In addition, the EPA cited at proposal certain technical information and a related analysis the agency conducted in order to facilitate efforts to address interstate transport requirements for the 2008 ozone NAAQS, which was also used to support the recently finalized Cross-State Air Pollution Rule Update for the 2008 ozone NAAQS (CSAPR Update).[1] In particular, the EPA cited to air quality modeling which (1) identified locations in the U.S. where the EPA anticipates nonattainment or maintenance issues in 2017 for the 2008 ozone NAAQS (these are identified as nonattainment and maintenance receptors), and (2) quantified the projected contributions from emissions from upwind states to downwind ozone concentrations at the nonattainment and maintenance receptors in 2017. The notice also proposed to apply an air quality threshold of one percent of the NAAQS, equivalent to 0.75 ppb with respect to the 2008 ozone NAAQS, to determine whether a state was ''linked'' to an identified downwind air quality problem in another state such that the upwind state may significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind state.

The modeling data showed that emissions from Wyoming contribute above the one percent threshold to one identified maintenance receptor in the Denver, Colorado area. Accordingly, as the Wyoming Department of Environmental Quality (WDEQ) did not provide technical analysis sufficient to support the State's conclusion that emissions originating in Wyoming do not interfere with maintenance of the 2008 ozone NAAQS in any other state, the EPA proposed to disapprove the Wyoming SIP as to prong 2 of CAA section 110(a)(2)(D)(i)(I). The proposal also noted that, despite the deficiencies in Wyoming's SIP submission as to prong 1, the modeling data confirmed the State's conclusion that it does not significantly contribute to nonattainment of the 2008 ozone NAAQS in any other state. Accordingly, the EPA proposed to approve Wyoming's SIP as meeting the prong 1 requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.

## II. Response to Comments

*Comment:* Several commenters asserted that the State should be given more time to review the CSAPR Update modeling analysis before the EPA takes final action on Wyoming's SIP submittal addressing the prong 1 and 2 requirements as to the 2008 ozone NAAQS. WDEQ submitted a comment letter on November 23, 2016, requesting a 90-day extension to the 30-day comment period that the State asserted was necessary ''to devote significant time and energy reviewing the EPA's basis for the approval and disapproval of the State Plans named in the Proposed Rule.'' The State noted that the EPA had taken over two years and nine months to review Wyoming's February 6, 2014 submittal, and that it was therefore reasonable to allow 120 days for the State to review the EPA's proposed action and to provide additional information in support of its original SIP submission. The EPA responded to WDEQ with a December 6, 2016 letter informing the State that we would not be extending the comment period for the proposed rule.[2]

Commenter Utility Air Regulatory Group (UARG) asserted that the EPA's refusal to extend the comment period is unreasonable. UARG stated that the EPA did not dispute that the State needed additional time, but rather denied the extension request on grounds that opposing counsel in a proposed consent decree negotiated between the EPA and the Sierra Club had refused to extend the negotiated deadline. *See Sierra Club* v. *McCarthy,* Case No. 3:15–cv–04328–JD, (N.D. Cal), Joint Motion to Enter Partial Consent Decree (Oct. 15, 2015) (Document 57). UARG asserted that, because the consent decree was still proposed and therefore had not been entered by the court, the EPA could have taken action to modify the proposed consent decree or filed a motion with the district court to modify the deadline. The commenter asserted that the EPA should have either taken one of these actions, or disputed WDEQ's statement that it needed additional time.

Several commenters asserted that Wyoming should be given an opportunity to review the recently-finalized CSAPR Update modeling to determine whether it is accurate or appropriate for Wyoming or the West overall. Commenter WEST Associates requested that the EPA allow Wyoming to re-examine and resubmit the prong 2 portion of the State's February 6, 2014 submittal before moving forward with a final action.

*Response:* The EPA disagrees with the commenters that the State has not had sufficient time to review the modeling analysis associated with the CSAPR Update Rulemaking. The EPA has provided several opportunities for states to review its modeling information relative to the 2008 ozone NAAQS. The EPA first issued a memo to all states on January 22, 2015, which included the preliminary modeling results assessing interstate transport with respect to the 2008 ozone NAAQS.[3] This preliminary modeling showed that in 2018 Wyoming would contribute to a maintenance receptor above the one percent screening threshold used in the original CSAPR rulemaking. The EPA subsequently issued updated modeling in an August 4, 2015 Notice of Data Availability (NODA), which included a docket with substantial technical information on how the modeling was conducted, notably an Air Quality Modeling Technical Support Document.[4] The updated air quality modeling also identified linkages between Wyoming and nonattainment and maintenance receptors in the Denver, Colorado area, and Wyoming submitted comments on the docket for the NODA. The modeling released in the NODA was used to support the proposed CSAPR Update, and the EPA provided additional, robust explanation and technical support for the modeling in that proposal (80 FR 75706, December 23, 2015) and again in the final rule (81 FR 74504, October 26, 2016), which once more demonstrated a linkage between Wyoming and a maintenance receptor in the Denver, Colorado area, as described in the EPA's

[1] ''Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS.'' 81 FR 74504, October 26, 2016.

[2] EPA's December 6, 2016 letter is available in the docket for this action.

[3] ''Information on the Interstate Transport ''Good Neighbor'' Provision for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) under Clean Air Act (CAA) Section 110(a)(2)(D)(i)(I).'' January 22, 2015. This document, and the associated January 2015 ''Air Quality Modeling Technical Support Document for the 2008 Ozone NAAQS Transport Assessment,'' are available in the docket for this action.

[4] ''Updated Air Quality Modeling Technical Support Document for the 2008 Ozone NAAQS Transport Assessment,'' August 2015.

proposed action on Wyoming's SIP submission.[5]

Moreover, the EPA proposed a similar action with respect to Utah's SIP submission addressing interstate transport with respect to the 2008 ozone NAAQS based on several deficiencies in that state's SIP and citing to the air quality modeling conducted to support the CSAPR Update, which demonstrated that Utah was also linked to nonattainment and maintenance receptors in Denver. May 10, 2016, 81 FR 28807. WDEQ reviewed and commented on the EPA's proposed disapproval action on Utah's interstate transport SIP submission in a June 9, 2016 comment letter submitted to the EPA.[6] In that letter, WDEQ discussed the impact that the EPA's application of the one percent screening threshold to states linked to the Denver receptors would have on the state of Wyoming. Accordingly, Wyoming had several opportunities (including time since January 2015) to review and comment on the EPA's modeling conducted over the last two years and, as necessary, to supplement its submission with additional technical analysis addressing the linkages repeatedly identified in the EPA's analysis.

Finally, although the commenters focus on concerns relative to an opportunity to review the applicability of the EPA's air quality modeling, they do not address the clear deficiency in Wyoming's SIP identified in the EPA's proposed disapproval as to the prong 2 requirements. As explained at proposal, in remanding the Clean Air Interstate Rule (CAIR) to the EPA in *North Carolina* v. *EPA,* the D.C. Circuit explained that the regulating authority must give the ''interfere with maintenance'' clause of section 110(a)(2)(D)(i)(I) ''independent significance'' by evaluating the impact of upwind state emissions on downwind areas that are at risk of future nonattainment, considering historic variability, even if they currently measure clean data.[7] Wyoming's SIP submission did not give the ''interfere with maintenance'' clause of section 110(a)(2)(D)(i)(I) independent significance because its analysis did not evaluate the potential impact of Wyoming emissions on areas that may have issues maintaining that air quality, even if they are currently measuring clean data. Thus, even absent the EPA's modeling, the SIP submission was deficient as to addressing the requirements of prong 2 with respect to the 2008 ozone NAAQS. Finally, the EPA notes that finalization of this action in no way precludes the state of Wyoming from subsequently submitting a SIP or SIP revision to address the deficiencies identified here.

*Comment:* Commenters WEST Associates and Basin Electric Power Cooperative (BEPC) stated that the EPA should wait for the litigation on the EPA's Federal Implementation Plan (FIP) for $NO_X$-related portions of the Wyoming Regional Haze SIP/FIP to be resolved before taking final action on prong 2 of Wyoming's February 6, 2014 submittal. The commenters asserted that it is counterproductive to engage in a prong 2 analysis for ozone while the EPA's Regional Haze $NO_X$ FIP is still under appeal before the United States Court of Appeals for the 10th Circuit. Commenter BEPC noted that the representatives for the Laramie River Station are currently participating in good faith negotiations with the EPA aimed at reaching an agreement on the Regional Haze $NO_X$ controls for the source.

*Response:* The EPA disagrees that it would be appropriate to wait until resolution of the legal challenges to the EPA's January 30, 2014 partial approval and partial disapproval of Wyoming's Regional Haze SIP and the EPA's concurrent promulgation of a FIP (79 FR 5032) before acting on Wyoming's prong 2 SIP submission. The Regional Haze and interstate transport planning requirements address different air quality concerns and are addressed under different statutory provisions and timeframes. The Regional Haze requirements concern visibility in Class I areas, whereas the interstate transport requirements are concerned with attainment and maintenance of the NAAQS, which are designed to address public health and welfare. Thus, while actions taken to address one set of requirements may assist with meeting the other set of requirements, neither Wyoming nor the commenters have explained how implementation of either the disputed SIP or FIP requirements for Regional Haze would necessarily address the 110(a)(2)(D)(i)(I) interstate transport requirements.

Moreover, Wyoming's prong 2 SIP was submitted on February 6, 2014 and was deemed complete by operation of law on August 7, 2014. Accordingly, CAA section 110(k)(2) requires the EPA to have taken final action to approve or disapprove a state's SIP within one year thereafter. As the EPA's action on this submission is already belated, the EPA does not find it appropriate to further delay action on the State's interstate transport SIP until there is resolution of litigation for an unrelated SIP requirement. Delaying action on the State's interstate transport SIP would only further delay potential emission reductions that may be necessary to address maintenance of the NAAQS in Denver, and thereby further delay the public health benefits that would accrue from such emission reductions. To the extent Wyoming believes that the $NO_X$ emission reductions that would be achieved through the State's implementation of the Regional Haze requirements will assist in meeting the State's interstate transport requirements, once the ongoing dispute is resolved, Wyoming may submit a revised SIP submission making an appropriate demonstration at that time.

*Comment:* Commenter WDEQ disagrees with the EPA's basis for disapproving the State's SIP submission as to the prong 2 requirements for the 2008 ozone NAAQS, and believes its February 6, 2014 submittal contains the necessary information to meet these requirements. WDEQ asserted that it had relied upon the EPA's most recent guidance at the time that directly addressed the prong 1 and 2 requirements. WDEQ noted that the EPA's September 2013 infrastructure SIP guidance did not address the prongs 1 and 2 requirements, and therefore relied on prior guidance documents issued in 2006 and 2007 regarding reliance on the EPA's prior interstate transport rulemaking, CAIR, for purposes of developing interstate transport SIPs. [8] WDEQ noted that these guidance documents state that a negative declaration from states not covered by CAIR certifying that the state meets prongs 1 and 2 is adequate to satisfy the requirements of CAA section 110(a)(2)(D)(i). WDEQ added that the guidance documents made no indication that the EPA expected states to consider contributions on days where downwind states measured an exceedance, neither in nonattainment nor maintenance areas. WDEQ contends that the EPA's proposed finding that WDEQ's analyses for prongs 1 and 2 are deficient because ''transported

[5] The Air Quality Modeling Technical Support Document (AQM TSD) for each of these actions in the docket for this rulemaking.

[6] WDEQ's comment letter on the EPA's May 10, 2016 proposed action on the Utah submittal can be found on *www.regulations.gov* in the docket for that action, EPA–R08–OAR–2016–0107.

[7] 531 F.3d 896, 910–11 (D.C. Cir. 2008) (holding that the EPA must give ''independent significance'' to each prong of CAA section 110(a)(2)(D)(i)(I)).

[8] ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ NAAQS,'' August 15, 2006, and ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' October 2, 2007.

emissions may cause an area to measure exceedances of the standard even if that area is not formally designated nonattainment by the EPA'' is unreasonable because such a showing was not stated as a requirement for approval. WDEQ also noted that the EPA previously approved Wyoming's ozone infrastructure plan which used the same methodology and approach used by the State in its February 6, 2014 submittal.

WDEQ asserted that the EPA's proposed prong 2 disapproval indicates a radical change from its prior approach for determining adequacy of such plans. WDEQ asserted that the EPA has made statements indicating that the Agency has not evaluated the applicability of a transport rule in the western states, and that the EPA does not have an understanding of the nature of interstate ozone transport in the West. WDEQ suggested that the EPA should conduct interstate transport modeling and analysis specific to western states and then use the outcome of such analysis in the development and evaluation of future plans, but not plans previously submitted.

Commenter Western Energy Alliance stated that the EPA's proposed action runs contrary to long-standing agency practice of accepting a ''weight of evidence'' approach to evaluating interstate transport in downwind states, and contends that is inappropriate for the EPA to hold the WDEQ analysis to standards that did not exist when the SIP was developed.

*Response:* For the reasons described at proposal and in this final action, the EPA disagrees that Wyoming's SIP submission contains adequate provisions to address the prong 2 requirements with respect to the 2008 ozone NAAQS. In particular, the State did not give the ''interfere with maintenance'' clause of CAA section 110(a)(2)(D)(i)(I) independent significance, because its analysis did not attempt to evaluate the potential impact of Wyoming emissions on areas that may have issues maintaining that air quality, even if they currently measure clean data. As we noted at proposal, the EPA's most recent technical information demonstrates that emissions from Wyoming will impact air quality in other states relative to the 2008 ozone NAAQS.

The EPA disagrees that it needed to issue guidance for states to be aware of the requirement to evaluate areas that might be at risk of violating the standard, regardless of whether those areas are or have been designated nonattainment. The court in *North Carolina* was specifically concerned with areas not designated nonattainment when it rejected the view that ''a state can never 'interfere with maintenance' unless the EPA determines that at one point it 'contribute[d] significantly to nonattainment.' '' 531 F.3d at 910. The court pointed out that areas barely attaining the standard due in part to emissions from upwind sources would have ''no recourse'' pursuant to such an interpretation. *Id.* Accordingly, and as described in the proposal, the court explained that the regulatory authority must give ''independent significance'' to the maintenance prong of CAA section 110(a)(2)(D)(i)(I) by separately identifying such downwind areas for purposes of defining states' obligations pursuant to the good neighbor provision. Thus, the court's decision in *North Carolina* gave Wyoming sufficient notice, without further guidance from the EPA, that it needed to consider the potential impact of its emissions on areas that may have issues maintaining the standard. In addition, as noted at proposal, the EPA has stated in many actions before Wyoming made their submission that the obligation to address impacts on downwind air quality is independent of formal designations because exceedances can happen in any area.[9] Wyoming's SIP submission did not attempt to evaluate such areas and was thus deficient as to the prong 2 requirements. In so finding, the EPA is not engaged in a ''radical departure'' from its prior approach to evaluating SIPs, but merely measuring Wyoming's SIP against the statutory requirements, as interpreted by the court in *North Carolina*.[10]

While EPA appreciates the helpful role guidance can provide to states, whether the EPA chooses to issue guidance or not does not relieve either states of the obligation to submit SIPs that address CAA section 110(a)(2)(D)(i)(I) by the statutory deadline or the EPA of the obligation to review SIPs consistent with those statutory requirements. States bear the primary responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. Furthermore, in *EPA* v. *EME Homer City Generation, L.P.,* the Supreme Court clearly held that ''nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.'' 134 S. Ct. 1584, 1601 (2014).[11] While the EPA has taken a different approach in some prior rulemakings by providing states with an opportunity to submit a SIP after we quantified the states' emission reduction obligations (*e.g.,* the $NO_X$ SIP Call and CAIR [12]), the CAA does not require such an approach. As discussed earlier, the EPA did provide information to assist states with developing or supplementing their SIP submittals for the 2008 ozone NAAQS, including the January 22, 2015 memorandum providing preliminary modeling information regarding potential downwind air quality problems and levels of upwind state contributions and the August 4, 2015 NODA providing

[9] The EPA notes that, in approving the state's SIP to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone NAAQS, the EPA supplemented the State's technical analysis in order to ensure that that independent analysis was given to the prong 2 requirements. See 73 FR 26023, May 8, 2008.

[10] *See, e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005) (''As to impacts, CAA section 110(a)(2)(D) refers only to prevention of 'nonattainment' in other States, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment areas must first have occurred.''); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (Aug. 8, 2011) (evaluating nonattainment and maintenance concerns based on modeled projections); Brief for Respondents U.S. Environmental Protection Agency at 23–24, *EME Homer City Generation, L.P.* v. *EPA,* Case No. 11–1302 (D.C. Cir. Jan. 16, 2015), ECF No. 1532516 (defending the EPA's identification of air quality problems in CSAPR independent of area designations). Cf. Final Response to Petition from New Jersey Regarding $SO_2$ Emissions From the Portland Generating Station, 76 FR 69052 (Nov. 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 $SO_2$ NAAQS prior to issuance of designations for that standard). Thus, it was unnecessary for the EPA to issue formal guidance to alert states to its interpretation of CAA section 110(a)(2)(D)(i)(I) requirements.

[11] ''Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Rather, the statute speaks without reservation: Once a NAAQS has been issued, a State 'shall' propose a SIP within three years, § 7410(a)(1), and that SIP 'shall' include, among other components, provisions adequate to satisfy the Good Neighbor Provision, § 7410(a)(2).'' *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. at 1600; *see also Nat'l Ass'n of Mfrs.* v. *EPA,* 750 F.3d 921, (D.C. Cir. 2014) (''Finally, petitioners argue that EPA should not have issued, or at least should not require compliance with, the 2013 NAAQS without first providing States and regulated parties certain implementation guidance. We disagree. The NAAQS sets a clear numerical target specifying the maximum levels of emissions in the States. Under the law, States will devise implementation plans to meet that target. Nothing in the law dictates additional guidance from EPA at this point.'').

[12] For information on the $NO_X$ SIP call see 63 FR 57356 (October 27, 1998). For information on CAIR (the Clean Air Interstate Rule) see 70 FR 25162 (May 12, 2005).

updated modeling. All of these documents consistently indicated that the EPA's technical analysis showed that Wyoming emissions contribute to downwind air quality problems with respect to the 2008 ozone NAAQS; yet Wyoming did not revise or supplement its SIP submittal with additional data showing the State had satisfied its statutory obligation.[13]

Moreover, it is inappropriate to rely on older EPA guidance to demonstrate compliance with the prong 2 requirements for the 2008 ozone NAAQS as those guidance documents do not address this specific NAAQS. Both the 2006 and 2007 guidance documents WDEQ claims to have relied on are inapplicable to the State's obligation to address the prong 2 requirements for the 2008 ozone NAAQS. First, WDEQ concedes that both guidance documents were aimed at the addressing the prongs 1 and 2 requirements for the 1997 ozone and fine particulate matter ($PM_{2.5}$) NAAQS, not the 2008 ozone NAAQS at issue here. To the extent the guidance documents recommended relying on the analysis conducted to support the CAIR rulemaking, that rulemaking also only addressed the 1997 standards, and not the more stringent 2008 ozone NAAQS. The guidance documents in no way suggested that states could rely on the analysis from CAIR to address the prong 1 and 2 requirements for any other NAAQS. Moreover, even were the CAIR analysis in some way relevant to the consideration of the 2008 ozone NAAQS, the EPA did not evaluate the impact of emissions from western states, including Wyoming, on air quality in the course of that rulemaking.[14] Accordingly, there would be no basis on which either Wyoming or the EPA could conclude that the CAIR analysis supports a conclusion that Wyoming does not contribute significantly to nonattainment or interfere with maintenance either for the NAAQS explicitly addressed by CAIR or for any other NAAQS.[15]

More importantly, in *North Carolina* v. *EPA,* the D.C. Circuit held that CAIR was ''fundamentally flawed,'' 531 F.3d 896, 929 (D.C. Cir. 2008), in part because CAIR did not satisfy the statutory requirement to ''achieve something measurable towards the goal of prohibiting sources 'within the State' from contributing to nonattainment or interfering with maintenance in 'any other State.' '' *Id.* at 908. The D.C. Circuit held in *EME Homer City Generation, L.P.* v. *EPA,* ''when our decision in North Carolina deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done.'' 795 F.3d 118, 133 (2015). States therefore did not need formal guidance to understand that it was no longer appropriate to rely on CAIR for purposes of satisfying the state's interstate transport obligations with respect to the 2008 ozone NAAQS, particularly when Wyoming submitted its SIP revision, six years after the *North Carolina* decision issued. Nonetheless, in a subsequent guidance document issued addressing the prong 1 and 2 requirements for the 2006 $PM_{2.5}$ NAAQS, the EPA explicitly stated that states should no longer rely on CAIR as a means of addressing the interstate transport requirements because the rule had been remanded by the court in *North Carolina.*[16]

Although WDEQ questions how it could have developed an approvable SIP without explicit guidance from the EPA and before the EPA had conducted air quality modeling evaluating downwind air quality and contributions, as explained earlier, states bear the primary responsibility for demonstrating that their plans contain adequate provisions to address the statutory interstate transport provisions whether or not the EPA issues such guidance or conducts such modeling. The commenters are correct to note that, in separate interstate transport actions, the EPA has reviewed and finalized action on interstate transport SIPs in states where air quality modeling was not available or where the total weight of evidence for finalizing action on the state's SIP was not solely based on air quality modeling.[17] As evidenced by these actions, consideration of monitoring data and wind patterns, properly used, can be relevant to evaluating potential interstate transport impacts, but such consideration does not absolve a state from evaluating its downwind impact regardless of formal area designations and considering the requirements of both prongs of the good neighbor provision. A state can and should submit all of the technical information it considers relevant to evaluate its contribution to downwind air quality, including anticipated changes in the emissions from sources within the state and any additional factors specific to the state that influence its emissions and air pollution which may transport to other states. As we noted above and as found by the Supreme Court in *EME Homer City Generation, L.P.,* the lack of guidance does not relieve either the states of the obligation to submit SIPs that address CAA section 110(a)(2)(D)(i)(I) nor the EPA of the obligation to review such SIPs consistent with the statutory requirements of the good neighbor provision. Though Wyoming submitted

[13] The EPA does not agree that its statements explaining the EPA's intent to work with western states are an indication that the EPA does not have an understanding of interstate transport in the West. The EPA's statement that the EPA and the states should have a ''common understanding of interstate ozone transport in each part of the country'' was intended to indicate the Agency's desire to work with the states to develop appropriate solutions to interstate transport problems, not an indication that the EPA lacks an understanding of interstate transport in the West. As explained further below, the EPA believes the modeling provides a reliable projection of the nature of interstate transport in western states.

[14] See AQM TSD for CAIR final rule, at 3. WDEQ's citation to CSAPR is also unavailing. CSAPR also addressed only the 1997 ozone NAAQS, not the more stringent 2008 ozone NAAQS, and did not evaluate interstate transport as to any of these standards in western states, including Wyoming. 76 FR 48229 (describing modeling of states in the central and eastern U.S.). Accordingly, it would also be inappropriate for Wyoming to conclude that, because the state was not included in CSAPR, it does not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS.

[15] Additionally, the 2006 guidance to which WDEQ points explicitly noted that any negative declaration indicating a state was not covered by CAIR should also be supported by a technical demonstration. *See* 2006 iSIP Guidance, p. 5.

[16] Memo from William T. Harnett to Regional Air Division Directors, Regions I–X, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS)'' (Sept. 25, 2009), p. 3. Notably, this guidance document explicitly stated as to the prong 2 requirements, ''This provision requires evaluation of impacts on areas of other states that are meeting the 2006 24-hour $PM_{2.5}$ NAAQS, not merely areas formerly designated nonattainment that are subject to a maintenance SIP. Therefore, the state's submission must explain whether or not emissions from the state have this impact and, if so, address the impact.'' *Id.* p. 3–4. The EPA continued by providing specific factors a state could consider: ''A state's submission for this requirement should provide the technical information which the state deems appropriate to support its conclusions. Suitable information might include, but is not limited to, information concerning emissions in the state, meteorological conditions in the state and the potentially impacted states, monitored ambient concentrations in the state and the potentially impacted states, and air quality modeling.'' *Id.* p. 4.

[17] See, *e.g.,* Air Quality State Implementation Plans; Approvals and Promulgations: Utah; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS May 20, 2013 (78 FR 29314); Final Rule, 78 FR 48615 (August 9, 2013); Approval and Promulgation of Implementation Plans; State of California; Interstate Transport of Pollution; Significant Contribution to Nonattainment and Interference With Maintenance Requirements, Proposed Rule, 76 FR 146516, 14616–14626 (March 17, 2011); Final Rule, 76 FR 34872 (June 15, 2011); Approval and Promulgation of State Implementation Plans; State of Colorado; Interstate Transport of Pollution for the 2006 24-Hour $PM_{2.5}$ NAAQS, Proposed Rule, 80 FR 27121, 27124–27125 (May 12, 2015); Final Rule, 80 FR 47862 (August 10, 2015).

a technical analysis that considers certain factors which align with the EPA's actions on prior SIP submissions, the EPA could not conclude based on this analysis that the State is not interfering with maintenance of the NAAQS in other states, particularly in light of air quality modeling demonstrating that emissions from Wyoming impact air quality in Denver, Colorado. The basis for this conclusion was explained in the proposal for this final action.

*Comment:* Commenter WDEQ stated that the EPA is applying new criteria retroactively. WDEQ asserted that the EPA had not established any technical requirements for demonstrating impacts on nearby states at the time of Wyoming's February 6, 2014 submission, but then retroactively applied ''a technical analysis developed almost three years after Wyoming's submittal to evaluate Wyoming's plan.'' The State submitted a timeline to argue that the EPA's proposed action is out of sequence with appropriate rulemakings. Commenter WDEQ noted that it had commented on the EPA's August 4, 2015 NODA, ''stating that it understood that the rule applied only to eastern states and would provide additional comments when the EPA proposed additional SIP requirements for western states.'' Wyoming asserted that the EPA did not provide a response to this comment. Finally, WDEQ stated that the EPA failed to indicate that a revision to submitted plans might be required, as it had done in its October 2, 2007 guidance document.

*Response:* As discussed previously, the EPA's primary basis for disapproving Wyoming's prong 2 SIP submission as to the 2008 ozone NAAQS is based on the State not giving the ''interfere with maintenance'' clause of CAA section 110(a)(2)(D)(i)(I) independent significance as required by *North Carolina,* a decision which was issued six years before Wyoming submitted the SIP at issue here. The EPA also has technical information demonstrating that emissions from Wyoming impact a downwind maintenance receptor in Denver, Colorado, but even absent this information, the State did not provide an adequate technical analysis meeting the basic statutory requirements outlined by the D.C. Circuit and supporting its conclusion.

Wyoming is correct to note that the EPA stated the CSAPR Update does not apply to Wyoming, and the final CSAPR Update does not impose any implementation obligations on the state of Wyoming or sources within the State. 81 FR 74523, October 26, 2016. However, in the context of that rulemaking, the EPA developed technical information relevant to western states, including Wyoming, while in this final action on the Wyoming SIP the EPA is adopting an approach to analyzing that data as it applies to Wyoming. While the modeling cited in this action was conducted after Wyoming submitted its SIP addressing the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, it would not be appropriate for the EPA to ignore modeling data indicating that the emissions from the State would impact air quality in other states. Rather, the EPA must evaluate each SIP submission based on the information available and consistent with the Act as we and courts interpret it at the time of our action, not at the time of the state's submittal. Wyoming was aware that the EPA had data indicating a potential impact as early as January 2015, but did not submit additional information to supplement or revise its SIP submission addressing CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS.[18] Wyoming also had an opportunity to review the modeling information in the context of the EPA's proposed action on the SIP submission, and could comment on the appropriateness of using the modeling for this purpose, and how the EPA should interpret the modeling results as they apply to Wyoming, which both Wyoming and a number of other commenters have done. The EPA addresses those specific comments regarding the EPA's technical analysis below.

*Comment:* Commenter WDEQ stated that the EPA's use of CSAPR Update modeling as a screening tool is not appropriate for interstate transport in the West, citing its June 9, 2016 comment letter opposing the EPA's proposed action for Utah. Commenters UARG, WEST Associates, and BEPC also referenced or attached comment letters submitted on the CSAPR Update proposal.[19]

*Response:* Commenters should identify with reasonable specificity any objections or issues with the proposed action rather than only referring or citing to comments made in other contexts. It is not appropriate to cite to or attach comments made on separate rulemaking actions without identifying which portions of such comments are relevant to the present proposed action. Accordingly, the EPA is not here responding to comments made on separate rulemaking actions.

*Comment:* Commenter Western Energy Alliance stated that the CSAPR Update modeling results are flawed because the model has not been adapted to the unique concerns of western states. The commenter stated that ''the CSAPR model fails to account for the topography, altitude, and climate of the western United States. Climate factors characteristic of the West include stratospheric intrusions, a long and severe wildfire season, abundant sunshine, and lack of summertime precipitation, all of which the CSAPR model fails to adequately consider.'' The commenter asserted that the EPA did not provide evidence explaining why the modeling results need not consider these factors. Finally, the commenter stated that the EPA inappropriately put the onus on the State to provide evidence to support or deny the EPA's decisions on the appropriateness of the CSAPR modeling, while the burden should rest on the EPA to justify the reversal of its long-standing policy about the CSAPR modeling deficiencies in the West.

Commenter WEST Associates stated that the EPA had noted in the CSAPR Update proposal that the modeling for that rule was conducted specifically for Eastern states. The commenter also referenced language from the CSAPR Update and the Wyoming proposal in which the EPA stated that there may be geographically specific factors to consider in evaluating ozone transport in the West affecting modeling and modeling results. Citing 81 FR 81715, November 18, 2016. The commenter suggested that these factors could include broad expanses of public land, high altitude settings, international transport and elevated background ozone concentrations that can comprise a significant portion of ambient concentrations, especially on high ozone days in the Western United States.

*Response:* The commenters do not provide evidence or technical bases for their claims about the inadequacies of the modeling for projecting air quality and contributions in the West. As described in the CSAPR Update Final Air Quality Modeling Technical

[18] The EPA explained in issuing the January 2015 memo that its ''goal is to provide information and to initiate discussions that inform state development and EPA review of 'Good Neighbor' SIPs, and, where appropriate, to facilitate state efforts to supplement or resubmit their 'Good Neighbor' SIPs,'' at 1. With respect to western states, the EPA indicated it would evaluate potential linkages on a case-by-case basis and recommended that states consult with the EPA regional offices. *Id.* at 4.

[19] These comment letters can be found in the docket for the CSAPR Update, EPA–HQ–OAR–2015–0500.

Support Document (2016 AQM TSD),[20] the CSAPR modeling was performed for a nationwide domain that accounted for the differences in emissions (including actual wild fires), meteorology, and topography in various regions across the U.S. The precipitation and other meteorological factors used in the EPA's modeling were found to correspond closely to measured data.[21] The 2016 AQM TSD includes an evaluation of 2011 base year model performance for 8-hour daily maximum concentrations on a regional and statewide basis as well as for individual monitoring sites. For example, the performance evaluation results for Wyoming indicate that the model tends to under predict measured 8-hour daily maximum ozone concentrations by 10.3 percent, on average, during the period May through September, which is the season the EPA used for analyzing 2017 model-predicted interstate contributions. For the Douglas County maintenance receptor in Colorado, the 2011 modeling under predicts measured 8-hour daily maximum ozone concentrations by 7.5 percent, on average for the May through September time period. As described more fully in the 2016 AQM TSD, the EPA's use of the Comprehensive Air Quality Model with Extensions (CAMx) source apportionment modeling for the CSAPR Update is appropriate and the Agency finds its use sufficient for the purposes of assessing and identifying downwind air quality problems and contributions from upwind states in both the eastern and the western U.S.[22] The emissions modeling TSD for the CSAPR Update final rule ''Preparation of Emission Inventories for the version 6.3, 2011 Emissions Modeling Platform'' describes how fire emissions were developed and modeled using a consistent approach for the contiguous United States. As described earlier, the most updated modeling continues to indicate that emissions from Wyoming will interfere with maintenance of the 2008 ozone NAAQS at one receptor in the Denver, Colorado area (*i.e.,* Douglas County).

The EPA does not find the information provided by the commenters to indicate flaws in the modeling conducted by the EPA. Rather, the commenters point to factors which the CSAPR Update modeling specifically took into account.[23] As described in the CAMx model User's Guide, ''CAMx is an Eulerian photochemical dispersion model that allows for integrated ''one-atmosphere'' assessments of tropospheric air pollution (ozone, particulates, air toxics, and mercury) over spatial scales ranging from neighborhoods to continents. It is designed to unify all of the technical features required of ''state-of-the-science'' air quality models into a single open-source system that is computationally efficient, flexible, and publicly available.'' [24] For these reasons, the EPA disagrees with these comments and finds the use of the CSAPR Update modeling to evaluate Wyoming's contributions to interstate transport is reasonable and supported.

The EPA did acknowledge in the CSAPR Update final rule that ''for western states, there may be geographically specific factors to consider in evaluating interstate ozone pollution transport,'' and that ''given the near-term 2017 analysis and implementation of the CSAPR Update FIPs, the EPA focused this rulemaking on eastern states where the CSAPR method for assessing collective contribution has proven effective.'' 81 FR 74523, October 26, 2016. However, these statements were not an indication that the EPA believed the modeling of air quality in the West was flawed. Rather, the EPA was suggesting that additional factors may be relevant in determining whether an upwind state that was projected to impact air quality in a downwind state should be determined to significantly contribute to nonattainment or interfere with maintenance of the NAAQS in that state. The EPA's recent action approving Arizona's interstate transport SIP, discussed in more detail at proposal, demonstrates some of the geographically specific factors that the EPA was referring to with these statements. *See* Proposed Rule, 81 FR 15202, March 22, 2016; Final Rule, 81 FR 31513, May 19, 2016.[25]

*Comment:* Commenter Western Energy Alliance stated that it is unclear whether the CSAPR Update modeling accounted for background ozone, which can contribute up to 60 ppb in the western U.S. Commenters West Associates and BEPC also note that approximately half of the ozone measured at the Denver monitor is from background ozone. These commenters suggest that this presents ''nearly identical'' facts to the grounds used to propose approval of Nevada's interstate transport SIP for the 2008 ozone NAAQS. 81 FR 87859, December 6, 2016.

*Response:* The commenters do not explain how the EPA's modeling has allegedly failed to account for background ozone. This modeling includes emissions from biogenic sources which are a major component of natural background ozone that is particularly relevant to summertime high ozone concentrations. The modeling also includes emissions from large portions of Canada and Mexico that are adjacent to the U.S. within the modeling domain. Background ozone due to transport from more distant international sources was accounted for by the use of global air quality modeling to provide ozone and precursor concentrations along the boundary of the modeling domain. The commenters

[20] ''Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update.'' August 2016. This document was included in the docket for the proposed action.

[21] ''Meteorological Model Performance for Annual 2011 Simulation WRF v3.4'' in the docket for the CSAPR Update Rulemaking, at EPA–HQ–OAR–2015–0500–0076.

[22] ''The EPA used CAMx photochemical source apportionment modeling to quantify the impact of emissions in specific upwind states on downwind nonattainment and maintenance receptors for 8-hour ozone. CAMx employs enhanced source apportionment techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.'' 80 FR 75726, December 3, 2015.

[23] Stratospheric intrusions are short-term events that have a relatively local impact on ground-level ozone concentrations and are unrelated to the impacts of interstate transport on downwind ozone formed from anthropogenic sources in upwind states. The modeling performed by the EPA did not explicitly account for these events within the modeling domain. However, the global modeling EPA used to provide boundary concentrations that reflect international transport into the domain did simulate processes that can result in stratospheric intrusions.

[24] User's Guide Comprehensive Air Quality Model with Extensions version 6.2. Environ International Corporation, Novato, CA, March, 2015.

[25] *See also* Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard (NAAQS), 82 FR 1740 (January 6, 2017): ''While the 1 percent screening threshold has been traditionally applied to evaluate upwind state linkages in eastern states where such collective contribution was identified, the EPA noted in the CSAPR Update that, as to western states, there may be geographically specific factors to consider in determining whether the 1 percent screening threshold is appropriate. For certain receptors, where the collective contribution of emissions from one or more upwind states may not be a considerable portion of the ozone concentration at the downwind receptor, the EPA and states have considered, and could continue to consider, other factors to evaluate those states' planning obligation pursuant to the Good Neighbor provision. However, where the collective contribution of emissions from one or more upwind states is responsible for a considerable portion of the downwind air quality problem, the CSAPR framework treats a contribution from an individual state at or above 1 percent of the NAAQS as significant, and this reasoning applies regardless of where the receptor is geographically located.''

have not explained how they believe the EPA must consider background ozone levels in evaluating interstate transport in the West, nor cited any specific provision of the statute that specifically requires such consideration. While the EPA does not view the obligation under the good neighbor provision as a requirement for upwind states to bear all of the burden for resolving downwind air quality problems, the CAA requires that upwind states (as well as the downwind states themselves) take reasonable steps to control emissions impacting downwind air quality even in areas affected by high levels of background concentrations of ozone. Were the EPA to absolve upwind states of the responsibility to make such reasonable reductions simply because of such background ozone concentrations, the area's citizens would suffer the health and environmental consequences of such inaction.

Moreover, the EPA does not agree that, because background ozone contributes to the projected design values at the Denver monitor, the factual circumstances are ''nearly identical'' to the circumstances supporting the proposed approval of the Nevada SIP. In fact, the circumstances here are substantially different than the facts considered in the Nevada SIP approval. The EPA proposed to approve Nevada's SIP submission because, among other factors, it determined that the cumulative contribution from upwind states to the downwind receptors to which Nevada was linked (all of which were located in California) was low relative to the cumulative contribution to air quality problems similarly identified elsewhere in the country and because Nevada was the only state contributing above the one percent threshold to those receptors. 81 FR 87860, Dec. 6, 2016. Because the EPA determined that emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems at the California receptors, the EPA proposed to determine that the sites should not be treated as receptors for purposes of determining interstate transport obligations. *Id.* This is in contrast to the air quality problem identified at the Denver receptor wherein the EPA determined that a significant portion of the ozone concentration was attributable to the collective contribution from anthropogenic emissions in multiple states, three of which contribute at or above the one percent screening threshold. 81 FR 81714 through 81715, December 6, 2016. The Denver receptor is comparable to receptors the EPA has addressed in the East in rulemakings such as the CSAPR Update wherein the EPA determined that downwind air quality problems resulted in part from the contributions of multiple upwind states that, although individually relatively small, collectively contribute a large portion of the ozone concentration at downwind receptors. *See* 81 FR 74518–19.[26]

Moreover, consistent with the EPA's approach to background concentrations in this action, the EPA disagreed with Nevada's contention that background concentrations should necessarily excuse an upwind state from reducing emissions where such emissions reductions may nonetheless improve downwind air quality. 81 FR 87860. The EPA noted that even areas with high background ozone may still have a relatively large amount of ozone from the collective contribution of upwind U.S. emissions. *Id.* Therefore, regardless of the level of background ozone, emissions reductions from upwind states may be an important component of solving the local nonattainment problem.

*Comment:* Commenter WDEQ stated that the EPA's decisions on interstate transport SIPs do not follow a consistent approach, and that the EPA is applying a piecemeal decision-making approach rather than a systematic analysis. WDEQ also asserted that the EPA is making arbitrary decisions as to what constitutes ''significant'' or ''insignificant'' contribution levels. WDEQ asserted that the EPA is not applying the one percent threshold as a screening threshold, as stated in the proposal. Referring to the EPA's October 19, 2016 final action on the Utah interstate transport SIP (81 FR 71991), WDEQ argued that the EPA gave no consideration to information submitted by Utah in its analysis beyond the one percent contribution. WDEQ further stated that the EPA approved the Colorado interstate transport submittal which otherwise ''did not provide a detailed analysis supporting its conclusion, including any quantification of the distance to other nonattainment areas or the amount of ozone emission reductions within the state and over what timeframe,'' solely because it was modeled below the one percent contribution threshold. 80 FR 72939, November 23, 2015. WDEQ also asserted that the Colorado approval is counter to the EPA actions disapproving plans from western states on the basis that they did not provide enough technical analysis.

WDEQ further asserted that the approval of the Arizona interstate transport SIP for 2008 ozone was inconsistent with the proposed action on Wyoming, because the EPA based its Arizona action on a weight of evidence analysis and a determination that Arizona's contribution was ''negligible'' although it was over the one percent threshold. The State also asked the EPA to explain why it determined the cumulative contribution percentages for Arizona were negligible, and at what percentage such contributions became negligible.

*Response:* The EPA disagrees that it has taken an inconsistent approach to reviewing states' interstate transport SIPs with respect to the 2008 ozone NAAQS. Where the EPA has determined that a state's SIP has not addressed all of the statutory requirements or provided a technical analysis to justify its conclusion regarding the state's impact on downwind air quality problems, the EPA has identified those deficiencies in acting upon the state's SIP submission. Where the EPA had analysis available that nonetheless supported the state's conclusion despite these deficiencies in the state's SIP submission, the EPA has proposed to approve the state's SIP submission, as it did with Colorado. However, where the EPA does not have its own analysis to support a state's conclusion, it does not have a basis to nonetheless approve the state's otherwise deficient SIP submission, as in Utah for prong 2. Accordingly, the EPA is in this rule finalizing approval as to Wyoming's otherwise deficient prong 1 demonstration because the EPA has an independent analysis that supports the conclusion that the state does not significantly contribute to nonattainment downwind. However, the EPA cannot approve Wyoming's deficient prong 2 demonstration because it has no independent basis on which it can conclude that the state does not interfere with maintenance of the 2008 ozone NAAQS downwind.

The EPA furthermore disagrees that it is not using the one percent contribution threshold as a screening threshold. States are not determined to significantly contribute to nonattainment or interfere with maintenance downwind merely because impacts from the state exceed the one percent threshold. As noted in the proposal for this final action, the one

[26] The EPA's analysis showed, for example, that upwind states collectively contributed in the range of 9.7% to 12.6% to the total ozone concentrations for receptors in Denton County, Harris County, and Tarrant County, Texas. This range is similar to the collective contribution at the Douglas County receptor in Colorado. See document EPA–R08–OAR–2016–0521–0002, ''Final CSAPR Update_Ozone Design Values & Contributions_All Sites,'' in the docket for this action.

percent threshold identifies a state as ''linked,'' prompting further inquiry into whether the contributions are significant and whether there are cost-effective controls that can be employed to reduce emissions. In the case of Colorado, as it was determined that state was not linked to any downwind nonattainment or maintenance receptors, further inquiry was unnecessary in spite of deficiencies identified with the Colorado transport analysis. In the case of states like Wyoming and Utah, the linkage to Denver area receptors indicated that each state's emissions require further evaluation, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the states' emission reduction obligation pursuant to 110(a)(2)(D)(i)(I). As Wyoming's SIP submission does not adequately evaluate whether additional emissions reductions are necessary or achievable, the EPA could not conclude that the State's SIP submission had demonstrated that the state prohibits emissions that interfere with maintenance of the NAAQS downwind.

With regard to the EPA's action on the Arizona submittal, the EPA found that the maximum total contribution from anthropogenic emissions in all states to either of the two California receptors to which Arizona contributed above the one percent threshold was 4.4 percent of the total ozone concentration at that receptor, and that only one state contributed above the one percent threshold. 81 FR 15203, March 22, 2016. Thus, the EPA determined that, unlike receptors identified in prior rulemakings, the air quality problems at the California receptors could not be attributed to the collective contribution of numerous upwind states. Given this information, the EPA determined that interstate transport to the California receptors is negligible overall, meaning that all states together (including Arizona) do not contribute significantly to the ozone problems at these receptors. Because the EPA determined that emissions that result in transported ozone from upwind states have limited impacts on the projected air quality problems at the California receptors, the EPA determined that the sites should not be treated as receptors for purposes of determining interstate transport obligations. *Id.* As stated in the proposal for this final action, EPA found that the contribution to ozone concentrations from all states upwind of the Douglas County, Colorado maintenance receptor is about 9.7 percent, and that three upwind states made contributions greater than one percent to the receptor. 81 FR 81715, November 18, 2016. The EPA has not defined a specific level which delineates between ''negligible'' and ''significant'' collective contribution, but has rather looked at each of these cases individually and reached conclusions based on our review of the information specific to each case. In the case of the Douglas County, Colorado receptor, the contributions from upwind states are comparable to receptors the EPA has addressed in the East in rulemakings such as the CSAPR Update wherein the EPA determined that downwind air quality problems resulted in part from the relatively small individual contributions of upwind states that collectively contribute a large portion of the ozone concentration at downwind receptors. *See* 81 FR 74518 through 74519.[27] Thus, the EPA has identified no basis on which it can distinguish the Douglas County, Colorado receptor from those receptors addressed in the East—nor have the commenters presented any such basis for the EPA to make a distinction when upwind states contribute more than twice as much to downwind nonattainment than was present at the California receptors addressed in the Arizona action.

*Comment:* Commenter WDEQ stated that the EPA's analysis does not consider new emissions information or reductions since the most recent modeling. The State asserted that because the EPA conducted the CSAPR Update modeling using an emissions inventory from a 2011 base year, the analysis fails to account for any emissions reductions in Wyoming between 2011 and when the updated modeling was conducted. WDEQ specifically pointed to the following ozone emissions reduction measures in the State: Participation in the EPA's Ozone Advance Program; emissions reductions in the Upper Green River Basin (UGRB), a marginal nonattainment area which was determined by the EPA to have timely attained the 2008 Ozone NAAQS on May 4, 2016 (81 FR 26697); reductions in $NO_X$ emissions from 2011 and 2014 of 34 percent for Title V facilities and 76 percent for non-Title V facilities that are not oil and gas reductions facilities. The State ''believes a more accurate assessment of Wyoming's contribution to the receptor in Colorado could be made using more recent emission inventory data available from the Division,'' and asked that the EPA use more recent data to conduct modeling for Wyoming.

The State asserted that it had made several attempts to provide the EPA with additional information, citing its November 23, 2016 letter requesting an extension to the comment period as an example, and claimed that the EPA has told Wyoming it will not consider any additional information beyond the February 6, 2014 submission.

*Response:* The EPA disagrees that the CSAPR Update modeling failed to account for any emissions reductions in Wyoming between 2011 and 2016, despite the use of a 2011 base year. As shown in the supporting documentation for the CSAPR Update Rule, significant emissions reductions for multiple pollutants, including $NO_X$, were accounted for in the modeling analysis.[28] At the EPA's request, on September 13, 2016 and September 14, 2016, the State submitted to the EPA an emissions inventory and an inventory summary that compared 2011 to 2014 Wyoming $NO_X$ and VOC emissions.[29] The State also included two graphs describing Wyoming $NO_X$ and VOC emission reductions in certain sectors in its December 19, 2016 comment letter on the proposal for this final action. EPA staff compared this information to the emissions reductions anticipated from base case year 2011 to projected future year 2017 in the CSAPR Update Modeling, and found that $NO_X$ and VOC emissions reductions included in the CSAPR Update modeling were greater than the $NO_X$ and VOC reductions in Wyoming emissions from 2011 to 2014, per the State's inventory.[30] The EPA does not dispute that $NO_X$ emission reductions have taken place in Wyoming between 2011 and 2014, as the inventory and the December 19, 2016 comment letter graphs indicate substantial reductions have occurred in certain sectors. However, the inventory

[27] The EPA's analysis showed, for example, that upwind states collectively contributed in the range of 9.7% to 12.6% to the total ozone concentrations for receptors in Denton County, Harris County, and Tarrant County, Texas. This range is similar to the collective contribution at the Douglas County receptor in Colorado. See document EPA–R08–OAR–2016–0521–0002, ''Final CSAPR Update_Ozone Design Values & Contributions_All Sites,'' in the docket for this action.

[28] ''Final Rule Emissions Modeling TSD: Preparation of Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform'' in the docket for the CSAPR Update Rulemaking, at EPA–HQ–OAR–2015–0500–0523.

[29] See September 12–14, 2016 email exchanges between Adam Clark, EPA Region 8, and Amber Potts and Tyler Ward, WDEQ, as well as attached emissions inventory documents submitted by the State, in the docket for this action.

[30] See document ''2011ek_2017ek_state_full_SCC_summary'' in the docket for this action. This document is also available in the docket for the CSAPR Update Rulemaking at EPA–HQ–OAR–2015–0500–0498.

taken on its own did not lead the EPA to the conclusion that the $NO_X$ reductions during this time were sufficient to show that Wyoming does not interfere with maintenance of the 2008 ozone NAAQS. In other words, the information was inconclusive, and so did not alter the EPA's decision to propose disapproval for prong 2. The EPA has reached the same conclusion regarding the comment letter graphs, and is therefore finalizing disapproval as to the prong 2 requirements.

The EPA also disagrees that the State made several attempts to provide EPA with additional information. The State submitted the aforementioned September 13, 2016 inventory, which the EPA reviewed. The State also submitted the June 9, 2016 comment letter on the Utah proposal as discussed previously, and the November 23, 2016 letter requesting an extension to the comment period. The EPA has reviewed and addressed all of these documents. Finally, the EPA is unaware that any staff told Wyoming that we will not consider any additional information beyond the February 6, 2014 submission. The EPA has continuously encouraged the State to submit additional technical information that might better inform our analysis, as discussed in detail earlier.

*Comment:* Commenter WDEQ asked whether the EPA's CSAPR Update modeling considered the impact ozone sources in the Colorado portion of the Front Range Urban Corridor, which extends from Pueblo, Colorado to Cheyenne, Wyoming, may have on attainment in Wyoming. The State then asserted that, because 98 percent of the population in this corridor resides in Colorado, and because the population in the Colorado portion of the corridor is much larger and denser than the population of the state of Wyoming, the mobile source and urban emissions emanating from Colorado are far more likely to contribute to Wyoming than the other way around.

Commenter Western Energy Alliance stated that Colorado's ozone nonattainment is affected by the northern Front Range's climate, geography, and local emissions sources, and not by Wyoming emissions. The commenter supported Wyoming's assessment that the year-round westerly prevailing wind direction makes it reasonable to infer that Cheyenne is not a driving cause of ozone nonattainment in Colorado's Front Range.

Commenter Western Energy Alliance also asserted that Wyoming is not contributing to ozone nonattainment in the Uintah Basin or in the Salt Lake Valley in Utah.

*Response:* In the CSAPR Update modeling, the EPA modeled contributions from all 48 contiguous states, including Colorado, to receptors in Wyoming. As the EPA did not project any nonattainment or maintenance receptors in the state of Wyoming for 2017, the EPA has determined that no state contributes significantly to nonattainment or interferes with maintenance of the 2008 ozone NAAQS in Wyoming. The EPA approved prongs 1 and 2 of Colorado's 2008 ozone interstate transport SIP on February 16, 2016. 81 FR 7706. The EPA did not receive any comments requesting that either portion of the Colorado SIP submission be disapproved.

The EPA agrees that Colorado emissions contribute more to ozone pollution in the Denver area than emissions from any other state. Indeed, the CSAPR Update modeling projected that Colorado would contribute 34.6% percent of the ozone at the Douglas County, Colorado maintenance receptor in 2017, compared to 9.7 percent of the emissions from all other states and tribes combined, with Wyoming projected to contribute 1.5 percent of the ozone. Although there are intrastate contributions to maintenance receptors in Denver, Colorado, those contributions do not relieve upwind states, like Wyoming, from controlling their within state emissions that significantly contribute to a downwind state's nonattainment or interfere with maintenance of the NAAQS in other states.

Thus, while CAA section 110(a)(2)(D)(i)(I) does not hold upwind areas solely responsible for attainment and maintenance of the NAAQS in downwind states, the statute requires upwind states to address their fair share of downwind air quality problems. As noted, the EPA finds that Wyoming contributions to the Douglas County, Colorado maintenance receptor are such that the State's emissions require further evaluation of potential emission reduction obligations pursuant to 110(a)(2)(D)(i)(I).

Regarding Wyoming's contribution to ozone issues in Utah, the EPA has not found that Wyoming emissions contribute significantly to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in Utah.

*Comment:* Commenter WDEQ asserted that ''EPA has not yet worked with western states or western regional planning organizations on region-appropriate analysis for interstate transport.'' The State listed examples in which the EPA committed to working with western states to address interstate transport.

Commenter WDEQ requested that the EPA honor the commitment made in the Utah Final Rulemaking to ''assisting the states in conducting or reviewing air quality modeling and other relevant technical information for the purposes of determining compliance with CAA section 110(a)(2)(D)(i)(I).'' 81 FR 71996, October 19, 2016. Specifically, the State requested that the EPA commit to work with WDEQ to conduct the necessary modeling and analysis for developing a SIP revision in the event that the EPA finalizes the proposed disapproval.

*Response:* Prior to the State's February 2014 SIP submission, the EPA held a meeting in Denver, Colorado on April 17, 2013 (and held a conference call) with western states to discuss next steps to address transport of air pollution across state boundaries. Subsequent to the release of the January 2015 memo and the August 2015 NODA with air quality modeling results, the EPA notes that it also held a webinar, a workshop and conference calls with states. Moreover, while we appreciate the importance of working with states in the SIP development process, states have the primary responsibility for developing SIPs to address the requirements of CAA section 110(a)(2)(D)(i)(I). As noted earlier, in *EPA* v. *EME Homer City Generation, L.P.,* the Supreme Court clearly held that ''nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.'' 134 S. Ct. at 1601. However, EPA remains committed to working with the State on reviewing technical information for the purposes of determining compliance with the requirements of 110(a)(2)(D)(i)(I).

*Comment:* Commenter Western Energy Alliance stated that ''EPA has failed to provide sufficient evidence that it reviewed and considered state exceptional events packages that may provide mitigating circumstances for NAAQS violations based on events such as wildfires or stratospheric intrusions of ozone.''

*Response:* In order for emissions to be excluded on the basis of an exceptional event per CAA 319(b), all exceptional event criteria applicable to the activity must be met. No exceptional event demonstrations relevant to the Douglas County, Colorado monitor were submitted to the EPA for evaluation, so no evidence was available with regard to the impact of exceptional event emissions on the violating monitor in the design value period considered. To the extent that the EPA approves an

exceptional events demonstration for this area in the future, the EPA can consider the impacts that action or other new information would have on the modeling results either in reviewing a subsequent SIP submission from Wyoming, which the State may submit at any time, or in evaluating whether any emissions reductions are necessary to address downwind air quality in addressing the Agency's FIP obligation triggered by this disapproval.

*Comment:* Commenter Sierra Club stated that the EPA should disapprove Wyoming's prong 1 submission for the 2008 ozone NAAQS. The commenter asserted that the Douglas County, Colorado maintenance receptor (to which Wyoming was modeled to contribute above one percent) [31] should instead be a nonattainment receptor, but it is not because the modeling under-predicts the receptor's 2017 ozone design value. The commenter based this assertion on a weight of evidence approach using ambient air monitoring data collected at the receptor. The commenter stated that such a weight of evidence approach was appropriate to determine this receptor should be nonattainment, and noted that the EPA had used a weight of evidence approach in its action on Arizona's transport SIP. The CSAPR Update modeling projected that the Douglas County, Colorado receptor would have a 2017 average design value of 75.5 ppb, with a maximum design value of 77.6 ppb.[32] The commenter first asserted that the 75.5 ppb level should indicate nonattainment rather than maintenance because the design value exceeds the 75.0 level of the NAAQS, referring to EPA's basis for a maintenance categorization as ''bad math.'' The commenter then stated that the Douglas County, Colorado receptor will indeed be nonattainment for the 2015–2017 period. The commenter included the 4th highest daily maximum values, on which the 2008 ozone NAAQS is based, for the years 2010 through 2016, which the EPA has replicated (with edits) in Table 1, below.

TABLE 1—4TH HIGHEST DAILY MAX AT DOUGLAS COUNTY, COLORADO RECEPTOR

| Year | 4th Max (ppb) |
|---|---|
| 2016 | 78 |
| 2015 | 81 |
| 2014 | 74 |
| 2013 | 83 |
| 2012 | 79 |
| 2011 | 81 |
| 2010 | 78 |

The commenter stated that the 2015–2017 monitored design value at the Douglas County, Colorado receptor could only attain the NAAQS if the receptor recorded a 4th daily maximum value of 66 ppb in 2017, a value well below the smallest value since 2010. The commenter asserted that the previous 7 years of monitoring data provide a weight of evidence analysis demonstrating that this receptor will be nonattainment for the 2015–2017 design value period. The commenter also asserted that it is unsurprising that the CSAPR Update modeling analysis under-predicts the 2017 design values because it included 2009 monitoring data which was impacted by the Great Recession, during which time ozone levels decreased. The commenter therefore recommended that the EPA disapprove Wyoming's February 6, 2014 prong 1 submittal for the 2008 ozone NAAQS.

*Response:* First, the EPA does not agree that because the receptor is projected to have an average design value of 75.5, that the EPA should label this receptor a nonattainment receptor. As explained in the 2016 AQM TSD, ''In determining compliance with the NAAQS, ozone design values are truncated to integer values. For example, a design value of 75.9 ppb is truncated to 75 ppb which is attainment. In this manner, design values at or above 76.0 ppb are considered to be violations of the NAAQS.'' [33] This method is consistent with the method to compliance with the 2008 ozone NAAQS.[34] Therefore a design value of 75.5 is not considered a violation of the standard.

The EPA agrees that recent monitoring data at the Douglas County, Colorado monitor suggest that the site faces a risk of not attaining the NAAQS in 2017. However, that risk is uncertain as the future monitored 2017 design value is unknown at this time. In light of this uncertainty and the statute's silence on how nonattainment and maintenance should be identified under the good neighbor provision, the EPA has developed a reasonable approach to identify downwind nonattainment and maintenance receptors. When evaluating air quality modeling for purposes of interstate transport, the EPA has routinely identified nonattainment receptors as those with monitors that are both projected to be unable to attain in an appropriate future year and that are measuring nonattainment based on current data—*i.e.,* if the projected average design value in the future year does not exceed the standard, the EPA does not identify that receptor as a nonattainment receptor, but rather as a maintenance receptor. *See* 81 FR 74517 (CSAPR Update); 80 FR 75723 through 75724 (Proposed CSAPR Update); 76 FR 48227 through 48228 (CSAPR); 70 FR 25243–33 (CAIR); *see also North Carolina,* 531 F.3d at 913–914 (affirming as reasonable EPA's approach to defining nonattainment in CAIR). Given the EPA's modeling does not project that the Douglas County, Colorado receptor will be in nonattainment in 2017, even though it may currently be measuring nonattainment, it would be inconsistent with the EPA's past practice to identify that receptor as a nonattainment receptor.

Moreover, the EPA does not agree that it should identify a nonattainment receptor based on the formula proposed by the commenter because the data cited by the commenter does not conclusively prove that this monitor will be in nonattainment based on 2017 data.[35] First, the commenter notes that it would be possible for the 2017 design value to be sufficiently low such that the 3-year average is attaining the NAAQS. Second, the CAA provides that should 2017 data yield a fourth highest 8-hour concentration of 75.9 ppb or below, the state can petition EPA for additional time to demonstrate attainment of the NAAQS. *See* CAA section 181(a)(5).

That said, the EPA agrees that the receptor may have problems maintaining the standard in 2017 and has therefore identified this site as a maintenance receptor. As a result of this finding, the EPA and the State of Wyoming will need to evaluate what

[31] For details about the Douglas County, Colorado receptor, see the proposal for this final rulemaking at 81 FR 81715.

[32] See document EPA–R08–OAR–2016–0521–0002, ''Final CSAPR Update_Ozone Design Values & Contributions_All Sites,'' in the docket for this action.

[33] See 2016 AQM TSD at pg. 11.

[34] See 40 CFR part 50, Appendix P—Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone; Section 2.1: ''*Computing 8-hour averages.* Hourly average concentrations shall be reported in parts per million (ppm) to the third decimal place, with additional digits to the right of the third decimal place truncated.''

[35] Although the commenter is correct that the EPA evaluated the weight of the evidence in the Arizona SIP submission, the EPA did not use the approach proposed by the commenter to average projections and monitored data in identifying potential receptors.

further emissions reductions may be required to ensure that the State's impact on downwind air quality is mitigated such that the State will not interfere with maintenance of the standard at that receptor.

The weight of evidence analysis in our action on the Arizona SIP determined the nature of the projected receptor's interstate transport problem as to the magnitude of ozone attributable to interstate transport from all upwind states collectively contributing to the air quality problem, not to the identification of that receptor. In the EPA action on the Arizona SIP, Arizona was the only state that contributed greater than the 1 percent threshold to the projected 2017 levels of the 2008 ozone NAAQS at the El Centro receptor. The EPA's assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor and finds the collective contribution of transported pollution to be substantial. Furthermore, in our action on the Arizona SIP we did not deviate from our past practice in identifying nonattainment and maintenance receptors in the way that commenter suggests we should do here.

The EPA does not agree that its projections are unreliable because the 2009 data are affected by the ''Great Recession.'' In determining our 2009–2013 base period average design values, the data from 2009 are only weighted once, whereas, data in 2011 which has higher ozone is weighted 3 times in the calculations. In addition, our emissions data are projected from 2011 to 2017 and, thus, the effects of the recession on 2009 emissions have very little influence our 2017 projected emissions. In this respect, the air quality and emissions in 2009 have only a very limited influence on the projected design values. As described in EPA's air quality modeling guidance for ozone attainment demonstrations, the use of 5-year weighted average design values, as applied here, is intended to focus the base period air quality on the year of base case emissions, 2011 for this analysis, and to smooth out, to some extent, the effects of inter-annual variability in ozone concentrations.[36] Thus, EPA continues to believe that including ambient data from 2009 is appropriate for projecting future year ozone concentrations as part of the final rule.

*Comment:* Commenter Sierra Club asserted that the EPA's analysis of Wyoming's February 6, 2014 submittal ignores wintertime ozone levels. The commenter asserted that the EPA relies on the CSAPR Update analysis for its Wyoming ozone transport analysis, and that the CSAPR Update analysis throws out wintertime ozone data.[37] The commenter stated that it is inappropriate for the EPA to exclude the wintertime ozone data because the EPA has elsewhere acknowledged that wintertime ozone is an important issue in Wyoming and neighboring states. To support this point, the commenter cited the EPA's revision to the 2008 ozone NAAQS, which states that ''Elevated levels of winter-time O3 have also been measured in some western states where precursor emissions can interact with sunlight off the snow cover under very shallow, stable boundary layer conditions.'' 80 FR 65416, October 26, 2015. The commenter also cited the ozone NAAQS revision to show that the ozone seasons for both Colorado and Utah are year-round, and that the EPA must therefore include an evaluation of wintertime ozone before it can approve any ozone transport provisions for Wyoming. 80 FR 65419 through 65420, October 26, 2015.

*Response:* As stated in the CSAPR Update Final, ''Ozone levels are generally higher during the summer months.'' 81 FR 74513, October 26, 2016. The 2016 AQM TSD states that ''High winter ozone concentrations that have been observed in certain parts of the Western U.S. are believed to result from the combination of strong wintertime inversions, large $NO_X$ and VOC emissions from nearby oil and gas operations, increased UV intensity due to reflection off of snow surfaces and potentially still uncharacterized sources of free radicals.'' 2016 AQM TSD at 14. Thus, high winter-time ozone episodes are due to a build-up of local emissions combined with local stagnation meteorological conditions rather than interstate transport. The EPA therefore disagrees that it must evaluate wintertime ozone before approving Wyoming's SIP as to the prong 1 requirements of section 110(a)(2)(D)(i)(I).

## III. Final Action

The EPA is approving CAA section 110(a)(2)(D)(i)(I) prongs 1, 2 and 4 for the 2008 Pb NAAQS, prong 1 for the 2008 ozone NAAQS, prongs 1 and 2 for the 2010 $NO_2$ NAAQS, and prong 4 for the 2010 $SO_2$ NAAQS, as shown in Table 2, below. The EPA is disapproving prong 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 $NO_2$ and 2012 $PM_{2.5}$ NAAQS, and prong 2 for the 2008 ozone NAAQS, as shown in Table 3. Disapproval of prong 2 for the 2008 ozone NAAQS will establish a 2-year deadline, under CAA section 110(c), for the EPA to promulgate a FIP, unless the EPA approves a SIP that meets these requirements. As stated at proposal, the prong 4 disapprovals do not have additional practical consequences for the State or the EPA because the FIP already in place will satisfy the prong 4 requirements for these NAAQS. The EPA will work with Wyoming to provide assistance as necessary to help Wyoming develop an approvable SIP submittal and the EPA is committed to taking prompt action on a SIP submitted by the State. Disapproval does not start a mandatory sanctions clock for Wyoming pursuant to CAA section 179 because this action does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

TABLE 2—LIST OF WYOMING INTERSTATE TRANSPORT PRONGS THAT THE EPA IS APPROVING

| Approval |
|---|
| *February 6, 2014 submittal*—2008 Ozone NAAQS: (D)(i)(I) prong 1. |
| *October 12, 2011 submittal*—2008 Pb NAAQS: (D)(i)(I) prongs 1 and 2, (D)(i)(II) prong 4. |
| *January 24, 2014 submittal*—2010 $NO_2$ NAAQS: (D)(i)(I) prongs 1 and 2. |
| *March 6, 2015 submittal*—2010 $SO_2$ NAAQS: (D)(i)(II) prong 4. |

TABLE 3—LIST OF WYOMING INTERSTATE TRANSPORT PRONGS THAT THE EPA IS DISAPPROVING

| Disapproval |
|---|
| *August 19, 2011 submittal*—2006 $PM_{2.5}$ NAAQS: (D)(i)(II) prong 4. |
| *February 6, 2014 submittal*—2008 Ozone NAAQS: (D)(i)(I) prong 2, (D)(i)(II) prong 4. |

[36] Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze available in the docket and at: *http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf*.

[37] *Id.* The commenter specifically cited the following language from the document: ''In addition, there are 7 sites in 3 counties in the West that were excluded from this file because the ambient design values at these sites were dominated by wintertime ozone episodes and not summer season conditions that are the focus of this transport assessment.'' *Citing* EPA–R08–OAR–2016–0521–0002 at ''Readme'' tab.

TABLE 3—LIST OF WYOMING INTERSTATE TRANSPORT PRONGS THAT THE EPA IS DISAPPROVING—Continued

| Disapproval |
| --- |
| *January 24, 2014 submittal*—2010 $NO_2$ NAAQS: (D)(i)(II) prong 4. |
| *June 24, 2016 submittal*—2012 $PM_{2.5}$ NAAQS: (D)(i)(II) prong 4. |

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

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

Dated: January 17, 2017.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended to read as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (e) is amended by adding the entry ''(27) XXVII'' at the end of the table to read as follows:

**§ 52.2620 Identification of plan.**

* * * * *

(e) * * *

| Rule No. | Rule title | State effective date | EPA effective date | Final rule citation/ date | Comments |
|---|---|---|---|---|---|
| * | * * * | * | * | * | * |
| (27) XXVII ..... | Interstate transport SIP for Section 110(a)(2)(D)(i) prong 1–2008 Ozone NAAQS; prongs 1, 2 and 4–2008 Pb NAAQS; prong 1 and 2–2010 $NO_2$ NAAQS; prong 4–2010 $SO_2$ NAAQS. | 2/6/2014; 10/12/2011; 1/24/2014; 3/6/2015. | 3/6/2017 | [Insert **Federal Register** citation] 2/3/2017. | |

[FR Doc. 2017–02197 Filed 2–2–17; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R08–OAR–2016–0588; FRL–9959–18–Region 8]**

### Approval and Promulgation of State Implementation Plans; Interstate Transport for Utah

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action on a portion of a January 31, 2013 submission and a December 22, 2015 supplemental submission from the State of Utah that are intended to demonstrate that the Utah State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (Act or CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS). The interstate transport requirements under the CAA consist of four elements: Significant contribution to nonattainment (prong 1) and interference with maintenance (prong 2) of the NAAQS in other states; and interference with measures required to be included in the plan for other states to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Specifically, the EPA is approving interstate transport prong 1 for the 2008 ozone NAAQS.

**DATES:** This final rule is effective on March 6, 2017.

**ADDRESSES:** The EPA has established a docket for this action under Docket Identification Number EPA–R08–OAR–2016–0588. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

## I. Background

On December 20, 2016, the EPA proposed to approve portions of Utah's January 31, 2013 submission and December 22, 2015 supplemental submission as meeting the prong 1 requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS. 81 FR 92755, December 20, 2016. An explanation of the CAA requirements, a detailed analysis of the State's submittals, and the EPA's rationale for this proposed action were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on January 10, 2017. The EPA received four comments on the proposal, which will be addressed in the ''Response to Comments'' section, below.

## II. Response to Comments

Comment: Commenter Sierra Club stated that the EPA should disapprove Utah's prong 1 submission for the 2008 ozone NAAQS. The commenter asserted that all three of the Denver area maintenance receptors to which Utah's projected contribution exceeded one percent of the NAAQS [1] should instead be nonattainment receptors, but are not because the CSAPR Update modeling under-predicts the receptors' 2017 ozone design values. The commenter based this assertion on a weight of evidence approach using ambient air monitoring data collected at these receptors. The commenter stated that such a weight of evidence approach was appropriate to determine this receptor should be nonattainment, and noted that the EPA had used a weight of evidence approach in its action on Arizona's transport SIP. The CSAPR Update modeling projected that the Douglas County, Colorado receptor (monitor site ID 80350004) would have a 2017 average design value of 75.5 ppb, with a maximum design value of 77.6 ppb, and that one Jefferson County, Colorado receptor (monitor site ID 80590006) would have a 2017 average design value of 75.7 ppb, with a maximum design value of 78.2 ppb.[2] The commenter first asserted that both average design values should indicate nonattainment rather than maintenance, referring to the EPA's basis for the maintenance categorizations as ''bad math.'' The commenter then stated that all three maintenance receptors will indeed be nonattainment for the 2015–2017 period. The commenter included the 4th highest daily maximum values, on which the 2008 ozone NAAQS is

[1] For details about these receptors, see EPA's final rulemaking disapproving prong 2 of Utah's 2008 ozone submittals, at 81 FR 71992, October 19, 2016.

[2] See document EPA–R08–OAR–2016–0588–0002, ''Final CSAPR Update_Ozone Design Values & Contributions_All Sites,'' in the docket for this action.

based, for the years 2010 through 2016, which the EPA has replicated (with edits) in Table 1, below.

TABLE 1—4TH HIGHEST DAILY MAX AT DENVER AREA RECEPTORS

| Year | 4th Max (ppb) | | |
|---|---|---|---|
| | Monitor ID 80350004 | Monitor ID 80590011 | Monitor ID 80590006 |
| 2017 | *66 | *61 | *69 |
| 2016 | 78 | 83 | 79 |
| 2015 | 81 | 81 | 77 |
| 2014 | 74 | 76 | 77 |
| 2013 | 83 | 82 | 81 |
| 2012 | 79 | 77 | 79 |
| 2011 | 81 | 83 | 81 |
| 2010 | 78 | 74 | 76 |

* Indicates a ''critical value'' required to attain NAAQS for 2015–2017.

The commenter stated that the 2015–2017 monitored design values at the Denver receptors could only attain the NAAQS if the receptors recorded the 4th daily maximum values (''critical values'') listed in the 2017 row of Table 1, and notes that each of these values is below the smallest value since 2010. The commenter asserted that the previous seven years of monitoring data provide a weight of evidence analysis demonstrating that these receptors will be nonattainment for the 2015–2017 design value period. The commenter also stated that Colorado's drill rig count for oil and gas extract had increased to 28 by the end of 2016, the highest level since November 2015. The commenter also stated that 2017 was likely to see increased oil and gas extraction and transportation activity in Colorado due to reduced oil production in other countries, and that this would increase $NO_X$ and VOC emissions. Finally, the commenter asserted that it is unsurprising that the CSAPR Update modeling analysis under-predicts the 2017 design values because it included 2009 monitoring data which was impacted by the Great Recession, during which time ozone levels decreased. The commenter therefore recommended that the EPA disapprove Utah's prong 1 submittals for the 2008 ozone NAAQS.

*Response:* First, the EPA does not agree that because the two Denver receptors (80350004 and 80590006) are projected to have average design values exceeding the NAAQS, that the EPA should label those receptors as nonattainment receptors. As explained in the EPA's 2016 CSAPR Update Final Air Quality Modeling Technical Support Document (2016 AQM TSD), ''In determining compliance with the NAAQS, ozone design values are truncated to integer values. For example, a design value of 75.9 ppb is truncated to 75 ppb which is attainment. In this manner, design values at or above 76.0 ppb are considered to be violations of the NAAQS.'' [3] This method is consistent with the method to demonstrate compliance with the 2008 ozone NAAQS. Therefore, design values of 75.5 or 75.7 are not considered a violation of the standard.

The EPA agrees that recent monitoring data at these three sites suggest that these sites face a risk of not attaining the NAAQS in 2017. However, that risk is uncertain as the future monitored 2017 design value is unknown at this time. In light of this uncertainty and the statute's silence on how nonattainment and maintenance should be identified under the good neighbor provision, the EPA has developed a reasonable approach to identify downwind nonattainment and maintenance receptors. When evaluating air quality modeling for purposes of interstate transport, the EPA has routinely identified nonattainment receptors as those with monitors that are both projected to be unable to attain in an appropriate future year and that are measuring nonattainment based on current data—*i.e.,* if the projected average design value in the future year does not exceed the standard, the EPA does not identify that receptor as a nonattainment receptor. See 81 FR 74517 (CSAPR Update); 80 FR 75723 through 75724 (Proposed CSAPR Update); 76 FR 48227–28 (CSAPR); 70 FR 25243–33 (CAIR); *see also North Carolina,* 531 F.3d at 913 through 914 (affirming as reasonable the EPA's approach to defining nonattainment in CAIR). Given the EPA's modeling does not project that the receptors will be in nonattainment in 2017, even though it may currently be measuring nonattainment, it would be inconsistent with the EPA's past practice to identify that receptor as a nonattainment receptor.

Moreover, the EPA does not agree that it should identify nonattainment receptors based on the formula proposed by the commenter because the data cited by the commenter does not conclusively prove that these monitors will be in nonattainment based on 2017 data.[4] First, the commenter notes that it would be possible for the 2017 design values to be sufficiently low such that the 3-year averages are attaining the NAAQS. Second, the CAA provides that should 2017 data yield a fourth highest 8-hour concentration of 75.9 ppb or below, the state can petition EPA for additional time to demonstrate attainment of the NAAQS. *See* CAA section 181(a)(5).

That said, the EPA agrees that the receptors may have problems maintaining the standard in 2017 and has therefore identified these sites as maintenance receptors. On October 19, 2016, the EPA finalized disapproval of Utah's SIP submission to address the maintenance prong for the 2008 ozone NAAQS. 81 FR 71991. As a result of this disapproval, the EPA and the State of Utah will need to evaluate what further emissions reductions may be required to ensure that the State's impact on downwind air quality is mitigated such that the State will not interfere with maintenance of the standard at these receptors.

[3] ''Air Quality Modeling Technical Support Document for the Final Cross State Air Pollution Rule Update.'' August 2016. This document was included in the docket for the proposed action.

[4] Although the commenter is correct that the EPA evaluated the weight of the evidence in the Arizona SIP submission, the EPA did not use the approach proposed by the commenter to average projections and monitored data in identifying potential receptors.

The weight of evidence analysis in our action on the Arizona SIP determined the nature of the projected receptor's interstate transport problem as to the magnitude of ozone attributable to interstate transport from all upwind states collectively contributing to the air quality problem, not to the identification of that receptor. In the EPA action on the Arizona SIP, Arizona was the only state that contributed greater than the one percent threshold to the projected 2017 levels of the 2008 ozone NAAQS at the El Centro receptor. The EPA's assessment concluded that emissions reductions from Arizona are not necessary to address interstate transport because the total collective upwind state ozone contribution to these receptors is relatively low compared to the air quality problems typically addressed by the good neighbor provision. As discussed previously, the EPA similarly evaluated collective contribution to the Douglas County, Colorado monitor and finds the collective contribution of transported pollution to be substantial. Furthermore, in our action on the Arizona SIP we did not deviate from our past practice in identifying nonattainment and maintenance receptors in the way that commenter suggests we should do here.

The EPA does not agree that its projections are unreliable because the 2009 data are affected by the ''Great Recession.'' In determining our 2009–2013 base period average design values, the data from 2009 are only weighted once, whereas, data in 2011 which has higher ozone is weighted 3 times in the calculations. In addition, our emissions data are projected from 2011 to 2017 and, thus, the effects of the recession on 2009 emissions have very little influence on our 2017 projected emissions. In this respect, the air quality and emissions in 2009 have only a very limited influence on the projected design values. As described in the EPA's air quality modeling guidance for ozone attainment demonstrations, the use of 5-year weighted average design values, as applied here, is intended to focus the base period air quality on the year of base case emissions, 2011 for this analysis, and to smooth out, to some extent, the effects of inter-annual variability in ozone concentrations.[5] Thus, the EPA continues to believe that including ambient data from 2009 is appropriate for projecting future year ozone concentrations as part of the final rule.

Finally, the EPA does not find that the commenter's assumptions about an increase in oil and gas extraction and transportation activities in Colorado sufficient to project an increase in such emissions. For instance, the number of drill rigs noted by the commenter (28) at the end of 2016 is actually much lower than the level at the end of 2014 (69).[6] The EPA is not here making assertions about oil and gas production activities in Colorado, but rather explaining why we find the commenter's assumptions about a likely increase in such activity based on a drill rig count to be insufficient. Further, the commenter does not provide a source for the assumption regarding increased Colorado oil and gas production based on changes to the worldwide oil market. For these reasons, the EPA does not find that oil and gas activities will necessarily increase in Colorado in 2017 based on the comments received.

*Comment:* Commenter Sierra Club asserted that the EPA's analysis of Utah's 2008 ozone submittals ignores wintertime ozone levels. The commenter asserted that the EPA relies on the CSAPR Update analysis for its Utah ozone transport analysis, and that the CSAPR Update analysis throws out wintertime ozone data.[7] The commenter stated that it is inappropriate for EPA to exclude the wintertime ozone data because the EPA has elsewhere acknowledged that wintertime ozone is an important issue in Utah and neighboring states. To support this point, the commenter cited the EPA's revision to the 2008 ozone NAAQS, which states that ''Elevated levels of winter-time O3 have also been measured in some western states where precursor emissions can interact with sunlight off the snow cover under very shallow, stable boundary layer conditions.'' 80 FR 65416, October 26, 2015. The commenter also cited the ozone NAAQS revision to show that the ozone seasons for both Colorado and Utah are year-round, and that EPA must therefore include an evaluation of wintertime ozone before it can approve any ozone transport provisions for Utah. 80 FR 65419 through 65420, October 26, 2015.

*Response:* As stated in the CSAPR Update Final, ''Ozone levels are generally higher during the summer months.'' 81 FR 74513, October 26, 2016. The 2016 AQM TSD states that ''High winter ozone concentrations that have been observed in certain parts of the Western U.S. are believed to result from the combination of strong wintertime inversions, large $NO_X$ and VOC emissions from nearby oil and gas operations, increased UV intensity due to reflection off of snow surfaces and potentially still uncharacterized sources of free radicals.'' 2016 AQM TSD at 14. Thus, high winter-time ozone episodes are due to a build-up of local emissions combined with local stagnation meteorological conditions rather than interstate transport. The EPA therefore disagrees that it must evaluate wintertime ozone before approving Utah's SIP as to the prong 1 requirements of section 110(a)(2)(D)(i)(I).

*Comment:* Several citizen commenters expressed frustration about the air quality in the Salt Lake City and greater Wasatch Front area of Utah. These commenters offered various solutions to improving air quality in the region.

*Response:* The EPA appreciates the recommendations provided by the commenters. The EPA will not address the recommendations specifically, as they are not directly connected to the impact of Utah emissions in other states, which this rulemaking (and CAA section 110(a)(2)(D)(i)) address.

## III. Final Action

The EPA is approving the section 110(a)(2)(D)(i)(I) prong 1 portion of Utah's January 31, 2013 submittal and the December 22, 2015 submittal with respect to the 2008 ozone NAAQS.

## IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735,

[5] Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze available in the docket and at: *http://www.epa.gov/ttn/scram/guidance/guide/Draft_O3-PM-RH_Modeling_Guidance-2014.pdf.*

[6] *http://insights.energentgroup.com/weekly-rig-counts-in-colorado.*

[7] *Id.* The commenter specifically cited the following language from the document: ''In addition, there are 7 sites in 3 counties in the West that were excluded from this file because the ambient design values at these sites were dominated by wintertime ozone episodes and not summer season conditions that are the focus of this transport assessment.''

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

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

Dated: January 17, 2017.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart TT—Utah

■ 2. In § 52.2354, add paragraph (c) to read as follows:

**§ 52.2354 Interstate transport.**

* * * * *

(c) Addition to the Utah State Implementation Plan regarding the 2008 ozone Standard for CAA section 110(a)(2)(D)(i)(I) prong 1 submitted to EPA on January 31, 2013 and supplemented on December 22, 2015.

[FR Doc. 2017–02187 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR PART 52

**[EPA–HQ–OAR–2016–0646; FRL–9958–70–OAR]**

## Findings of Failure To Submit State Implementation Plan Submittals for the 2008 Ozone National Ambient Air Quality Standards (NAAQS)

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finding that 15 states and the District of Columbia have failed to submit State Implementation Plan (SIP) revisions in a timely manner to satisfy certain requirements for the 2008 ozone National Ambient Air Quality Standards (NAAQS) that apply to nonattainment areas and/or states in the Ozone Transport Region (OTR). As explained in this action, consistent with the Clean Air Act (CAA) and EPA regulations, these findings of failure to submit establish certain deadlines for the imposition of sanctions, if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

**DATE:** The effective date of this action is March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** General questions concerning this notice should be addressed to Mr. Stephen Senter, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C504–2, 109 TW Alexander Drive, Research Triangle Park, NC 27709; by telephone (919) 541–3042; or by email at *senter.stephen@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Notice and Comment Under the Administrative Procedure Act (APA)*

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit

SIPs, or elements of SIPs, because the finding is required by the CAA where states have made no submissions to meet the SIP requirements, or where the EPA has separately determined that they made incomplete submissions. Thus, notice and public procedures are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

*B. How can I get copies of this document and other related information?*

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2016–0646. All documents in the docket are listed on *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or 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 through *http://www.regulations.gov.*

*C. Where do I go if I have a specific state question?*

For questions related to specific states mentioned in this notice, please contact the appropriate EPA Regional office:

| Regional offices | States |
|---|---|
| EPA Region 1: Anne Arnold, Chief, Air Quality Planning Unit, EPA Region 1, 1 Congress Street, Suite 1100, Boston, MA 02203. | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont. |
| EPA Region 2: Rick Ruvo, Chief, Air Program Branch, EPA Region 2, 290 Broadway, New York, NY 10007. | New Jersey. |
| EPA Region 3: Maria Pino, Acting Associate Director, Office of Air Program Planning, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103. | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia. |
| EPA Region 5: John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604. | Illinois, Indiana, Wisconsin. |
| EPA Region 9: Doris Lo, Chief, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. | California. |

*D. How is the preamble organized?*

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L. Judicial Review

## II. Background

On March 27, 2008, the EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards.[1] In that action, the EPA promulgated identical revised primary and secondary ozone standards, designed to protect public health and welfare, of 0.075 parts per million (ppm).[2] Those standards are met when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppm.[3]

Promulgation of a revised NAAQS triggers a requirement for the EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards; for ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.[4] Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's ''design value,'' which represents air quality in the area for the most recent 3 years). The possible classifications for ozone nonattainment areas are Marginal, Moderate, Serious, Severe, and Extreme.[5] Nonattainment areas with a ''lower'' classification have ozone levels that are closer to the standard than areas with a ''higher'' classification.[6]

On May 21, 2012, and June 11, 2012, the EPA issued rules designating 46 areas throughout the country as nonattainment for the 2008 ozone NAAQS, effective July 20, 2012, and establishing classifications for the designated nonattainment areas.[7] Areas designated nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. States in the OTR are additionally subject to the requirements outlined in CAA section 184.

Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For a Marginal area, a state is required to submit a baseline emissions inventory and adopt a SIP requiring emissions statements from stationary sources and implementing a Nonattainment New Source Review (NNSR) program for the relevant ozone standard.[8] For a Moderate area, a state needs to comply with the Marginal area requirements, plus additional requirements, including the requirement to submit a demonstration that the area will attain in 6 years, the requirement to

[1] 73 FR 16436.

[2] Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as ''the 2008 ozone NAAQS'' or ''the 2008 ozone standard.''

[3] 40 CFR 50.15.

[4] CAA sections 107(d)(1) and 181(a)(1).

[5] CAA section 181(a)(1).

[6] *See* 40 CFR 51.1103 for the design value thresholds for each classification for the 2008 ozone NAAQS.

[7] 77 FR 30088 (May 21, 2012) and 77 FR 34221 (June 11, 2012).

[8] CAA section 182(a).

adopt and implement certain emissions controls, such as Reasonably Available Control Technology (RACT), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program. For each higher ozone nonattainment classification, a state needs to comply with all lower area classification requirements, plus additional emissions controls and more expansive NNSR offset requirements.

The CAA sets out specific requirements for states in the OTR.[9] Upon promulgation of the 2008 ozone NAAQS, states in the OTR were required to submit a SIP revision for RACT.[10] This requirement is the only recurring obligation for an OTR state upon revision of a NAAQS, unless that state also contains some portion of a nonattainment area for the revised NAAQS. In that case, the nonattainment requirements described above also apply to those portions of that state.

On March 6, 2015, the EPA established a final implementation rule for the 2008 ozone NAAQS (2008 Ozone SIP Requirements Rule).[11] The purpose of that action was to detail the requirements applicable to ozone nonattainment areas, as well as requirements that apply in the OTR, and provide specific deadlines for SIP submittals.

*Reasonably Available Control Technology*

Subpart 1 of part D of title I of the CAA includes a requirement that the SIP for a nonattainment area must provide for the implementation of all reasonably available control measures (otherwise referred to as Reasonably Available Control Measures) as expeditiously as practicable to meet a given NAAQS, including such emissions reductions that may be obtained through implementation of RACT. Under the provisions of Subpart 2 of part D of title I of the CAA, states with ozone nonattainment areas classified Moderate and higher must adopt RACT rules for all volatile organic compounds (VOC) sources covered by existing or new Control Technique Guidelines (CTGs),[12] and for all other major stationary sources of VOC and nitrogen oxide ($NO_X$).[13] This same requirement applies to states with affected sources in the OTR.[14] The RACT SIP requirements for states with nonattainment areas and states in the OTR are codified for the 2008 ozone NAAQS in 40 CFR 51.1112 and 51.1116(b), respectively, and require that RACT SIP revisions be submitted no later than 24 months after the effective date of area designations for the 2008 standards (*i.e.,* July 20, 2014).

*Nonattainment New Source Review*

NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area.[15] The specific NNSR requirements for the 2008 ozone NAAQS are located in 40 CFR 51.160–165. The 2008 Ozone SIP Requirements Rule explained that, for each nonattainment area, a NNSR plan or plan revision was due no later than 36 months after the effective date of area designations for the 2008 standards (*i.e.,* July 20, 2015).[16]

*Basic Vehicle Inspection and Maintenance*

Consistent with the applicable provisions under CAA section 182(b)(4), ozone nonattainment areas with urbanized populations of 200,000 or more based upon the 1990 United States Census that are classified as Moderate are subject to requirements to implement a basic vehicle inspection and maintenance (I/M) program, for which a new submittal or plan revision is due at the same time as the attainment demonstration, which was 3 years after the effective date of designation for a Moderate area (*i.e.,* July 20, 2015).[17]

*Transportation Control Measures To Offset Growth in Emissions From Growth in Vehicle Miles Traveled*

Consistent with CAA section 182(d)(1)(A), Severe and higher ozone nonattainment areas must submit an analysis to determine if emissions have increased due to growth in vehicle miles traveled (VMT) or vehicle trips. If the VMT analysis shows that a growth in emissions has occurred, the subject area must develop and submit a new plan or a plan revision with specific enforceable transportation control measures (TCMs) to offset that growth in emissions. For such areas, a new submittal or plan revision was due 2 years after the effective date of area designation (*i.e.,* July 20, 2014).

*Clean Fuels for Boilers*

For ozone nonattainment areas classified as Extreme, section 182(e)(3) of the CAA outlines requirements for new, modified, and existing electric utility, industrial, and commercial boilers that emit more than 25 tons per year of $NO_X$. Such facilities must use a low polluting fuel as its primary fuel source (*e.g.,* natural gas, methane, ethanol) or use advanced control technology for $NO_X$ emissions reductions. For such areas, a new submittal or plan revision was due 3 years after the effective date of area designation (*i.e.,* July 20, 2015).

## III. Consequences of a Finding of Failure To Submit

For plan requirements under subpart D, title I of the CAA, such as those for ozone nonattainment areas and areas in the OTR, if the EPA finds that a state has failed to make the required SIP submittal or that a submitted SIP is incomplete, then CAA section 179(a) establishes specific consequences, including the eventual imposition of mandatory sanctions for the affected area. Additionally, such a finding triggers an obligation under CAA section 110(c) for the EPA to promulgate a FIP no later than 2 years from the finding of failure to submit a complete SIP, if the affected state has not submitted, and the EPA has not approved, the required SIP submittal.

If the EPA has not affirmatively determined that a state has submitted a

[9] CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to submit RACT SIP revisions and mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards.

[10] 40 CFR 51.1116.

[11] 80 FR 12264.

[12] CTGs provide the EPA's recommendations on how to control emissions of VOC from a specific type of product or process (source category) in an ozone nonattainment area. Each CTG includes emissions limitations based on RACT. RACT emissions limitations are the lowest emissions limitations that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Air agencies responsible for ozone nonattainment areas or areas in the OTR must evaluate the recommendations provided in the CTG and determine if it is necessary to modify their existing regulations or create new regulations to meet the CAA's RACT requirements. *See* Web site: *https://www3.epa.gov/airtoxics/ctg_act.html.*

[13] To clarify, this notice does not make any findings with respect to SIP revisions that were required upon EPA's issuance of specific CTGs in 2006, 2007, 2008 or other years. In issuing those CTGs, the EPA established a separate set of SIP revision deadlines (as required by CAA section 182(b)(2)), and these deadlines are not associated with or triggered by the issuance of revised ozone NAAQS in 1997 or 2008. The findings in this notice pertain only to those SIP revisions triggered by the promulgation of a revised ozone NAAQS in 2008.

[14] CAA section 184(b).

[15] CAA sections 172(c)(5), 173 and 182.

[16] With respect to states with nonattainment areas subject to a finding of failure to submit NNSR SIP revisions, such revisions would no longer be required if the area were redesignated to attainment. The CAA's Prevention of Significant Deterioration program requirements apply in lieu of NNSR after an area is redesignated to attainment. For areas outside the OTR, NNSR requirements do not apply in areas designated as attainment.

[17] 40 CFR 51.372(b)(2).

complete SIP addressing the deficiency that is the basis for the finding within 18 months of the effective date of this rulemaking, then pursuant to CAA section 179(a) and (b) and 40 CFR 52.31 the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If the EPA has not affirmatively determined that the state has submitted a complete SIP addressing the deficiency that is the basis for the finding within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. If the state does not make the required SIP submittal and the EPA does not take final action to approve the submittal within 2 years of the effective date of these findings, the EPA is required to promulgate a FIP, pursuant to CAA section 179(a) and 40 CFR 52.31 for the affected nonattainment area.

## IV. Findings of Failure To Submit for States That Failed To Make a Nonattainment Area and/or Ozone Transport Region SIP submittal

Based on a review of SIP submittals received and deemed complete as of the date of this action, the EPA is finding that the states and areas listed in the tables below have failed to submit specific SIP element(s) for the 2008 ozone NAAQS required under subpart 2 of part D of title 1 of the CAA and the 2008 Ozone SIP Requirements Rule.

TABLE 1—FINDINGS OF FAILURE TO SUBMIT CERTAIN REQUIRED SIP ELEMENTS FOR 2008 OZONE NAAQS NONATTAINMENT AREAS

| Region | State | Area name | Required SIP element |
|---|---|---|---|
| 1 | CT | Greater Connecticut | Nonattainment NSR rules—Marginal. |
| 1 | CT | New York-N. New Jersey-Long Island | Nonattainment NSR rules—Marginal. |
| 1 | MA | Dukes County | Nonattainment NSR rules—Marginal. |
| 2 | NJ | New York-N. New Jersey-Long Island | Nonattainment NSR rules—Marginal. |
| 2 | NJ | Philadelphia-Wilmington-Atlantic City | Nonattainment NSR rules—Marginal. |
| 3 | DC | Washington | Nonattainment NSR rules—Marginal. |
| 3 | DE | Philadelphia-Wilmington-Atlantic City | Nonattainment NSR rules—Marginal. |
| 3 | DE | Seaford | Nonattainment NSR rules—Marginal. |
| 3 | MD | Baltimore | I/M Basic. |
| 3 | MD | Baltimore | Nonattainment NSR rules—Moderate. |
| 3 | MD | Baltimore | $NO_X$ RACT for Major Sources. |
| 3 | MD | Philadelphia-Wilmington-Atlantic City | Nonattainment NSR rules—Marginal. |
| 3 | MD | Washington | Nonattainment NSR rules—Marginal. |
| 3 | PA | Allentown-Bethlehem-Easton | Nonattainment NSR rules—Marginal. |
| 3 | PA | Lancaster | Nonattainment NSR rules—Marginal. |
| 3 | PA | Philadelphia-Wilmington-Atlantic City | Nonattainment NSR rules—Marginal. |
| 3 | PA | Pittsburgh-Beaver Valley | Nonattainment NSR rules—Marginal. |
| 3 | PA | Reading | Nonattainment NSR rules—Marginal. |
| 3 | VA | Washington | Nonattainment NSR rules—Marginal. |
| 5 | IL | Chicago-Naperville | Nonattainment NSR rules—Marginal. |
| 5 | IL | St. Louis-St. Charles-Farmington | Nonattainment NSR rules—Marginal. |
| 5 | IN | Chicago-Naperville | Nonattainment NSR rules—Marginal. |
| 5 | IN | Cincinnati | Nonattainment NSR rules—Marginal. |
| 5 | WI | Chicago-Naperville | Nonattainment NSR rules—Marginal. |
| 5 | WI | Sheboygan County | Nonattainment NSR rules—Marginal. |
| 9 | CA | Calaveras County | Nonattainment NSR rules—Marginal. |
| 9 | CA | Kern County (Eastern Kern) | Nonattainment NSR rules—Marginal. |
| 9 | CA | Los Angeles-San Bernardino Counties (Antelope Valley & Mojave Desert air districts). | Nonattainment NSR rules—Severe 15. |
| 9 | CA | Los Angeles-San Bernardino Counties (Antelope Valley & Mojave Desert air districts). | VMT—TCMs to Offset Growth. |
| 9 | CA | Los Angeles-South Coast Air Basin | Clean Fuels for Boilers. |
| 9 | CA | Los Angeles-South Coast Air Basin | Nonattainment NSR rules—Extreme. |
| 9 | CA | Los Angeles-South Coast Air Basin | VMT—TCMs to Offset Growth. |
| 9 | CA | Mariposa County | Nonattainment NSR rules—Marginal. |
| 9 | CA | Riverside County (Coachella Valley) | Nonattainment NSR rules—Severe 15. |
| 9 | CA | Riverside County (Coachella Valley) | VMT—TCMs to Offset Growth. |
| 9 | CA | Sacramento Metro (Sacramento) | Non-CTG VOC RACT for Major Sources. |
| 9 | CA | Sacramento Metro (Sacramento) | $NO_X$ RACT for Major Sources. |
| 9 | CA | Sacramento Metro (Sacramento) | CTG VOC RACT (for all 44 CTGs*). |
| 9 | CA | Sacramento Metro (Yolo Solano) | Nonattainment NSR rules—Severe 15. |
| 9 | CA | Sacramento Metro (Yolo Solano) | Non-CTG VOC RACT for Major Sources. |
| 9 | CA | Sacramento Metro (Yolo Solano) | $NO_X$ RACT for Major Sources. |
| 9 | CA | Sacramento Metro (Yolo Solano) | CTG VOC RACT (for all 44 CTGs*). |
| 9 | CA | Sacramento Metro | VMT—TCMs to Offset Growth. |
| 9 | CA | San Joaquin Valley | Nonattainment NSR rules—Extreme. |

TABLE 1—FINDINGS OF FAILURE TO SUBMIT CERTAIN REQUIRED SIP ELEMENTS FOR 2008 OZONE NAAQS NONATTAINMENT AREAS—Continued

| Region | State | Area name | Required SIP element |
|---|---|---|---|
| 9 | CA | Ventura County | Nonattainment NSR rules—Serious. |

* A listing in the chart for ''all 44 CTGs'' or particular CTG does not mean that the state or area has failed to meet a plan submission requirement triggered by the issuance of any particular CTG. The findings in this notice pertain only to those SIP revisions triggered by the promulgation of a revised ozone NAAQS in 2008. In other words, consistent with CAA sections 182(b)(2) and 184(b)(1)(B), and 40 CFR 51.1112 and 51.1116, inclusion in this table means that the state or area listed has failed to submit to the EPA a RACT submittal per the 2008 ozone NAAQS to address the sources covered by a CTG. The 44 VOC RACT CTGs that are relevant for purposes of the 2008 ozone NAAQS are for the following source categories: Aerospace; Auto and Light-Duty Truck Assembly Coatings (2008); Bulk Gasoline Plants; Equipment Leaks from Natural Gas/Gasoline Processing Plants; Factory Surface Coating of Flat Wood Paneling; Fiberglass Boat Manufacturing Materials (2008); Flat Wood Paneling Coatings (2006); Flexible Packaging Printing Materials (2006); Fugitive Emissions from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment; Graphic Arts—Rotogravure and Flexography; Industrial Cleaning Solvents (2006); Large Appliance Coatings (2007); Large Petroleum Dry Cleaners; Leaks from Gasoline Tank Trucks and Vapor Collection Systems; Leaks from Petroleum Refinery Equipment; Lithographic Printing Materials and Letterpress Printing Materials (2006); Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins; Manufacture of Pneumatic Rubber Tires; Manufacture of Synthesized Pharmaceutical Products; Metal Furniture Coatings (2007); Miscellaneous Industrial Adhesives (2008); Miscellaneous Metal Products Coatings (2008); Paper, Film, and Foil Coatings (2007); Petroleum Liquid Storage in External Floating Roof Tanks; Plastic Parts Coatings (2008); Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds; Shipbuilding/repair; SOCMI Air Oxidation Processes; SOCMI Distillation and Reactor Processes; Solvent Metal Cleaning; Stage I Vapor Control Systems—Gasoline Service Stations; Storage of Petroleum Liquids in Fixed Roof Tanks; Surface Coating for Insulation of Magnet Wire; Surface Coating of Automobiles and Light-Duty Trucks; Surface Coating of Cans; Coating of Coils; Surface Coating of Fabrics; Surface Coating of Large Appliances; Surface Coating of Metal Furniture; Surface Coating of Miscellaneous Metal Parts and Products; Coating of Paper; Tank Truck Gasoline Loading Terminals; Use of Cutback Asphalt; Wood Furniture.

TABLE 2—FINDINGS OF FAILURE TO SUBMIT CERTAIN REQUIRED SIP ELEMENTS FOR STATES IN THE OZONE TRANSPORT REGION

| EPA region | State | Required SIP element |
|---|---|---|
| 1 | MA | Non-CTG VOC RACT for Major Sources. |
| 1 | MA | $NO_X$ RACT for Major Sources. |
| 1 | MA | CTG VOC RACT (for all 44 CTGs*). |
| 1 | ME | Non-CTG VOC RACT for Major Sources. |
| 1 | ME | CTG VOC RACT (for all 44 CTGs*). |
| 1 | NH | Non-CTG VOC RACT for Major Sources. |
| 1 | NH | $NO_X$ RACT for Major Sources. |
| 1 | NH | CTG VOC RACT (for all 44 CTGs*). |
| 1 | RI | Non-CTG VOC RACT for Major Sources. |
| 1 | RI | $NO_X$ RACT for Major Sources. |
| 1 | RI | CTG VOC RACT (for all 44 CTGs*). |
| 1 | VT | Non-CTG VOC RACT for Major Sources. |
| 1 | VT | $NO_X$ RACT for Major Sources. |
| 1 | VT | CTG VOC RACT (for all 44 CTGs*). |
| 2 | NJ | CTG VOC RACT Fiberglass Boat Manufacturing Materials (2008). |
| 2 | NJ | CTG VOC RACT Miscellaneous Metal Products Coatings (2008). |
| 2 | NJ | CTG VOC RACT Paper, Film, and Foil Coatings (2007). |
| 2 | NJ | CTG VOC RACT Plastic Parts Coatings (2008). |
| 2 | NJ | CTG VOC RACT Industrial Cleaning Solvents (2006). |
| 3 | DC | $NO_X$ RACT for Major Sources. |
| 3 | DC | CTG VOC RACT (for all 44 CTGs*). |
| 3 | DC | Non-CTG VOC RACT for Major Sources. |
| 3 | MD | $NO_X$ RACT for Major Sources. |
| 3 | PA | CTG VOC RACT (for all 44 CTGs*). |
| 3 | VA | Non-CTG VOC RACT for Major Sources. |
| 3 | VA | $NO_X$ RACT for Major Sources. |
| 3 | VA | CTG VOC RACT (for all 44 CTGs*). |

* *See* the explanation after Table 1.

## V. Environmental Justice Considerations

The EPA believes that the human health or environmental risks addressed by this action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations because it does not directly affect the level of protection provided to human health or environment under the ozone NAAQS. The purpose of this rule is to make findings that states named have failed to provide the identified SIP submissions to the EPA that are required per the CAA for purposes of implementing the 2008 ozone NAAQS. As such, this action does not directly affect the level of protection provided for human health or the environment. Moreover, it is intended that the actions and deadlines resulting from this notice will in fact lead to greater protection for U.S. citizens, including minority, low-income, or indigenous populations, by ensuring that states meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward attaining the 2008 ozone NAAQS.

## VI. Statutory and Executive Order Reviews

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

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

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under sections 172, 182, and 184 which address the statutory requirements that apply to areas designated as nonattainment for the ozone NAAQS and to states within the Ozone Transport Region, respectively.

*C. Regulatory Flexibility Act (RFA)*

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

The rule is a finding that the named states have not submitted the necessary SIP revisions.

*D. Unfunded Mandates Reform Act of 1995 (UMRA)*

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

*E. Executive Order 13132: Federalism*

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

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

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under section 184 of the CAA for the 2008 ozone NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172 or under subpart 5 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under Section 184 for the 2008 ozone NAAQS and does not directly or disproportionately affect children.

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

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

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that several states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172 and 182 of the CAA, and the OTR requirements under section 184 of the CAA for the 2008 ozone NAAQS, this action does not directly affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section V of this preamble titled ''Environmental Justice Considerations.''

*K. Congressional Review Act (CRA)*

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

*L. Judicial Review*

Section 307(b)(l) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

The EPA has determined that this final rule consisting of findings of failure to submit certain of the required SIP revisions is ''nationally applicable'' within the meaning of section 307(b)(1). This final agency action affects 15 states with nonattainment areas and/or in the OTR, located in five of the 10 EPA Regional offices, and in 6 different federal circuits.

In addition, the EPA has determined that this rule has nationwide scope or effect because it addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR 51 appendix V applied to determining the completeness of SIPs in states across the country. This determination is appropriate because, in the 1977 CAA Amendments that revised CAA section 307(b)(l), Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has ''scope or effect beyond a single judicial circuit.'' H.R. Rep. No. 95–294 at 323–324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this action extends to the 6 judicial circuits that include the states across the country affected by this action. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of ''nationwide scope or effect'' and, thus, to indicate that venue for challenges lies in the District of Columbia Circuit. Accordingly, the EPA

is determining that this rule is of nationwide scope or effect.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Approval and promulgation of implementation plans, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: January 13, 2017.

**Gina McCarthy,**

*Administrator.*

[FR Doc. 2017–02188 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2014–0812; FRL–9958–82–Region 9]**

## Approval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements To Address Interstate Transport for the 2008 Ozone NAAQS

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Nevada Division of Environmental Protection (NDEP) to address the interstate transport requirements of Clean Air Act (CAA) with respect to the 2008 ozone national ambient air quality standard (NAAQS). We are approving the portion of the Nevada SIP pertaining to requirements prohibiting significant contributions from Nevada to nonattainment or interference with maintenance in another state.

**DATES:** This final rule is effective on March 6, 2017.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2014–0812 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Tom Kelly, Air Planning Office (AIR–2), EPA, Region IX, (415) 972–3856, *kelly.thomasp@epa.gov.*

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

**Table of Contents**

I. Background
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### I. Background

Sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements to implement, maintain and enforce the NAAQS no later than three years after the promulgation of a new or revised standard. Section 110(a)(2) outlines the specific requirements that each state is required to address in this SIP submission that collectively constitute the ''infrastructure'' of a state's air quality management program. A SIP submittal that addresses these requirements is referred to as an ''infrastructure SIP'' (I–SIP). In particular, CAA section 110(a)(2)(D)(i)(I) requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' (''prong 1'') or ''interfere with maintenance'' (''prong 2'') of the applicable NAAQS in any other state. This action addresses the section 110(a)(2)(D)(i) requirements of prong 1 and prong 2 with respect to Nevada's I–SIP submission.

On March 27, 2008, the EPA issued a revised NAAQS for ozone.[1] This action triggered a requirement for states to submit an I–SIP to address the applicable requirements of section 110(a)(2) within three years of issuance of the revised NAAQS. On April 10, 2013, NDEP submitted the ''Nevada State Implementation Plan for the 2008 8-Hour Ozone NAAQS: Demonstration of Adequacy'' (''2013 Submittal'') to address all of the CAA section 110(a)(2) requirements for the 2008 8-hour ozone NAAQS. On March 25, 2016, NDEP submitted, ''2016 Supplement to the Nevada State Implementation Plan for the 2008 8-Hour Primary Ozone NAAQS: Clean Air Act Section 110(a)(2)(D)(i)(I)'' (''2016 Supplement'').

On November 3, 2015, the EPA issued a partial approval and partial disapproval of Nevada's 2013 I–SIP submittal for the 2008 ozone, 2010 nitrogen dioxide, and 2010 sulfur dioxide NAAQS, including the following actions on infrastructure SIP requirements: Approval of SIP elements relating to CAA sections 110(a)(2)(A), (B), (C), (D)(i)(II)—visibility transport (''prong 4''), (E), (F), (G), (H), (I), (K), (L) and (M); partial approval, for Clark County, and partial disapproval, for Washoe County and the remainder of the state, of SIP elements relating to CAA sections 110(a)(2)(C), (D)(i)(II)—interference with Prevention of Significant Deterioration (''prong 3''), (D)(ii) (interstate pollution abatement and international air pollution) and (J); and, for $NO_X$ only, approval of SIP elements relating to prong 1 and prong 2 of CAA section 110(a)(2)(D)(i)(I).[2] Our November 3, 2015, partial approval and partial disapproval took no action on the Nevada 2013 Submittal with regard to prong 1 and prong 2 of the interstate transport requirements for the 2008 ozone NAAQS, but the proposal did state our intention to take action in a subsequent rulemaking. The EPA must take final action by February 13, 2017, on the provisions of the Nevada 2013 Submittal and 2016 Supplement addressing the requirements of prong 1 and prong 2, pursuant to a judgment by the District of Nevada in *Nevada* v. *McCarthy.*[3]

On December 6, 2016, the EPA proposed to approve the 2013 SIP Submittal and the 2016 Supplement addressing the infrastructure requirements of CAA section 110(a)(2)(D)(i) for the 2008 ozone

[1] National Ambient Air Quality Standards for Ozone; Final Rule, 73 FR 16436 (March 27, 2008).

[2] Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Nevada; Infrastructure Requirements for Ozone, $NO_2$ and $SO_2$, 80 FR 67652 (November 3, 2015).

[3] *See* Judgment, *Nevada* v. *McCarthy*, Case 3:15–cv–00396–HDM–WGC (D. Nev. June 22, 2016).

NAAQS.[4] The rationale supporting the EPA's actions is explained in our proposal notice and the associated Technical Support Document (TSD) and will not be restated here. The proposed rule and TSD are available online at *http://www.regulations.gov,* Docket ID number EPA–R09–OAR–2014–0812.

## II. Public Comments

The EPA received no comments on the proposed action during the public comment period.

## III. Final Action

Under CAA section 110(k)(3), and based on the evaluation and rationale presented in the proposed rule, the related TSD, and this final rule, the EPA is approving Nevada's SIP as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) prong 1 and prong 2 for the 2008 ozone NAAQS.

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Air pollution control, Approval and promulgation of implementation plans, Environmental protection, Incorporation by reference, Oxides of nitrogen, Ozone, and Volatile organic compounds.

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

Dated: January 13, 2017.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

## Subpart DD—Nevada

■ 2. In § 52.1470, paragraph (e), the table is amended by adding, under the heading ''Air Quality Implementation Plan for the State of Nevada'' an entry after the entry ''Nevada's Clean Air Act § 110(a)(1) and (2) State Implementation Plan for the 2008 ozone NAAQS, excluding appendices A–F for NDEP; excluding the cover letter to NDEP and attachments A and B for Clark County; and excluding the cover letter to NDEP and Attachments A and B for Washoe County'' to read as follows:

**§ 52.1470 Identification of plan.**

* * * * *

(e) * * *

[4] ''Air Quality State Implementation Plans; Approvals and Promulgations: Nevada; Infrastructure Requirements to Address Interstate Transport for the 2008 Ozone NAAQS,'' 81 FR 87857 (December 6, 2016).

EPA-APPROVED NEVADA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| **AIR QUALITY IMPLEMENTATION PLAN FOR THE STATE OF NEVADA** [1] | | | | |
| * * | * | * | * | * * |
| Supplement to the Nevada Division of Environmental Protection Portion of the Nevada "Infrastructure" SIP for the 2008 Ozone NAAQS: CAA § 110(a)(2)(D)(i)(I), Interstate Transport; excluding the cover letter to EPA Region 9 and attachments A and 2. | State-wide ..... | 3/25/2016 | [Insert **Federal Register** citation] 2/3/2017. | Interstate transport supplement to the "Infrastructure" SIP for NDEP, Clark County and Washoe County for the 2008 8-hour ozone standard. |
| * * | * | * | * | * * |

[1] The organization of this table generally follows from the organization of the State of Nevada's original 1972 SIP, which was divided into 12 sections. Nonattainment and maintenance plans, among other types of plans, are listed under Section 5 (Control Strategy). Lead SIPs and Small Business Stationary Source Technical and Environmental Compliance Assistance SIPs are listed after Section 12 followed by nonregulatory or quasi-regulatory statutory provisions approved into the SIP. Regulatory statutory provisions are listed in 40 CFR 52.1470(c).

■ 3. Section 52.1472 is amended by revising paragraph (h) to read as follows:

**§ 52.1472 Approval status.**

* * * * *

(h) *2008 8-hour ozone NAAQS:* The SIPs submitted on December 20, 2012 are partially disapproved for CAA elements 110(a)(2)(C), (D)(ii), and (J) for the NDEP and Washoe County portions of the Nevada SIP.

* * * * *

[FR Doc. 2017–02191 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

**[EPA–HQ–OW–2016–0012; FRL–9958–40–OW]**

**RIN 2040–AF60**

## Aquatic Life Criteria for Cadmium in Oregon

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is establishing a federal Clean Water Act (CWA) aquatic life criterion for freshwaters under the state of Oregon's jurisdiction, to protect aquatic life from the effects of exposure to harmful levels of cadmium. In 2013, EPA determined that the freshwater acute cadmium criterion and freshwater acute and chronic copper criteria that Oregon adopted in 2004 did not meet CWA requirements to protect aquatic life in the state. Since that time, the state adopted revised criteria for copper (which EPA is approving in parallel with this final rulemaking), but has not adopted a revised acute criterion for cadmium and thus EPA is establishing a federal freshwater acute criterion for cadmium that takes into account the best available science, EPA policies, guidance and legal requirements, to protect aquatic life uses in Oregon.

**DATES:** This final rule is effective on March 6, 2017.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2016–0012. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Erica Fleisig, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1057; email address: *fleisig.erica@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule is organized as follows:

I. General Information
  A. Does this action apply to me?
  B. How did EPA develop this final rule?
II. Background
  A. Statutory and Regulatory Background
  B. EPA's Actions on Oregon's Freshwater Copper and Cadmium Criteria
  C. General Recommended Approach for Deriving Aquatic Life Criteria
III. Freshwater Cadmium Aquatic Life Criteria
  A. EPA's National Recommended Cadmium Criteria
  B. Final Acute Cadmium Criterion for Oregon's Freshwaters
  C. Additional Considerations for Calculation of Site-Dependent Cadmium Criteria
IV. Implementation of Final Cadmium Criterion in Oregon
V. Critical Low-Flows and Mixing Zones
VI. Endangered Species Act
VII. Applicability of Criteria
VIII. Alternative Regulatory Approaches and Implementation Mechanisms
  A. Designating Uses
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IX. Economic Analysis
  A. Identifying Affected Entities
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X. Statutory and Executive Order Reviews
  A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132 (Federalism)
  F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
  G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
  H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
  I. National Technology Transfer and Advancement Act of 1995

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
K. Congressional Review Act (CRA)

## I. General Information

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

Cadmium naturally occurs at low levels in surface waters, but anthropogenic activities can increase levels of cadmium in the environment. At higher concentrations, cadmium can be toxic to aquatic life. Sources of elevated cadmium in the environment include coal combustion, mining, electroplating, iron and steel production, and use of pigments, fertilizers and pesticides. Industrial facilities, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to freshwaters of the United States under the state of Oregon's jurisdiction could be indirectly affected by this rulemaking, because federal water quality standards (WQS) promulgated by EPA are applicable to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in Oregon could also be interested in this rulemaking. Categories and entities that could potentially be affected include the following:

| Category | Examples of potentially affected entities |
| --- | --- |
| Industry | Industrial facilities discharging pollutants to freshwaters of the United States in Oregon. |
| Municipalities | Publicly owned treatment works or other facilities discharging pollutants to freshwaters of the United States in Oregon. |
| Stormwater Management Districts | Entities responsible for managing stormwater runoff in the state of Oregon. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be indirectly affected by this action. Any parties or entities who depend upon or contribute to the water quality of Oregon's waters could be indirectly affected by this rule. To determine whether your facility or activities could be indirectly affected by this action, you should carefully examine this rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### B. How did EPA develop this final rule?

In developing this final rule, EPA carefully considered the public comments and feedback received from interested parties. EPA originally provided a 45-day public comment period after publishing the proposed rule in the **Federal Register** on April 18, 2016.[1] In addition, EPA held two public hearings on May 16 and 17, 2016, to provide clarification on the contents of the proposed rule and accept verbal public comments.

Fourteen organizations and individuals submitted comments on a range of issues prior to the close of the public comment period on June 2, 2016. Some comments addressed issues beyond the scope of the rulemaking, and thus EPA did not consider them in finalizing this rule. In each section of this preamble, EPA discusses certain public comments so that the public is aware of the Agency's position. For a full response to these and all other comments, see EPA's Response to Comments document in the official public docket.

[1] See Aquatic Life Criteria for Copper and Cadmium in Oregon: Proposed Rule, 81 FR 22555, April 18, 2016.

## II. Background

### A. Statutory and Regulatory Background

CWA section 101(a)(2) establishes as a national goal ''wherever attainable . . . water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water. . . .'' These are commonly referred to as the ''fishable/swimmable'' goals of the CWA.

CWA section 303(c) (33 U.S.C. 1313(c)) directs states to adopt WQS for their waters subject to the CWA. CWA section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that a state's WQS specify appropriate designated uses of the waters, and water quality criteria that protect those uses. EPA's regulations at 40 CFR 131.11(a)(1) provide that ''[s]uch criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use.'' In addition, 40 CFR 131.10(b) provides that ''[i]n designating uses of a water body and the appropriate criteria for those uses, the [s]tate shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.''

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA section 303(c)(1)). Any new or revised WQS must be submitted to EPA for review and approval or disapproval (CWA section 303(c)(2)(A) and (c)(3)). If EPA disapproves a state's new or revised WQS, the CWA provides the state 90 days to adopt a revised WQS that meets CWA requirements, and if it fails to do so, EPA shall promptly propose and then within 90 days promulgate such standard unless EPA approves a state replacement WQS first (CWA section 303(c)(3) and (c)(4)(A)). CWA section 303(c)(4)(B) authorizes the Administrator to determine that a new or revised standard is needed to meet CWA requirements. Upon making such a determination, the CWA specifies that EPA shall promptly propose, and then within 90 days promulgate, any such new or revised standard unless prior to such promulgation, the state has adopted a revised or new WQS that EPA determines to be in accordance with the CWA.

Under CWA section 304(a), EPA periodically publishes criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to meet the CWA section 101(a)(2) goal uses. In establishing criteria, states should establish numeric water quality criteria based on EPA's CWA section 304(a) criteria, section 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). In all cases criteria must be sufficient to protect the designated use and be based on sound scientific rationale (40 CFR 131.11(a)(1)).

### B. EPA's Actions on Oregon's Freshwater Copper and Cadmium Criteria

As discussed in the preamble to EPA's proposed rule (81 FR 22555; April 18, 2016), EPA disapproved several of Oregon's revised aquatic life criteria

under CWA 303(c), including an acute cadmium freshwater criterion, and acute and chronic freshwater copper criteria that the National Marine Fisheries Service (NMFS) concluded would jeopardize endangered species in Oregon in its biological opinion dated August 14, 2012.[2] [3] On November 14, 2016, Oregon submitted revised freshwater copper criteria to EPA for review under CWA section 303(c). In parallel with this final rule, EPA is taking action under CWA 303(c) to approve the freshwater copper aquatic life criteria submitted by Oregon. Oregon did not adopt a revised acute cadmium criterion, however, therefore EPA is finalizing the freshwater acute cadmium criterion in this rule in accordance with CWA section 303(c)(3) and (c)(4) requirements.

### *C. General Recommended Approach for Deriving Aquatic Life Criteria*

As discussed in the preamble to the 2016 proposed rule (81 FR 22555), to derive criteria for the protection of aquatic life, EPA follows its *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (referred to as the ''1985 Guidelines'').[4] These guidelines describe an objective way to estimate the highest concentration of a substance in water that will not present a significant risk to the aquatic organisms in the water.

Numeric criteria derived using EPA's 1985 Guidelines are expressed as short-term (acute) and long-term (chronic) values. The combination of a criteria maximum concentration (CMC), a one-hour average value, and a criteria continuous concentration (CCC), a four-day average value, protects aquatic life from acute and chronic toxicity, respectively. Neither value is to be exceeded more than once in three years. EPA selected the CMC's one-hour averaging period because high concentrations of certain pollutants can cause death in one to three hours, and selected the CCC's four-day averaging period to prevent increased adverse effects on sensitive life stages. EPA based the once every three years exceedance frequency recommendation on the ability of aquatic ecosystems to recover from the exceedances (when the average concentration over the duration of the averaging period is above the CCC or the CMC).[5]

Because fresh and salt waters have different chemical compositions and different species assemblages, it is necessary to derive separate acute and chronic criteria for fresh and salt waters. Additionally, criteria may be based on certain water characteristics (*e.g.,* pH, temperature, hardness, dissolved organic carbon (DOC), etc.) because water chemistry can influence a pollutant's bioavailability and toxicity. For metals in particular, EPA recommends expressing the criteria as functions of chemical constituents of the water, because those constituents can form complexes with metals and render the metals biologically unavailable, or compete with metals for binding sites on aquatic organisms. Additionally, in 1995, EPA recommended that criteria for metals be expressed as dissolved (rather than total) metal concentrations, because the concentration of dissolved metal better approximates the toxic fraction.[6]

## III. Freshwater Cadmium Aquatic Life Criteria

### *A. EPA's National Recommended Cadmium Criteria*

Water hardness (determined by the presence of calcium and magnesium ions, and expressed as calcium carbonate, $CaCO_3$) affects the toxicity of cadmium, as calcium and magnesium ions compete with cadmium for binding sites on aquatic organisms' gills. Organisms show more sensitivity to cadmium in lower hardness (soft) water than in hard water. EPA therefore expresses the national 304(a) recommended acute and chronic cadmium criteria as functions of water hardness.

On March 30, 2016, EPA announced publication of final updated 304(a) national recommended aquatic life criteria for cadmium.[7] The 2016 cadmium 304(a) criteria reflect the best available science, including the results of laboratory aquatic toxicity tests for 75 new species. EPA lowered the updated 304(a) recommended freshwater acute cadmium criterion to protect commercially and recreationally important salmonids, consistent with EPA's 1985 Guidelines. In addition, EPA revised the effect of total hardness on cadmium toxicity using the newly acquired data.

### *B. Final Acute Cadmium Criterion for Oregon's Freshwaters*

To protect aquatic life in Oregon's freshwaters from acute toxic effects from cadmium, EPA is promulgating the one-hour average CMC of $e^{(0.9789 \times \ln(\text{hardness}) - 3.866)} \times \text{CF}$ (µg/L, dissolved), not to be exceeded more than once every three years. ''CF'' refers to the conversion factor and is used to convert the total recoverable concentration to a dissolved concentration, consistent with EPA's policy on criteria for metals. The equation for the acute cadmium CF is $\text{CF} = 1.136672 - [(\ln \text{hardness}) \times (0.041838)]$. This is the same freshwater acute cadmium criterion (and associated CF) as in EPA's final 2016 national updated 304(a) recommended cadmium criteria. The (ln hardness) term in both the CMC equation and the CF equation is the natural logarithm of the ambient water hardness in mg/L ($CaCO_3$). Commenters were generally supportive of EPA's proposal to apply the final 2016 national 304(a) recommended acute cadmium criterion (and associated CF) to freshwaters in Oregon.

Where site-specific hardness data are unavailable, EPA is establishing default hardness concentrations (as $CaCO_3$), based on the 10th percentile of existing hardness concentrations in waters within each of the nine Level III ecoregions in Oregon. These ecoregion-specific default hardness concentrations are set forth in Table 2 in the final regulatory text for § 131.46.

To determine the default hardness concentrations, EPA used 10th percentile hardness estimates from Table 4 in USEPA's *Recommended Estimates for Missing Water Quality Parameters for Application in EPA's Biotic Ligand Model,* February 16, 2016

[2] See USEPA. 2013. *EPA Clean Water Act 303(c) Determinations On Oregon's New and Revised Aquatic Life Toxic Criteria Submitted on July 8, 2004, and as Amended by Oregon's April 23, 2007 and July 21, 2011 Submissions.* Page 46.

[3] The NMFS biological opinion contained Reasonable and Prudent Alternatives (RPAs) that would avoid the likelihood of jeopardy to the species. For acute cadmium, the RPA specified a process for deriving revised freshwater criteria.

[4] USEPA. 1985. *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses.* U.S. Environmental Protection Agency, Office of Research and Development, Duluth, MN, Narragansett, RI, Corvallis, OR. PB85–227049. *https://www.epa.gov/wqc/guidelines-deriving-numerical-national-water-quality-criteria-protection-aquatic-organisms-and.*

[5] *See* USEPA, 1985. Pages. 5–7.

[6] *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria,* May 4, 1995, 60 FR 22229.

[7] USEPA. 2016. *Aquatic Life Ambient Water Quality Criteria: Cadmium—2016.* U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–820–R–16–002.

(EPA 820–R–15–106).[8] EPA elected to rely on the dataset [9] that formed the basis for the recommendations in EPA's peer-reviewed *Missing Parameters* document to determine the proposed and final defaults for Oregon. While not the only acceptable dataset, the dataset that EPA used in its *Missing Parameters* document is robust and publicly available, and is therefore a reasonable source of data to determine scientifically defensible and protective default hardness concentrations for the acute cadmium criterion. Although EPA is promulgating these default hardness values to use in the absence of ambient hardness data, EPA strongly recommends that Oregon collect sufficiently representative ambient hardness data to determine the appropriate acute cadmium criterion for a site.

Some commenters were in favor of EPA's decision to include default input parameters, while others were critical of this approach. Specifically related to EPA's proposal of a default hardness value for use with the acute cadmium criterion, some commenters argued that EPA's proposal of a default hardness value of 25 mg/L was overly conservative because it is below the lowest existing 10th percentile ecoregional hardness concentration in Oregon. EPA maintains that it is important to include default values for hardness to provide clarity to NPDES permit writers and water body assessors as to the applicable acute cadmium criterion at the site when there are insufficient ambient hardness data to adequately characterize the site. The default hardness of 25 mg/L that EPA proposed in its April 18, 2016 proposed rule (81 FR 22555) is protective and consistent with Oregon's application of a default hardness concentration of 25 mg/L if no hardness data are available to calculate hardness-dependent metals criteria.[10] However, EPA recognizes that hardness concentrations vary throughout the state, and using more refined hardness defaults based on ecoregion-specific data, rather than a single statewide default hardness value, would also result in protective criteria in the absence of ambient hardness data. Therefore, in this rulemaking EPA is finalizing different default hardness concentrations that correspond to the 10th percentile of ambient hardness data from each of the nine ecoregions in Oregon.

Consistent with EPA guidance, the hardness default does not represent a ''hardness floor'' for the ecoregion; rather, a site's actual ambient water hardness should be used to calculate the criterion when sufficiently representative hardness data are available, even if ambient hardness is below the default hardness concentration.[11]

### *C. Additional Considerations for Calculation of Site-Dependent Cadmium Criteria*

Commenters requested that EPA provide additional specificity on the minimum number of samples required to adequately capture temporal and spatial variability at a site, and site selection considerations. While many of these comments were with respect to copper criteria calculations, EPA agrees that these are important considerations for cadmium as well. In response to these comments, EPA is providing the following recommendations.

The number of samples needed to characterize site variability depends on several characteristics of the site. The water quality characteristics that determine the bioavailability of metals, including cadmium, can vary widely in both space and time, changing with biological activity, flow, geology, human activities, watershed landscape, and other features of the water body. For the state to ensure that the criteria are adequately protective of the most bioavailable conditions at the site through time, the state should apply appropriate methods to evaluate how a site's water quality conditions are expected to vary temporally, and ensure that adequate monitoring is in place to capture the variability across the site and through time.

The state should first demonstrate that the hardness concentrations used in the calculations are not biased toward less bioavailable conditions for cadmium by evaluating the hardness data and resultant acute cadmium criteria that are calculated over time for different flows and seasons. The state should use appropriate analytical methods, such as a Monte Carlo [12] simulation or another analytical tool, to determine if the monitoring methods are sufficient to capture the temporal trends, and the resultant calculated criteria are adequate to represent the most bioavailable conditions over time at the site.

Oregon should consider the following when defining a site to which to apply criteria for cadmium: (1) Metals are generally persistent, so calculating the criterion using input parameter values from a location at or near the discharge point could result in a criterion that is not protective of areas that are outside of that location, and (2) as the size of a site increases, the spatial and temporal variability is likely to increase; thus, more water samples may be required to adequately characterize the entire site.[13] Additionally, pursuant to 40 CFR 131.10(b), Oregon must consider downstream WQS when calculating a protective criterion in upstream waters.

Substantial changes in a site's ambient hardness will likely affect the bioavailability of and the relevant criterion for cadmium at that site. In addition, with regular monitoring and a robust, site-specific dataset, criteria can be developed that more accurately reflect site conditions than criteria set using default values or limited data sets. Therefore, EPA recommends that Oregon periodically revisit each water body's cadmium criterion and re-run the hardness equation when changes in water chemistry are evident or suspected at a site, and also as additional monitoring data become available.

When Oregon calculates cadmium criteria, to promote transparency and ensure predictable and repeatable outcomes, EPA recommends that the state make each site's ambient hardness data used in the cadmium criteria calculations, resultant numeric criteria, and the geographic extent of the site publicly available on the state's Web site.

## IV. Implementation of Final Cadmium Criterion in Oregon

Because organisms are more sensitive to cadmium when hardness is low, Oregon should ensure that sufficiently representative ambient hardness data are collected to have confidence that critical conditions in the water body are

[8] For a map of Level III ecoregions in the continental United States, see: *https://www.epa.gov/eco-research/level-iii-and-iv-ecoregions-continental-united-states.*

[9] Data came from several water quality databases including the Storage and Retrieval Data System, National Waters Information System (NWIS), Wadeable Stream Assessment, and National River and Stream Assessment (NRSA) database.

[10] Oregon Department of Environmental Quality. 2014. *Methodology for Oregon's 2012 Water Quality Report and List of Water Quality Limited Waters (Pursuant to Clean Water Act Sections 303(d) and 305(b) and OAR 340–041–0046).* Pages 76–77.

[11] USEPA. 2002. *National Recommended Water Quality Criteria: 2002.* U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–822–R–02–047.

[12] Given sufficient data, Monte Carlo simulation or equivalent analysis can be used to determine the probability of identifying the most bioavailable time period for a series of monitoring scenarios. From such an analysis, the state can select the appropriate monitoring regime.

[13] USEPA. 1994. *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals.* U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–823–B–94–001. February 1994.

being adequately captured. When setting Water Quality-Based Effluent Limitations (WQBELs) for cadmium, Oregon should determine hardness values that represent the receiving water both upstream of and below the point of discharge under critical conditions (*i.e.,* low hardness) when cadmium bioavailability is expected to be greater, such that the resulting criteria calculations, reasonable potential analyses, and any effluent limitations will be protective of the entire site at critical conditions. EPA's NPDES Permit Writers' Manual describes the importance of determining effluent and receiving water critical conditions, because if a discharge is controlled so that it does not cause water quality criteria to be exceeded in the receiving water under critical conditions, then water quality criteria should be attained under all other conditions.[14] The same principle holds for developing a TMDL target.

For transparency for the public, EPA recommends that Oregon describe in its NPDES permit factsheets how the numeric criteria were calculated and used to determine reasonable potential and derive WQBELs. Similarly for TMDLs, EPA recommends that Oregon describe in the TMDL document how the numeric criteria were calculated and used to determine TMDL targets. In the assessment and listing context, EPA recommends that Oregon describe in its integrated reports how it calculated numeric criteria to which it compared ambient cadmium concentrations.

## V. Critical Low-Flows and Mixing Zones

To ensure that the criteria are applied appropriately to protect Oregon's aquatic life uses, EPA is establishing critical low-flow values for Oregon to use in calculating the available dilution for the purposes of determining the need for and establishing WQBELs in NPDES permits. Dilution is one of the primary mechanisms by which the concentrations of contaminants in effluent discharges are reduced following their introduction into a receiving water. Low flows can exacerbate the effects of effluent discharges because, during a low-flow event, there is less water available for dilution, resulting in higher instream pollutant concentrations. If criteria are implemented using inappropriate critical low-flow values (*i.e.,* values that are too high), the resulting ambient concentrations could exceed criteria when low flows occur.[15]

EPA's March 1991 *Technical Support Document for Water Quality-based Toxics Control* recommends two methods for calculating acceptable critical low-flow values: The traditional hydrologically based method developed by the USGS and a biologically based method developed by EPA.[16] The hydrologically based critical low-flow value is determined statistically using probability and extreme values, while the biologically based critical low-flow is determined empirically using the specific duration and frequency associated with the criterion.

For the freshwater acute cadmium criterion, EPA establishes the following critical low-flow values: 1Q10 or 1B3. Using the hydrologically based method, the 1Q10 represents the lowest one-day average flow event expected to occur once every ten years, on average. Using the biologically based method, 1B3 represents the lowest one-day average flow event expected to occur once every three years, on average.[17]

The criterion in this final rule applies at the point of discharge unless Oregon authorizes a mixing zone. Where Oregon authorizes a mixing zone, the criterion applies at the locations allowed by the mixing zone (*i.e.,* the CMC would apply at the defined boundary of the acute mixing zone).[18]

One commenter argued that EPA's proposed critical low-flow provisions were unnecessary, asserting that Oregon already has such provisions. Currently Oregon's implementation methods for low-flows are in non-binding guidance. Specifying the appropriate low-flow provisions in regulation will provide added clarity, and ensure that the acute cadmium criterion is implemented in such a way that designated uses are protected.

## VI. Endangered Species Act

As noted in the 2016 proposed rule, the NMFS 2012 biological opinion concluded that the freshwater acute cadmium criterion that Oregon adopted in 2004 would jeopardize the continued existence of specific endangered species and their critical habitat in Oregon. The opinion also contained a reasonable and prudent alternative (RPA) for cadmium that would avoid the likelihood of jeopardy to endangered species in Oregon.

EPA has determined that the acute cadmium criterion being finalized in this rulemaking is consistent with the RPA for acute cadmium as contained in the NMFS 2012 biological opinion. Therefore, as finalized, the acute cadmium criterion for Oregon is sufficiently protective of threatened and endangered species in state waters and avoids the likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat. EPA's RPA analysis for the acute cadmium criterion is contained in the docket for this rule.

## VII. Applicability of Criteria

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters (CWA section 303(a)–(c)). Although EPA is establishing an acute cadmium criterion for Oregon's freshwaters to remedy EPA's 2013 disapproval of Oregon's 2004 criteria, Oregon continues to have the option to adopt and submit to EPA an acute cadmium criterion for the state's freshwaters consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131.

In its April 18, 2016, proposed rule, EPA proposed that if Oregon adopted and submitted freshwater cadmium and/or copper aquatic life criteria after EPA's finalization of the freshwater acute cadmium criterion and freshwater acute and chronic copper criteria, then once EPA approved Oregon's WQS, those EPA-approved criteria in Oregon's WQS would automatically become solely effective for CWA purposes and EPA's promulgated criteria would no longer apply. EPA did not receive any comments on this provision as it relates to copper and cadmium criteria for Oregon, and this provision is moot with respect to copper since Oregon adopted revised freshwater copper criteria (which EPA is approving in parallel with this final acute cadmium criterion rulemaking). However, upon further consideration of comments received on other proposed rules where EPA proposed a similar provision, EPA decided not to finalize this provision. Pursuant to 40 CFR 131.21(c), EPA's federally promulgated WQS are and will be applicable for purposes of the CWA until EPA withdraws those federally promulgated WQS. EPA would expeditiously undertake such a rulemaking to withdraw the federal

[14] USEPA. 2010. *NPDES Permit Writers' Manual.* U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA–833–K–10–001. September 2010.

[15] USEPA. 2014. *Water Quality Standards Handbook-Chapter 5: General Policies.* U.S. Environmental Protection Agency, Office of Water. Washington, DC EPA-820-B-14&-004. *http://www.epa.gov/sites/production/files/2014-09/documents/handbook-chapter5.pdf.*

[16] USEPA. 1991. *Technical Support Document For Water Quality-based Toxics Control.* U.S. Environmental Protection Agency, Office of Water, Washington, DC EPA/505/2-90-001. *http://www3.epa.gov/npdes/pubs/owm0264.pdf.*

[17] *See* USEPA, 2014.

[18] *See* USEPA, 1991.

acute cadmium criterion if and when Oregon adopts and EPA approves a corresponding criterion that meets the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131.

## VIII. Alternative Regulatory Approaches and Implementation Mechanisms

Oregon has considerable discretion to implement the acute cadmium aquatic life criterion through various water quality control programs. Among other things, EPA's regulations: (1) Specify how states and authorized tribes establish, modify, or remove designated uses; (2) specify the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions; (3) authorize states and authorized tribes to adopt WQS variances to provide time to achieve the applicable WQS; and (4) allow states and authorized tribes to include compliance schedules in NPDES permits. Each of these approaches are discussed in this section.

### *A. Designating Uses*

EPA's final acute cadmium criterion applies to freshwaters in Oregon where the protection of fish and aquatic life is a designated use (see Oregon Administrative Rules at 340–041–8033, Table 30). The federal regulations at 40 CFR 131.10 specify how states and authorized tribes establish, modify or remove designated uses for their waters. If Oregon removes designated uses such that no fish or aquatic life uses apply to any particular water body affected by this rule and adopts the highest attainable use,[19] and EPA finds that removal to be consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131, then the federal acute cadmium criterion would no longer apply to that water body. Instead, any criterion associated with the newly designated highest attainable use would apply to that water body.

### *B. Site-Specific Criteria*

EPA's regulations at 40 CFR 131.11 specify requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions. In the context of this rulemaking, a site-specific criterion (SSC) is an alternative value to the federal freshwater acute cadmium criterion that would be applied on a watershed, area-wide, or water body-specific basis that meets the regulatory test of protecting the designated use, being scientifically defensible, and ensuring the protection and maintenance of downstream WQS. A SSC may be more or less stringent than the otherwise applicable federal criterion. A SSC may be appropriate when further scientific data and analyses can bring added precision to express the concentration of cadmium that protects the aquatic life-related designated use in a particular water body. As discussed earlier, if Oregon adopts and EPA approves site-specific criteria that fully meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131, EPA will undertake a rulemaking to withdraw the corresponding federal criterion.

### *C. Variances*

40 CFR part 131 defines WQS variances at 131.3(o) as time-limited designated uses and supporting criteria for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable conditions during the term of the WQS variances. WQS variances adopted in accordance with 40 CFR part 131 allow states and authorized tribes to address water quality challenges in a transparent and predictable way. Variances help states and authorized tribes focus on making incremental progress in improving water quality, rather than pursuing a downgrade of the underlying water quality goals through a designated use change, when the designated use is not attainable throughout the term of the variance due to one of the factors listed in 40 CFR 131.14. Oregon has sufficient authority to use variances when implementing the final acute cadmium criterion, as long as such variances are adopted consistent with 40 CFR 131.14, and submitted to EPA for review under CWA section 303(c).

### *D. Compliance Schedules*

EPA's regulations at 40 CFR 122.47 provide the requirements when states and authorized tribes wish to include permit compliance schedules in their NPDES permits if dischargers need additional time to meet their WQBELs based on the applicable WQS. EPA's updated regulations at 40 CFR 131.15 require any state or authorized tribe wishing to use permit compliance schedules to also include provisions authorizing the use of permit compliance schedules after appropriate public involvement to ensure that a decision to allow permit compliance schedules derives from and complies with the applicable WQS. (80 FR 51022, August 21, 2015). Oregon may use its EPA-approved regulation authorizing the use of permit compliance schedules (see OAR 340–041–0061), consistent with 40 CFR 131.15, to grant compliance schedules, as appropriate, for WQBELs based on the federal acute cadmium criterion. That state regulation is not affected by this final rule.

## IX. Economic Analysis

Although EPA's final acute cadmium criterion itself will not impose any direct requirements on entities, this criterion may ultimately serve as a basis for development of new or revised NPDES permit limits. Oregon has NPDES permitting authority, and retains considerable discretion in implementing standards. Still, to best inform the public of the potential impacts of this rule, EPA evaluated the potential costs associated with state implementation of EPA's final criterion. This analysis is documented in *Economic Analysis for the Final Rule: Aquatic Life Criteria for Cadmium in Oregon,* which can be found in the record for this rulemaking.

For the economic analysis, EPA assumed the baseline to be full implementation of currently approved existing aquatic life criteria (*i.e.,* ''baseline criteria'') and then estimated the incremental impacts for compliance with the final cadmium criterion in this rule. For point source costs, any NPDES-permitted facility that discharges cadmium could potentially incur compliance costs. The types of affected facilities could include industrial facilities and publicly owned treatment works (POTWs) discharging sanitary wastewater to surface waters (*i.e.,* point sources). EPA expects that dischargers would use similar process and treatment controls to come into compliance with the final cadmium criterion as they would to comply with Oregon's baseline criteria.

EPA did not estimate the potential for costs to stormwater or nonpoint sources such as agricultural runoff. EPA recognizes that Oregon may require controls for nonpoint sources; however, it is difficult to model and evaluate the potential cost impacts of this rule to those sources because they are intermittent, variable, and occur under hydrologic or climatic conditions associated with precipitation events. Also, baseline total maximum daily loads (TMDLs) for waters with baseline impairment for cadmium have not yet

[19] Highest attainable use is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, based on the evaluation of the factor(s) in § 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the state demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable (see 40 CFR 131.3(m)).

been developed; therefore, determining which waters would not achieve standards based on the final aquatic life criterion after complying with existing (baseline) regulations and policies may not be possible.

*A. Identifying Affected Entities*

For identifying new criteria values for the purposes of estimating cost incremental to costs to achieve the existing baseline criteria, EPA developed hypothetical applications of the final cadmium criterion using conservative estimates for hardness. The criteria that EPA calculated for the economic analysis are likely different from and possibly lower (more stringent) than the actual criteria applications that Oregon would calculate using ambient data from each water body. As described earlier in this final rule, EPA recommends that Oregon collect sufficiently representative ambient data to calculate the most accurate and protective cadmium criteria by site.

Using the criteria calculated for the cost analysis, EPA identified 12 point source facilities with sufficient data for evaluation [20] that could potentially be affected by the rule—all are major dischargers. Major discharge facilities are typically those that discharge more than 1 million gallons per day (mgd). Of these potentially affected facilities, 10 are POTWs (municipals) and two are industrial dischargers. EPA did not include facilities covered by general permits in its analysis because none of the general permits reviewed include specific effluent limits or monitoring requirements for cadmium except for two industrial stormwater general permits that include monitoring requirements for cadmium, but no effluent limits. See the Economic Analysis for more details.

*B. Method for Estimating Costs*

For facilities with available data, EPA evaluated existing baseline permit conditions, reasonable potential to exceed estimates of the aquatic life criteria based on the final rule, and potential to exceed projected effluent limitations based on available effluent monitoring data. There was no reasonable potential to exceed the final acute cadmium criterion.

If the final criterion resulted in an incremental increase in impaired waters, resulting in the need for TMDL development, there could also be some costs to nonpoint sources of cadmium. Using available ambient monitoring data, EPA compared cadmium concentrations to the baseline and final criteria, identifying waterbodies that may be incrementally impaired (*i.e.,* impaired under the final criteria but not under the baseline). EPA did not identify the potential for incremental impairment due to the final acute cadmium criterion.

*C. Results*

As discussed above, EPA determined there are no point or nonpoint source costs associated with the acute cadmium criterion in this final rule. None of the dischargers for which monitoring data are available have a reasonable potential to exceed the final criterion. Therefore, EPA estimates that point source dischargers will not incur annual costs to comply with the final acute cadmium criterion. Additionally, based on available monitoring data, EPA did not identify any location that would be incrementally impaired under the final criterion. Therefore, EPA did not attribute any cost to nonpoint sources for compliance with the final acute cadmium criterion.

## X. Statutory and Executive Order Reviews

*A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket.

EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis, *Economic Analysis for the Final Rule: Aquatic Life Criteria for Cadmium in Oregon,* is summarized in section IX of the preamble and is available in the docket.

*B. Paperwork Reduction Act*

This action does not impose any direct new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Actions to implement these WQS could entail additional paperwork burden. Burden is defined at 5 CFR 1320.3(b). This action does not include any information collection, reporting, or record-keeping requirements.

*C. Regulatory Flexibility Act*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. EPA-promulgated standards are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable WQS. Thus, under the CWA, EPA's promulgation of WQS establishes standards that the state implements through the NPDES permit process. The state has discretion in developing discharge limits, as needed to meet the standards. As a result of this action, the State of Oregon will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the state will have a number of choices associated with permit writing. While Oregon's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing.

*D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. As these water quality criteria are not self-implementing, EPA's action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that could significantly or uniquely affect small governments.

*E. Executive Order 13132 (Federalism)*

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

[20] EPA initially used ICIS–NPDES to identify facilities in Oregon whose NPDES permits contain effluent limitations and/or monitoring requirements for cadmium. There were neither sufficient nor adequate data available to evaluate those facilities. Therefore, EPA obtained monitoring data from the Oregon Department of Environmental Quality. EPA excluded biosolids data, facilities with ocean discharges (*i.e.,* not freshwater), facilities where all reported results were non-detect, facilities with less than three data points, and others where there were insufficient or inadequate data to perform the analysis. EPA obtained facility-specific information from NPDES permits and fact sheets.

responsibilities among the various levels of government. This rule does not alter Oregon's considerable discretion in implementing these WQS, nor will it preclude Oregon from adopting WQS in the future that EPA concludes meet the requirements of the CWA, which will eliminate the need for federal standards. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This action does not have tribal implications as specified in Executive Order 13175. This rule does not impose substantial direct compliance costs on federally recognized tribal governments, nor does it substantially affect the relationship between the federal government and tribes, or the distribution of power and responsibilities between the federal government and tribes. Thus, Executive Order 13175 does not apply to this action.

Many tribes in the Pacific Northwest hold reserved rights to take fish for subsistence, ceremonial, religious, and commercial purposes. EPA developed the criteria in this final rule to protect aquatic life in Oregon from the effects of exposure to harmful levels of cadmium. Protecting the health of fish in Oregon will, therefore, support tribal reserved fishing rights, including treaty-reserved rights, where such rights apply in waters under state jurisdiction.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials during the development of this action. On November 23, 2015, EPA sent a letter to tribal leaders in Oregon offering to consult on the proposed cadmium criterion in this rule. On December 15, 2015, EPA held a conference call with tribal water quality technical contacts to explain EPA's proposed action and timeline. Formal consultation on the proposed action was not requested by any of the tribes.

*G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)*

This rule is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)*

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act of 1995*

This final rulemaking does not involve technical standards.

*J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)*

The human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The criterion in this final rule will support the health and abundance of aquatic life in Oregon, and will therefore benefit all communities that rely on Oregon's ecosystems.

*K. Congressional Review Act (CRA)*

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

**List of Subjects in 40 CFR Part 131**

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: January 10, 2017.

**Gina McCarthy,**

*Administrator.*

For the reasons set forth in the preamble, EPA amends 40 CFR part 131 as follows:

## PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

### Subpart D—Federally Promulgated Water Quality Standards

■ 2. Add § 131.46 to read as follows:

**§ 131.46 Aquatic life criterion for cadmium in Oregon.**

(a) *Scope.* This section promulgates an acute aquatic life criterion for cadmium in freshwaters in Oregon.

(b) *Criterion for cadmium in Oregon.* The aquatic life criterion in Table 1 applies to all freshwaters in Oregon where fish and aquatic life are a designated use.

TABLE 1—CADMIUM AQUATIC LIFE CRITERION FOR OREGON FRESHWATERS

| Metal | CAS No. | Criterion Maximum Concentration (CMC)[3] (μg/L) |
|---|---|---|
| Cadmium[1 2] | 7440439 | $[e^{(0.9789 \times \ln(\text{hardness}) - 3.866)}] \times CF$<br>Where CF = 1.136672 − [(ln hardness) × (0.041838)]. |

[1] The criterion for cadmium is expressed as the dissolved metal concentration.

[2] CF is the conversion factor used to convert between the total recoverable and dissolved forms of cadmium. The term (ln hardness) in the CMC and the CF equation is the natural logarithm of the ambient hardness in mg/L ($CaCO_3$). The default hardness concentrations from the applicable ecoregion in Table 2 of paragraph (c) of this section shall be used to calculate cadmium criteria in the absence of sufficiently representative ambient hardness data.

[3] The CMC is the highest allowable one-hour average instream concentration of cadmium. The CMC is not to be exceeded more than once every three years. The CMC is rounded to two significant figures.

(c) *Estimated Values To Calculate Cadmium Criteria.* The default inputs to calculate cadmium criteria in the absence of sufficiently representative ambient data are shown in Table 2.

TABLE 2—HARDNESS DEFAULTS WITHIN EACH LEVEL III ECOREGION IN OREGON

| Level III ecoregion | Hardness mg/L) |
|---|---|
| 1 Coast Range | 34.12 |
| 3 Willamette Valley | 32.39 |

TABLE 2—HARDNESS DEFAULTS WITHIN EACH LEVEL III ECOREGION IN OREGON—Continued

| Level III ecoregion | Hardness mg/L) |
|---|---|
| 4 Cascades | 28.39 |

TABLE 2—HARDNESS DEFAULTS WITHIN EACH LEVEL III ECOREGION IN OREGON—Continued

| Level III ecoregion | Hardness mg/L) |
|---|---|
| 9 Eastern Cascades Slopes and Foothills | 36.08 |
| 10 Columbia Plateau | 58.82 |
| 11 Blue Mountains | 43.49 |
| 12 Snake River Plain | 123.5 |
| 78 Klamath Mountains | 40.61 |
| 80 Northern Basin and Range | 98.62 |

(d) *Applicability.* (1) The criterion in paragraph (b) of this section applies to freshwaters in Oregon where fish and aquatic life are a designated use, and applies concurrently with other applicable water quality criteria.

(2) The criterion established in this section is subject to Oregon's general rules of applicability in the same way and to the same extent as are other federally promulgated and state-adopted numeric criteria when applied to freshwaters in Oregon where fish and aquatic life are a designated use.

(i) For all waters with mixing zone regulations or implementation procedures, the criterion applies at the appropriate locations within or at the boundary of the mixing zones and outside of the mixing zones; otherwise the criterion applies throughout the water body including at the end of any discharge pipe, conveyance or other discharge point within the water body.

(ii) The state shall not use a low flow value that is less stringent than the values listed below for waters suitable for the establishment of low flow return frequencies (*i.e.,* streams and rivers) when calculating the available dilution for the purposes of determining the need for and establishing Water Quality-Based Effluent Limitations in National Pollutant Discharge Elimination System permits:

| Acute criteria (CMC) | 1Q10 or 1B3 |
|---|---|

Where:

1. 1Q10 is the lowest one-day average flow event expected to occur once every ten years, on average (determined hydrologically).
2. 1B3 is the lowest one-day average flow event expected to occur once every three years, on average (determined biologically).

[FR Doc. 2017–02283 Filed 2–2–17; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 102

**RIN 0991–AC0**

## Annual Civil Monetary Penalties Inflation Adjustment

**AGENCY:** Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services (HHS) is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015.

**DATES:** This rule is effective February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Andrea Brandon, Deputy Assistant Secretary for Grants and Acquisitions, Office of the Assistant Secretary for Financial Resources, Room 514–G, Hubert Humphrey Building, 200 Independence Avenue SW., Washington DC 20201; 202–690–6396; FAX 202–690–5405.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the ''Act''), which is intended to improve the effectiveness of civil monetary penalties (''CMPs'') and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

The Department of Health and Human Services (HHS) lists the civil monetary penalties and the penalty amounts administered by all of its agencies in tabular form in 45 CFR 102.3.

### II. Calculation of Adjustment

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 16, 2016, OMB Memorandum for the Heads of Executive Agencies and Departments, M–17–11, *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,* OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2017, based on the CPI–U for the month of October 2016, not seasonally adjusted, is 1.01636.

Using the 2017 multiplier, HHS adjusted all its applicable monetary penalties in 45 CFR 102.3.

### III. Statutory and Executive Order Reviews

The 2015 Act Requires Federal Agencies To Publish Annual Penalty Inflation Adjustments Notwithstanding Section 553 of the Administrative Procedure Act

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

Section 4 of the 2015 Act directs federal agencies to publish annual adjustments no later than January 15, 2017. In accordance with section 553 of the Administrative Procedure Act (APA), most rules are subject to notice and comment and are effective no earlier than 30 days after publication in the **Federal Register**. However, Section 4(b)(2) of the 2015 Act provides that each agency shall make the annual inflation adjustments ''notwithstanding section 553'' of the APA. According to OMB's Memorandum M–17–11, *Memorandum of the Heads of Executive Departments and Agencies* (December 16, 2016) the phrase ''notwithstanding section 553'' means that ''the public procedure the APA generally provides—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.'' Consistent with the language of the 2015 Act and OMB's implementation guidance, this rule is not subject to notice and an opportunity for public comment and will be effective immediately upon publication.

*B. Review Under Procedural Statutes and Executive Orders*

Pursuant to OMB Memorandum for the Heads of Executive Departments and Agencies, M–17–11, HHS has determined that making technical changes to the amount of civil monetary penalties in its regulations does not trigger any requirements under procedural statutes and Executive Orders that govern rulemaking procedures.

### IV. Effective Date

This rule is effective February 3, 2017. The adjusted civil penalty amounts apply to civil penalties assessed on or after February 3, 2017, when the

violation occurred after November 2, 2015. If the violation occurred prior to November 2, 2015, or a penalty was assessed prior to September 6, 2016, the pre-adjustment civil penalty amounts in effect prior to September 6, 2016 will apply.

**List of Subjects in 45 CFR Part 102**

Administrative practice and procedure, Penalties.

For reasons discussed in the preamble, the Department of Health and Human Services amends subtitle A, title 45 of the Code of Federal Regulations as follows:

## PART 102—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

■ 1. The authority citation for part 102 continues to read as follows:

**Authority:** Public Law 101–410, Sec. 701 of Public Law 114–74, 31 U.S.C. 3801–3812.

■ 2. Amend § 102.3 by revising the table to read as follows:

**§ 102.3 Penalty adjustment and table.**

* * * * *

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS

[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 21 U.S.C.: | | | | | | |
| 333(b)(2)(A) | | FDA | Penalty for violations related to drug samples resulting in a conviction of any representative of manufacturer or distributor in any 10-year period. | 2016 | 98,935 | 100,554 |
| 333(b)(2)(B) | | FDA | Penalty for violation related to drug samples resulting in a conviction of any representative of manufacturer or distributor after the second conviction in any 10-yr period. | 2016 | 1,978,690 | 2,011,061 |
| 333(b)(3) | | FDA | Penalty for failure to make a report required by 21 U.S.C. 353(d)(3)(E) relating to drug samples. | 2016 | 197,869 | 201,106 |
| 333(f)(1)(A) | | FDA | Penalty for any person who violates a requirement related to devices for each such violation. | 2016 | 26,723 | 27,160 |
| | | | Penalty for aggregate of all violations related to devices in a single proceeding. | 2016 | 1,781,560 | 1,810,706 |
| 333(f)(2)(A) | | FDA | Penalty for any individual who introduces or delivers for introduction into interstate commerce food that is adulterated per 21 U.S.C. 342(a)(2)(B) or any individual who does not comply with a recall order under 21 U.S.C. 350l. | 2016 | 75,123 | 76,352 |
| | | | Penalty in the case of any other person other than an individual) for such introduction or delivery of adulterated food. | 2016 | 375,613 | 381,758 |
| | | | Penalty for aggregate of all such violations related to adulterated food adjudicated in a single proceeding. | 2016 | 751,225 | 763,515 |
| 333(f)(3)(A) | | FDA | Penalty for all violations adjudicated in a single proceeding for any person who violates 21 U.S.C. 331(jj)(1) by failing to submit the certification required by 42 U.S.C. 282(j)(5)(B) or knowingly submitting a false certification; by failing to submit clinical trial information under 42 U.S.C. 282(j); or by submitting clinical trial information under 42 U.S.C. 282(j) that is false or misleading in any particular under 42 U.S.C. 282(j)(5)(D). | 2016 | 11,383 | 11,569 |
| 333(f)(3)(B) | | FDA | Penalty for each day any above violation is not corrected after a 30-day period following notification until the violation is corrected. | 2016 | 11,383 | 11,569 |
| 333(f)(4)(A)(i) | | FDA | Penalty for any responsible person that violates a requirement of 21 U.S.C. 355(o) (post-marketing studies, clinical trials, labeling), 21 U.S.C. 355(p) (risk evaluation and mitigation (REMS)), or 21 U.S.C. 355–1 (REMS). | 2016 | 284,583 | 289,239 |
| | | | Penalty for aggregate of all such above violations in a single proceeding. | 2016 | 1,138,330 | 1,156,953 |
| 333(f)(4)(A)(ii) | | FDA | Penalty for REMS violation that continues after written notice to the responsible person for the first 30-day period (or any portion thereof) the responsible person continues to be in violation. | 2016 | 284,583 | 289,239 |
| | | | Penalty for REMS violation that continues after written notice to responsible person doubles for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period. | 2016 | 1,138,330 | 1,156,953 |
| | | | Penalty for aggregate of all such above violations adjudicated in a single proceeding. | 2016 | 11,383,300 | 11,569,531 |
| 333(f)(9)(A) | | FDA | Penalty for any person who violates a requirement which relates to tobacco products for each such violation. | 2016 | 16,503 | 16,773 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | | | Penalty for aggregate of all such violations of tobacco product requirement adjudicated in a single proceeding. | 2016 | 1,100,200 | 1,118,199 |
| 333(f)(9)(B)(i)(I) | | FDA | Penalty per violation related to violations of tobacco requirements. | 2016 | 275,050 | 279,550 |
| | | | Penalty for aggregate of all such violations of tobacco product requirements adjudicated in a single proceeding. | 2016 | 1,100,200 | 1,118,199 |
| 333(f)(9)(B)(i)(II) | | FDA | Penalty in the case of a violation of tobacco product requirements that continues after written notice to such person, for the first 30-day period (or any portion thereof) the person continues to be in violation. | 2016 | 275,050 | 279,550 |
| | | | Penalty for violation of tobacco product requirements that continues after written notice to such person shall double for every 30-day period thereafter the violation continues, but may not exceed penalty amount for any 30-day period. | 2016 | 1,100,200 | 1,118,199 |
| | | | Penalty for aggregate of all such violations related to tobacco product requirements adjudicated in a single proceeding. | 2016 | 11,002,000 | 11,181,993 |
| 333(f)(9)(B)(ii)(I) | | FDA | Penalty for any person who either does not conduct post-market surveillance and studies to determine impact of a modified risk tobacco product for which the HHS Secretary has provided them an order to sell, or who does not submit a protocol to the HHS Secretary after being notified of a requirement to conduct post-market surveillance of such tobacco products. | 2016 | 275,050 | 279,550 |
| | | | Penalty for aggregate of for all such above violations adjudicated in a single proceeding. | 2016 | 1,100,200 | 1,118,199 |
| 333(f)(9)(B)(ii)(II) | | FDA | Penalty for violation of modified risk tobacco product post-market surveillance that continues after written notice to such person for the first 30-day period (or any portion thereof) that the person continues to be in violation. | 2016 | 275,050 | 279,550 |
| | | | Penalty for post-notice violation of modified risk tobacco product post-market surveillance shall double for every 30-day period thereafter that the tobacco product requirement violation continues for any 30-day period, but may not exceed penalty amount for any 30-day period. | 2016 | 1,100,200 | 1,118,199 |
| | | | Penalty for aggregate above tobacco product requirement violations adjudicated in a single proceeding. | 2016 | 11,002,000 | 11,181,993 |
| 333(g)(1) | | FDA | Penalty for any person who disseminates or causes another party to disseminate a direct-to-consumer advertisement that is false or misleading for the first such violation in any 3-year period. | 2016 | 284,583 | 289,239 |
| | | | Penalty for each subsequent above violation in any 3-year period. | 2016 | 569,165 | 578,477 |
| 333 note | | FDA | Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (*e.g.,* violations of regulations in 21 CFR part 1140) with respect to a retailer with an approved training program in the case of a second regulation violation within a 12-month period. | 2016 | 275 | 279 |
| | | | Penalty in the case of a third tobacco product regulation violation within a 24-month period. | 2016 | 550 | 559 |
| | | | Penalty in the case of a fourth tobacco product regulation violation within a 24-month period. | 2016 | 2,200 | 2,236 |
| | | | Penalty in the case of a fifth tobacco product regulation violation within a 36-month period. | 2016 | 5,501 | 5,591 |
| | | | Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis. | 2016 | 11,002 | 11,182 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | | | Penalty to be applied for violations of restrictions on the sale or distribution of tobacco products promulgated under 21 U.S.C. 387f(d) (*e.g.*, violations of regulations in 21 CFR part 1140) with respect to a retailer that does not have an approved training program in the case of the first regulation violation. | 2016 | 275 | 279 |
| | | | Penalty in the case of a second tobacco product regulation violation within a 12-month period. | 2016 | 550 | 559 |
| | | | Penalty in the case of a third tobacco product regulation violation within a 24-month period. | 2016 | 1,100 | 1,118 |
| | | | Penalty in the case of a fourth tobacco product regulation violation within a 24-month period. | 2016 | 2,200 | 2,236 |
| | | | Penalty in the case of a fifth tobacco product regulation violation within a 36-month period. | 2016 | 5,501 | 5,591 |
| | | | Penalty in the case of a sixth or subsequent tobacco product regulation violation within a 48-month period as determined on a case-by-case basis. | 2016 | 11,002 | 11,182 |
| 335b(a) | | FDA | Penalty for each violation for any individual who made a false statement or misrepresentation of a material fact, bribed, destroyed, altered, removed, or secreted, or procured the destruction, alteration, removal, or secretion of, any material document, failed to disclose a material fact, obstructed an investigation, employed a consultant who was debarred, debarred individual provided consultant services. | 2016 | 419,320 | 426,180 |
| | | | Penalty in the case of any other person (other than an individual) per above violation. | 2016 | 1,677,280 | 1,704,720 |
| 360pp(b)(1) | | FDA | Penalty for any person who violates any such requirements for electronic products, with each unlawful act or omission constituting a separate violation. | 2016 | 2,750 | 2,795 |
| | | | Penalty imposed for any related series of violations of requirements relating to electronic products. | 2016 | 937,500 | 952,838 |
| 42 U.S.C. | | | | | | |
| 262(d) | | FDA | Penalty per day for violation of order of recall of biological product presenting imminent or substantial hazard. | 2016 | 215,628 | 219,156 |
| 263b(h)(3) | | FDA | Penalty for failure to obtain a mammography certificate as required. | 2016 | 16,773 | 17,047 |
| 300aa–28(b)(1) | | FDA | Penalty per occurrence for any vaccine manufacturer that intentionally destroys, alters, falsifies, or conceals any record or report required. | 2016 | 215,628 | 219,156 |
| 256b(d)(1)(B)(vi) | | HRSA | Penalty for each instance of overcharging a 340B covered entity. | 2016 | 5,437 | 5,526 |
| 299c–(3)(d) | | AHRQ | Penalty for an establishment or person supplying information obtained in the course of activities for any purpose other than the purpose for which it was supplied. | 2016 | 14,140 | 14,371 |
| 653(l)(2) | 45 CFR 303.21(f) | ACF | Penalty for Misuse of Information in the National Directory of New Hires. | 2016 | 1,450 | 1,474 |
| 262a(i)(1) | 42 CFR 1003.910 | OIG | Penalty for each individual who violates safety and security procedures related to handling dangerous biological agents and toxins. | 2016 | 327,962 | 333,327 |
| | | | Penalty for any other person who violates safety and security procedures related to handling dangerous biological agents and toxins. | 2016 | 655,925 | 666,656 |
| 300jj–51 | | OIG | Penalty per violation for committing information blocking. | 2016 | 1,000,000 | 1,016,360 |
| 1320a–7a(a) | 42 CFR 1003.210(a)(1) | OIG | Penalty for knowingly presenting or causing to be presented to an officer, employee, or agent of the United States a false claim. | 2016 | 15,024 | 15,270 |
| | | | Penalty for knowingly presenting or causing to be presented a request for payment which violates the terms of an assignment, agreement, or PPS agreement. | 2016 | 15,024 | 15,270 |
| | 42 CFR 1003.210(a)(2) | | Penalty for knowingly giving or causing to be presented to a participating provider or supplier false or misleading information that could reasonably be expected to influence a discharge decision. | 2016 | 22,537 | 22,906 |
| | 42 CFR 1003.210(a)(3) | | Penalty for an excluded party retaining ownership or control interest in a participating entity. | 2016 | 15,024 | 15,270 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | 42 CFR 1003.1010 | ..... | Penalty for remuneration offered to induce program beneficiaries to use particular providers, practitioners, or suppliers. | 2016 | 15,024 | 15,270 |
| | 42 CFR 1003.210(a)(4) | ..... | Penalty for employing or contracting with an excluded individual. | 2016 | 14,718 | 14,959 |
| ..... | 42 CFR 1003.310(a)(3) | ..... | Penalty for knowing and willful solicitation, receipt, offer, or payment of remuneration for referring an individual for a service or for purchasing, leasing, or ordering an item to be paid for by a Federal health care program. | 2016 | 73,588 | 74,792 |
| | 42 CFR 1003.210(a)(1) | | Penalty for ordering or prescribing medical or other item or service during a period in which the person was excluded. | 2016 | 10,874 | 11,052 |
| | 42 CFR 1003.210(a)(6) | | Penalty for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier. | 2016 | 54,372 | 55,262 |
| | 42 CFR 1003.210(a)(8) | ..... | Penalty for knowing of an overpayment and failing to report and return. | 2016 | 10,874 | 11,052 |
| | 42 CFR 1003.210(a)(7) | ..... | Penalty for making or using a false record or statement that is material to a false or fraudulent claim. | 2016 | 54,372 | 55,262 |
| | 42 CFR 1003.210(a)(9) | ..... | Penalty for failure to grant timely access to HHS OIG for audits, investigations, evaluations, and other statutory functions of HHS OIG. | 2016 | 16,312 | 16,579 |
| 1320a–7a(b) ..... | ..... | OIG .... | Penalty for payments by a hospital or critical access hospital to induce a physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits. | 2016 | 4,313 | 4,384 |
| | | | Penalty for physicians who knowingly receive payments from a hospital or critical access hospital to induce such physician to reduce or limit services to individuals under direct care of physician or who are entitled to certain medical assistance benefits. | 2016 | 4,313 | 4,384 |
| | 42 CFR 1003.210(a)(10) | | Penalty for a physician who executes a document that falsely certifies home health needs for Medicare beneficiaries. | 2016 | 7,512 | 7,635 |
| 1320a–7e(b)(6)(A) ..... | 42 CFR 1003.810 ..... | OIG .... | Penalty for failure to report any final adverse action taken against a health care provider, supplier, or practitioner. | 2016 | 36,794 | 37,396 |
| 1320b–10(b)(1) ..... | 42 CFR 1003.610(a) ..... | OIG .... | Penalty for the misuse of words, symbols, or emblems in communications in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS. | 2016 | 9,893 | 10,055 |
| 1320b–10(b)(2) ..... | 42 CFR 1003.610(a) ..... | OIG .... | Penalty for the misuse of words, symbols, or emblems in a broadcast or telecast in a manner in which a person could falsely construe that such item is approved, endorsed, or authorized by HHS. | 2016 | 49,467 | 50,276 |
| 1395i–3(b)(3)(B)(ii)(1) ..... | 42 CFR 1003.210(a)(11) | OIG .... | Penalty for certification of a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment. | 2016 | 2,063 | 2,097 |
| 1395i–3(b)(3)(B)(ii)(2) ..... | 42 CFR 1003.210(a)(11) | OIG .... | Penalty for causing another to certify or make a false statement in assessment of functional capacity of a Skilled Nursing Facility resident assessment. | 2016 | 10,314 | 10,483 |
| 1395i–3(g)(2)(A) ..... | 42 CFR 1003.1310 ..... | OIG .... | Penalty for any individual who notifies or causes to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted. | 2016 | 4,126 | 4,194 |
| 1395w–27(g)(2)(A) ..... | 42 CFR 1003.410 ..... | OIG .... | Penalty for a Medicare Advantage organization that substantially fails to provide medically necessary, required items and services. | 2016 | 37,561 | 38,175 |
| | | | Penalty for a Medicare Advantage organization that charges excessive premiums. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization that improperly expels or refuses to reenroll a beneficiary. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization that engages in practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2016 | 147,177 | 149,585 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | | | Penalty per individual who does not enroll as a result of a Medicare Advantage organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2016 | 22,077 | 22,438 |
| | | | Penalty for a Medicare Advantage organization misrepresenting or falsifying information to Secretary. | 2016 | 147,177 | 149,585 |
| | | | Penalty for a Medicare Advantage organization misrepresenting or falsifying information to individual or other entity. | 2016 | 36,794 | 37,396 |
| | | | Penalty for Medicare Advantage organization interfering with provider's advice to enrollee and non-MCO affiliated providers that balance bill enrollees. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization that employs or contracts with excluded individual or entity. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization enrolling an individual in without prior written consent. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization transferring an enrollee to another plan without consent or solely for the purpose of earning a commission. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization failing to comply with marketing restrictions or applicable implementing regulations or guidance. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicare Advantage organization employing or contracting with an individual or entity who violates 1395w–27(g)(1)(A)–(J). | 2016 | 36,794 | 37,396 |
| 1395w–141(i)(3) | | OIG | Penalty for a prescription drug card sponsor that falsifies or misrepresents marketing materials, overcharges program enrollees, or misuse transitional assistance funds. | 2016 | 12,856 | 13,066 |
| 1395cc(g) | | OIG | Penalty for improper billing by Hospitals, Critical Access Hospitals, or Skilled Nursing Facilities. | 2016 | 5,000 | 5,082 |
| 1395dd(d)(1) | 42 CFR 1003.510 | OIG | Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has 100 beds or more. | 2016 | 103,139 | 104,826 |
| | | | Penalty for a hospital or responsible physician dumping patients needing emergency medical care, if the hospital has less than 100 beds. | 2016 | 51,570 | 52,414 |
| 1395mm(i)(6)(B)(i) | 42 CFR 1003.410 | OIG | Penalty for a HMO or competitive plan is such plan substantially fails to provide medically necessary, required items or services. | 2016 | 51,570 | 52,414 |
| | | | Penalty for HMOs/competitive medical plans that charge premiums in excess of permitted amounts. | 2016 | 51,570 | 52,414 |
| | | | Penalty for a HMO or competitive medical plan that expels or refuses to reenroll an individual per prescribed conditions. | 2016 | 51,570 | 52,414 |
| | | | Penalty for a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in future. | 2016 | 206,278 | 209,653 |
| | | | Penalty per individual not enrolled in a plan as a result of a HMO or competitive medical plan that implements practices to discourage enrollment of individuals needing services in the future. | 2016 | 29,680 | 30,166 |
| | | | Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to the Secretary. | 2016 | 206,278 | 209,653 |
| | | | Penalty for a HMO or competitive medical plan that misrepresents or falsifies information to an individual or any other entity. | 2016 | 51,570 | 52,414 |
| | | | Penalty for failure by HMO or competitive medical plan to assure prompt payment of Medicare risk sharing contracts or incentive plan provisions. | 2016 | 51,570 | 52,414 |
| | | | Penalty for HMO that employs or contracts with excluded individual or entity. | 2016 | 47,340 | 48,114 |
| 1395nn(g)(3) | 42 CFR 1003.310 | OIG | Penalty for submitting or causing to be submitted claims in violation of the Stark Law's restrictions on physician self-referrals. | 2016 | 23,863 | 24,253 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1395nn(g)(4) | 42 CFR 1003.310 | OIG | Penalty for circumventing Stark Law's restrictions on physician self-referrals. | 2016 | 159,089 | 161,692 |
| 1395ss(d)(1) | 42 CFR 1003.1110 | OIG | Penalty for a material misrepresentation regarding Medigap compliance policies. | 2016 | 9,893 | 10,055 |
| 1395ss(d)(2) | 42 CFR 1003.1110 | OIG | Penalty for selling Medigap policy under false pretense. | 2016 | 9,893 | 10,055 |
| 1395ss(d)(3)(A)(ii) | 42 CFR 1003.1110 | OIG | Penalty for an issuer that sells health insurance policy that duplicates benefits. | 2016 | 44,539 | 45,268 |
| | | | Penalty for someone other than issuer that sells health insurance that duplicates benefits. | 2016 | 26,723 | 27,160 |
| 1395ss(d)(4)(A) | 42 CFR 1003.1110 | OIG | Penalty for using mail to sell a non-approved Medigap insurance policy. | 2016 | 9,893 | 10,055 |
| 1396b(m)(5)(B)(i) | 42 CFR 1003.410 | OIG | Penalty for a Medicaid MCO that substantially fails to provide medically necessary, required items or services. | 2016 | 49,467 | 50,276 |
| | | | Penalty for a Medicaid MCO that charges excessive premiums. | 2016 | 49,467 | 50,276 |
| | | | Penalty for a Medicaid MCO that improperly expels or refuses to reenroll a beneficiary. | 2016 | 197,869 | 201,106 |
| | | | Penalty per individual who does not enroll as a result of a Medicaid MCO's practice that would reasonably be expected to have the effect of denying or discouraging enrollment. | 2016 | 29,680 | 30,166 |
| | | | Penalty for a Medicaid MCO misrepresenting or falsifying information to the Secretary. | 2016 | 197,869 | 201,106 |
| | | | Penalty for a Medicaid MCO misrepresenting or falsifying information to an individual or another entity. | 2016 | 49,467 | 50,276 |
| | | | Penalty for a Medicaid MCO that fails to comply with contract requirements with respect to physician incentive plans. | 2016 | 44,539 | 45,268 |
| 1396r(b)(3)(B)(ii)(I) | 42 CFR 1003.210(a)(11) | OIG | Penalty for willfully and knowingly certifying a material and false statement in a Skilled Nursing Facility resident assessment. | 2016 | 2,063 | 2,097 |
| 1396r(b)(3)(B)(ii)(II) | 42 CFR 1003.210(a)(11) | OIG | Penalty for willfully and knowingly causing another individual to certify a material and false statement in a Skilled Nursing Facility resident assessment. | 2016 | 10,314 | 10,483 |
| 1396r(g)(2)(A)(i) | 42 CFR 1003.1310 | OIG | Penalty for notifying or causing to be notified a Skilled Nursing Facility of the time or date on which a survey is to be conducted. | 2016 | 4,126 | 4,194 |
| 1396r–8(b)(3)(B) | 42 CFR 1003.1210 | OIG | Penalty for the knowing provision of false information or refusing to provide information about charges or prices of a covered outpatient drug. | 2016 | 178,156 | 181,071 |
| 1396r–8(b)(3)(C)(i) | 42 CFR 1003.1210 | OIG | Penalty per day for failure to timely provide information by drug manufacturer with rebate agreement. | 2016 | 17,816 | 18,107 |
| 1396r–8(b)(3)(C)(ii) | 42 CFR 1003.1210 | OIG | Penalty for knowing provision of false information by drug manufacturer with rebate agreement. | 2016 | 178,156 | 181,071 |
| 1396t(i)(3)(A) | 42 CFR 1003.1310 | OIG | Penalty for notifying home and community-based providers or settings of survey. | 2016 | 3,563 | 3,621 |
| 11131(c) | 42 CFR 1003.810 | OIG | Penalty for failing to report a medical malpractice claim to National Practitioner Data Bank. | 2016 | 21,563 | 21,916 |
| 11137(b)(2) | 42 CFR 1003.810 | OIG | Penalty for breaching confidentiality of information reported to National Practitioner Data Bank. | 2016 | 21,563 | 21,916 |
| 299b–22(f)(1) | 42 CFR 3.404 | OCR | Penalty for violation of confidentiality provision of the Patient Safety and Quality Improvement Act. | 2016 | 11,940 | 12,135 |
| | 45 CFR 160.404(b)(1)(i), (ii) | OCR | Penalty for each pre-February 18, 2009 violation of the HIPAA administrative simplification provisions. | 2016 | 150 | 152 |
| | | | Calendar Year Cap | 2016 | 37,561 | 38,175 |
| 1320(d)–5(a) | 45 CFR 160.404(b)(2)(i)(A), (B). | OCR | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the covered entity or business associate did not know and by exercising reasonable diligence, would not have known that the covered entity or business associate violated such a provision: | | | |
| | | | Minimum | 2016 | 110 | 112 |
| | | | Maximum | 2016 | 55,010 | 55,910 |
| | | | Calendar Year Cap | 2016 | 1,650,300 | 1,677,299 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | 45 CFR 160.404(b)(2)(ii)(A), (B) | OCR ... | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to reasonable cause and not to willful neglect: | | | |
| | | | Minimum | 2016 | 1,100 | 1,118 |
| | | | Maximum | 2016 | 55,010 | 55,910 |
| | | | Calendar Year Cap | 2016 | 1,650,300 | 1,677,299 |
| | 45 CFR 160.404(b)(2)(iii)(A), (B) | OCR ... | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or, by exercising reasonable diligence, would have known that the violation occurred: | | | |
| | | | Minimum | 2016 | 11,002 | 11,182 |
| | | | Maximum | 2016 | 55,010 | 55,910 |
| | | | Calendar Year Cap | 2016 | 1,650,300 | 1,677,299 |
| | 45 CFR 160.404(b)(2)(iv)(A), (B) | OCR ... | Penalty for each February 18, 2009 or later violation of a HIPAA administrative simplification provision in which it is established that the violation was due to willful neglect and was not corrected during the 30-day period beginning on the first date the covered entity or business associate knew, or by exercising reasonable diligence, would have known that the violation occurred: | | | |
| | | | Minimum | 2016 | 55,010 | 55,910 |
| | | | Maximum | 2016 | 1,650,300 | 1,677,299 |
| | | | Calendar Year Cap | 2016 | 1,650,300 | 1,677,299 |
| 263a(h)(2)(B) & 1395w–2(b)(2)(A)(ii). | 42 CFR 493.1834(d)(2)(i). | CMS ... | Penalty for a clinical laboratory's failure to meet participation and certification requirements and poses immediate jeopardy: | | | |
| | | | Minimum | 2016 | 6,035 | 6,134 |
| | | | Maximum | 2016 | 19,787 | 20,111 |
| | 42 CFR 493.1834(d)(2)(ii). | CMS ... | Penalty for a clinical laboratory's failure to meet participation and certification requirements and the failure does not pose immediate jeopardy: | | | |
| | | | Minimum | 2016 | 99 | 101 |
| | | | Maximum | 2016 | 5,936 | 6,033 |
| 300gg–15(f) | 45 CFR 147.200(e) | CMS ... | Failure to provide the Summary of Benefits and Coverage. | 2016 | 1,087 | 1,105 |
| 300gg–18 | 45 CFR 158.606 | CMS ... | Penalty for violations of regulations related to the medical loss ratio reporting and rebating. | 2016 | 109 | 111 |
| 1320a–7h(b)(1) | 42 CFR 402.105(d)(5), 42 CFR 403.912(a) & (c). | CMS ... | Penalty for manufacturer or group purchasing organization failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests: | | | |
| | | | Minimum | 2016 | 1,087 | 1,105 |
| | | | Maximum | 2016 | 10,874 | 11,052 |
| | | | Calendar Year Cap | 2016 | 163,117 | 165,786 |
| 1320a–7h(b)(2) | 42 CFR 402.105(h), 42 CFR 403.912(b) & (c). | CMS ... | Penalty for manufacturer or group purchasing organization knowingly failing to report information required under 42 U.S.C. 1320a–7h(a), relating to physician ownership or investment interests: | | | |
| | | | Minimum | 2016 | 10,874 | 11,052 |
| | | | Maximum | 2016 | 108,745 | 110,524 |
| | | | Calendar Year Cap | 2016 | 1,087,450 | 1,105,241 |
| | | CMS | Penalty for an administrator of a facility that fails to comply with notice requirements for the closure of a facility. | 2016 | 108,745 | 110,524 |
| 1320a–7j(h)(3)(A) | 42 CFR 488.446(a)(1), (2), & (3). | CMS ... | Minimum penalty for the first offense of an administrator who fails to provide notice of facility closure. | 2016 | 544 | 553 |
| | | | Minimum penalty for the second offense of an administrator who fails to provide notice of facility closure. | 2016 | 1,631 | 1,658 |
| | | | Minimum penalty for the third and subsequent offenses of an administrator who fails to provide notice of facility closure. | 2016 | 3,262 | 3,315 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1320a–8(a)(1) | | CMS | Penalty for an entity knowingly making a false statement or representation of material fact in the determination of the amount of benefits or payments related to old-age, survivors, and disability insurance benefits, special benefits for certain World War II veterans, or supplemental security income for the aged, blind, and disabled. | 2016 | 7,954 | 8,084 |
| | | | Penalty for violation of 42 U.S.C. 1320a–8(a)(1) if the violator is a person who receives a fee or other income for services performed in connection with determination of the benefit amount or the person is a physician or other health care provider who submits evidence in connection with such a determination. | 2016 | 7,500 | 7,623 |
| 1320a–8(a)(3) | | CMS | Penalty for a representative payee (under 42 U.S.C. 405(j), 1007, or 1383(a)(2)) converting any part of a received payment from the benefit programs described in the previous civil monetary penalty to a use other than for the benefit of the beneficiary. | 2016 | 6,229 | 6,331 |
| 1320b–25(c)(1)(A) | | CMS | Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility. | 2016 | 217,490 | 221,048 |
| 1320b–25(c)(2)(A) | | CMS | Penalty for failure of covered individuals to report to the Secretary and 1 or more law enforcement officials any reasonable suspicion of a crime against a resident, or individual receiving care, from a long-term care facility if such failure exacerbates the harm to the victim of the crime or results in the harm to another individual. | 2016 | 326,235 | 331,572 |
| 1320b–25(d)(2) | | CMS | Penalty for a long-term care facility that retaliates against any employee because of lawful acts done by the employee, or files a complaint or report with the State professional disciplinary agency against an employee or nurse for lawful acts done by the employee or nurse. | 2016 | 217,490 | 221,048 |
| 1395b–7(b)(2)(B) | 42 CFR 402.105(g) | CMS | Penalty for any person who knowingly and willfully fails to furnish a beneficiary with an itemized statement of items or services within 30 days of the beneficiary's request. | 2016 | 147 | 149 |
| 1395i–3(h)(2)(B)(ii)(I) | 42 CFR 488.408(d)(1)(iii). | CMS | Penalty per day for a Skilled Nursing Facility that has a Category 2 violation of certification requirements: | | | |
| | | | Minimum | 2016 | 103 | 105 |
| | | | Maximum | 2016 | 6,188 | 6,289 |
| | 42 CFR 488.408(d)(1)(iv) | CMS | Penalty per instance of Category 2 noncompliance by a Skilled Nursing Facility: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(1)(iii) | CMS | Penalty per day for a Skilled Nursing Facility that has a Category 3 violation of certification requirements: | | | |
| | | | Minimum | 2016 | 6,291 | 6,394 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(1)(iv) | CMS | Penalty per instance of Category 3 noncompliance by a Skilled Nursing Facility: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(2)(ii) | CMS | Penalty per day and per instance for a Skilled Nursing Facility that has Category 3 noncompliance with Immediate Jeopardy: | | | |
| | | | Per Day (Minimum) | 2016 | 6,291 | 6,394 |
| | | | Per Day (Maximum) | 2016 | 20,628 | 20,965 |
| | | | Per Instance (Minimum) | 2016 | 2,063 | 2,097 |
| | | | Per Instance (Maximum) | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.438(a)(1)(i) | CMS | Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the upper range per day: | | | |
| | | | Minimum | 2016 | 6,291 | 6,394 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.438(a)(1)(ii) | CMS | Penalty per day of a Skilled Nursing Facility that fails to meet certification requirements. These amounts represent the lower range per day: | | | |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | | | Minimum | 2016 | 103 | 105 |
| | | | Maximum | 2016 | 6,188 | 6,289 |
| | 42 CFR 488.438(a)(2) | CMS | Penalty per instance of a Skilled Nursing Facility that fails to meet certification requirements: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| 1395l(h)(5)(D) | 42 CFR 402.105(d)(2)(i) | CMS | Penalty for knowingly, willfully, and repeatedly billing for a clinical diagnostic laboratory test other than on an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395l(i)(6) | | CMS | Penalty for knowingly and willfully presenting or causing to be presented a bill or request for payment for an intraocular lens inserted during or after cataract surgery for which the Medicare payment rate includes the cost of acquiring the class of lens involved. | 2016 | 3,957 | 4,022 |
| 1395l(q)(2)(B)(i) | 42 CFR 402.105(a) | CMS | Penalty for knowingly and willfully failing to provide information about a referring physician when seeking payment on an unassigned basis. | 2016 | 3,787 | 3,849 |
| 1395m(a)(11)(A) | 42 CFR 402.1(c)(4), 402.105(d)(2)(ii). | CMS | Penalty for any durable medical equipment supplier that knowingly and willfully charges for a covered service that is furnished on a rental basis after the rental payments may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395m(a)(18)(B) | 42 CFR 402.1(c)(5), 402.105(d)(2)(iii). | CMS | Penalty for any nonparticipating durable medical equipment supplier that knowingly and willfully fails to make a refund to Medicare beneficiaries for a covered service for which payment is precluded due to an unsolicited telephone contact from the supplier. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395m(b)(5)(C) | 42 CFR 402.1(c)(6), 402.105(d)(2)(iv). | CMS | Penalty for any nonparticipating physician or supplier that knowingly and willfully charges a Medicare beneficiary more than the limiting charge for radiologist services. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395m(h)(3) | 42 CFR 402.1(c)(8), 402.105(d)(2)(vi). | CMS | Penalty for any supplier of prosthetic devices, orthotics, and prosthetics that knowing and willfully charges for a covered prosthetic device, orthotic, or prosthetic that is furnished on a rental basis after the rental payment may no longer be made. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(a)(11)(A), that is in the same manner as 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395m(j)(2)(A)(iii) | | CMS | Penalty for any supplier of durable medical equipment including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully distributes a certificate of medical necessity in violation of Section 1834(j)(2)(A)(i) of the Act or fails to provide the information required under Section 1834(j)(2)(A)(ii) of the Act. | 2016 | 1,591 | 1,617 |
| 1395m(j)(4) | 42 CFR 402.1(c)(10), 402.105(d)(2)(vii). | CMS | Penalty for any supplier of durable medical equipment, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries for series billed other than on as assignment-related basis under certain conditions. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(j)(4) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1395m(k)(6) | 42 CFR 402.1(c)(31), 402.105(d)(3). | CMS | Penalty for any person or entity who knowingly and willfully bills or collects for any outpatient therapy services or comprehensive outpatient rehabilitation services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395m(k)(6) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395m(l)(6) | 42 CFR 402.1(c)(32), 402.105(d)(4). | CMS | Penalty for any supplier of ambulance services who knowingly and willfully fills or collects for any services on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(b)(18)(B) | 42 CFR 402.1(c)(11), 402.105(d)(2)(viii). | CMS | Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(j)(2)(B) | 42 CFR 402.1(c) | CMS | Penalty for any physician who charges more than 125% for a non-participating referral. (Penalties are assessed in the same manner as 42 U.S.C. 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(k) | 42 CFR 402.1(c)(12), 402.105(d)(2)(ix). | CMS | Penalty for any physician who knowingly and willfully presents or causes to be presented a claim for bill for an assistant at a cataract surgery performed on or after March 1, 1987, for which payment may not be made because of section 1862(a)(15). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(l)(3) | 42 CFR 402.1(c)(13), 402.105(d)(2)(x). | CMS | Penalty for any nonparticipating physician who does not accept payment on an assignment-related basis and who knowingly and willfully fails to refund on a timely basis any amounts collected for services that are not reasonable or medically necessary or are of poor quality under 1842(l)(1)(A). (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(m)(3) | 42 CFR 402.1(c)(14), 402.105(d)(2)(xi). | CMS | Penalty for any nonparticipating physician charging more than $500 who does not accept payment for an elective surgical procedure on an assignment related basis and who knowingly and willfully fails to disclose the required information regarding charges and coinsurance amounts and fails to refund on a timely basis any amount collected for the procedure in excess of the charges recognized and approved by the Medicare program. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(n)(3) | 42 CFR 402.1(c)(15), 402.105(d)(2)(xii). | CMS | Penalty for any physician who knowingly, willfully, and repeatedly bills one or more beneficiaries for purchased diagnostic tests any amount other than the payment amount specified by the Act. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395u(o)(3)(B) | 42 CFR 414.707(b) | CMS | Penalty for any practitioner specified in Section 1842(b)(18)(C) of the Act or other person that knowingly and willfully bills or collects for any services pertaining to drugs or biologics by the practitioners on other than an assignment-related basis. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(b)(18)(B) and 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1395u(p)(3)(A) | | CMS | Penalty for any physician or practitioner who knowingly and willfully fails promptly to provide the appropriate diagnosis codes upon CMS or Medicare administrative contractor request for payment or bill not submitted on an assignment-related basis. | 2016 | 3,957 | 4,022 |
| 1395w–3a(d)(4)(A) | 42 CFR 414.806 | CMS | Penalty for a pharmaceutical manufacturer's misrepresentation of average sales price of a drug, or biologic. | 2016 | 12,856 | 13,066 |
| 1395w–4(g)(1)(B) | 42 CFR 402.1(c)(17), 402.105(d)(2)(xiii). | CMS | Penalty for any nonparticipating physician, supplier, or other person that furnishes physician services not on an assignment-related basis who either knowingly and willfully bills or collects in excess of the statutorily-defined limiting charge or fails to make a timely refund or adjustment. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395w–4(g)(3)(B) | 42 CFR 402.1(c)(18), 402.105(d)(2)(xiv). | CMS | Penalty for any person that knowingly and willfully bills for statutorily defined State-plan approved physicians' services on any other basis than an assignment-related basis for a Medicare/Medicaid dual eligible beneficiary. (Penalties are assessed in the same manner as 42 U.S.C. 1395u(j)(2)(B), which is assessed according to 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395w–27(g)(3)(A); 1857(g)(3). | 42 CFR 422.760(b); 42 CFR 423.760(b). | CMS | Penalty for each termination determination the Secretary makes that is the result of actions by a Medicare Advantage organization or Part D sponsor that has adversely affected an individual covered under the organization's contract. | 2016 | 36,794 | 37,396 |
| 1395w–27(g)(3)(B); 1857(g)(3). | | CMS | Penalty for each week beginning after the initiation of civil money penalty procedures by the Secretary because a Medicare Advantage organization or Part D sponsor has failed to carry out a contract, or has carried out a contract inconsistently with regulations. | 2016 | 14,718 | 14,959 |
| 1395w–27(g)(3)(D); 1857(g)(3). | | CMS | Penalty for a Medicare Advantage organization's or Part D sponsor's early termination of its contract. | 2016 | 136,689 | 138,925 |
| 1395y(b)(3)(C) | 42 CFR 411.103(b) | CMS | Penalty for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits not to enroll under a group health plan or large group health plan which would be a primary plan. | 2016 | 8,908 | 9,054 |
| 1395y(b)(5)(C)(ii) | 42 CFR 402.1(c)(20), 42 CFR 402.105(b)(2). | CMS | Penalty for any non-governmental employer that, before October 1, 1998, willfully or repeatedly failed to provide timely and accurate information requested relating to an employee's group health insurance coverage. | 2016 | 1,450 | 1,474 |
| 1395y(b)(6)(B) | 42 CFR 402.1(c)(21), 402.105(a). | CMS | Penalty for any entity that knowingly, willfully, and repeatedly fails to complete a claim form relating to the availability of other health benefits in accordance with statute or provides inaccurate information relating to such on the claim form. | 2016 | 3,182 | 3,234 |
| 1395y(b)(7)(B)(i) | | CMS | Penalty for any entity serving as insurer, third party administrator, or fiduciary for a group health plan that fails to provide information that identifies situations where the group health plan is or was a primary plan to Medicare to the HHS Secretary. | 2016 | 1,138 | 1,157 |
| 1395y(b)(8)(E) | | CMS | Penalty for any non-group health plan that fails to identify claimants who are Medicare beneficiaries and provide information to the HHS Secretary to coordinate benefits and pursue any applicable recovery claim. | 2016 | 1,138 | 1,157 |
| 1395nn(g)(5) | 42 CFR 411.361 | CMS | Penalty for any person that fails to report information required by HHS under Section 1877(f) concerning ownership, investment, and compensation arrangements. | 2016 | 18,936 | 19,246 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1395pp(h) | 42 CFR 402.1(c)(23), 402.105(d)(2)(xv). | CMS | Penalty for any durable medical equipment supplier, including a supplier of prosthetic devices, prosthetics, orthotics, or supplies, that knowingly and willfully fails to make refunds in a timely manner to Medicare beneficiaries under certain conditions. (42 U.S.C. 1395(m)(18) sanctions apply here in the same manner, which is under 1395u(j)(2) and 1320a–7a(a)). | 2016 | 15,024 | 15,270 |
| 1395ss(a)(2) | 42 CFR 402.1(c)(24), 405.105(f)(1). | CMS | Penalty for any person that issues a Medicare supplemental policy that has not been approved by the State regulatory program or does not meet Federal standards after a statutorily defined effective date. | 2016 | 51,569 | 52,413 |
| 1395ss(d)(3)(A)(vi) (II) | | CMS | Penalty for someone other than issuer that sells or issues a Medicare supplemental policy to beneficiary without a disclosure statement. | 2016 | 26,723 | 27,160 |
| | | | Penalty for an issuer that sells or issues a Medicare supplemental policy without disclosure statement. | 2016 | 44,539 | 45,268 |
| 1395ss(d)(3)(B)(iv) | | CMS | Penalty for someone other than issuer that sells or issues a Medicare supplemental policy without acknowledgement form. | 2016 | 26,723 | 27,160 |
| | | | Penalty for issuer that sells or issues a Medicare supplemental policy without an acknowledgement form. | 2016 | 44,539 | 45,268 |
| 1395ss(p)(8) | 42 CFR 402.1(c)(25), 402.105(e). | CMS | Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute. | 2016 | 26,723 | 27,160 |
| | 42 CFR 402.1(c)(25), 405.105(f)(2) | CMS | Penalty for any person that sells or issues Medicare supplemental polices after a given date that fail to conform to the NAIC or Federal standards established by statute. | 2016 | 44,539 | 45,268 |
| 1395ss(p)(9)(C) | 42 CFR 402.1(c)(26), 402.105(e). | CMS | Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits. | 2016 | 26,723 | 27,160 |
| | 42 CFR 402.1(c)(26), 405.105(f)(3), (4) | | Penalty for any person that sells a Medicare supplemental policy and fails to make available for sale the core group of basic benefits when selling other Medicare supplemental policies with additional benefits or fails to provide the individual, before selling the policy, an outline of coverage describing benefits. | 2016 | 44,539 | 45,268 |
| 1395ss(q)(5)(C) | 42 CFR 402.1(c)(27), 405.105(f)(5). | CMS | Penalty for any person that fails to suspend the policy of a policyholder made eligible for medical assistance or automatically reinstates the policy of a policyholder who has lost eligibility for medical assistance, under certain circumstances. | 2016 | 44,539 | 45,268 |
| 1395ss(r)(6)(A) | 42 CFR 402.1(c)(28), 405.105(f)(6). | CMS | Penalty for any person that fails to provide refunds or credits as required by section 1882(r)(1)(B). | 2016 | 44,539 | 45,268 |
| 1395ss(s)(4) | 42 CFR 402.1(c)(29), 405.105(c). | CMS | Penalty for any issuer of a Medicare supplemental policy that does not waive listed time periods if they were already satisfied under a proceeding Medicare supplemental policy, or denies a policy, or conditions the issuances or effectiveness of the policy, or discriminates in the pricing of the policy base on health status or other specified criteria. | 2016 | 18,908 | 19,217 |
| 1395ss(t)(2) | 42 CFR 402.1(c)(30), 405.105(f)(7). | CMS | Penalty for any issuer of a Medicare supplemental policy that fails to fulfill listed responsibilities. | 2016 | 44,539 | 45,268 |
| 1395ss(v)(4)(A) | | CMS | Penalty someone other than issuer who sells, issues, or renews a medigap Rx policy to an individual who is a Part D enrollee. | 2016 | 19,284 | 19,599 |
| | | | Penalty for an issuer who sells, issues, or renews a Medigap Rx policy who is a Part D enrollee. | 2016 | 32,140 | 32,666 |
| 1395bbb(c)(1) | 42 CFR 488.725(c) | CMS | Penalty for any individual who notifies or causes to be notified a home health agency of the time or date on which a survey of such agency is to be conducted. | 2016 | 4,126 | 4,194 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 1395bbb(f)(2)(A)(i) | 42 CFR 488.845(b)(2)(iii) 42 CFR 488.845(b)(3)–(6); and 42 CFR 488.845(d)(1)(ii). | CMS | Maximum daily penalty amount for each day a home health agency is not in compliance with statutory requirements. | 2016 | 19,787 | 20,111 |
| | 42 CFR 488.845(b)(3) | | Penalty per day for home health agency's non-compliance (Upper Range): | | | |
| | | | Minimum | 2016 | 16,819 | 17,094 |
| | | | Maximum | 2016 | 19,787 | 20,111 |
| | 42 CFR 488.845(b)(3)(i) | | Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in actual harm. | 2016 | 19,787 | 20,111 |
| | 42 CFR 488.845(b)(3)(ii) | | Penalty for a home health agency's deficiency or deficiencies that cause immediate jeopardy and result in potential for harm. | 2016 | 17,808 | 18,099 |
| | 42 CFR 488.845(b)(3)(iii) | | Penalty for an isolated incident of noncompliance in violation of established HHA policy. | 2016 | 16,819 | 17,094 |
| | 42 CFR 488.845(b)(4) | | Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy, but is directly related to poor quality patient care outcomes (Lower Range): | | | |
| | | | Minimum | 2016 | 2,968 | 3,017 |
| | | | Maximum | 2016 | 16,819 | 17,094 |
| | 42 CFR 488.845(b)(5) | | Penalty for a repeat and/or condition-level deficiency that does not constitute immediate jeopardy and that is related predominately to structure or process-oriented conditions (Lower Range): | | | |
| | | | Minimum | 2016 | 989 | 1,005 |
| | | | Maximum | 2016 | 7,915 | 8,044 |
| | 42 CFR 488.845(b)(6) | | Penalty imposed for instance of noncompliance that may be assessed for one or more singular events of condition-level noncompliance that are identified and where the noncompliance was corrected during the onsite survey: | | | |
| | | | Minimum | 2016 | 1,979 | 2,011 |
| | | | Maximum | 2016 | 19,787 | 20,111 |
| | | | Penalty for each day of noncompliance (Maximum). | 2016 | 19,787 | 20,111 |
| | 42 CFR 488.845(d)(1)(ii) | | Penalty for each day of noncompliance (Maximum). | 2016 | 19,787 | 20,111 |
| 1396b(m)(5)(B) | 42 CFR 460.46 | CMS | Penalty for PACE organization's practice that would reasonably be expected to have the effect of denying or discouraging enrollment: | | | |
| | | | Minimum | 2016 | 22,077 | 22,438 |
| | | | Maximum | 2016 | 147,177 | 149,585 |
| | | | Penalty for a PACE organization that charges excessive premiums. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a PACE organization misrepresenting or falsifying information to CMS, the State, or an individual or other entity. | 2016 | 147,177 | 149,585 |
| | | | Penalty for each determination the CMS makes that the PACE organization has failed to provide medically necessary items and services of the failure has adversely affected (or has the substantial likelihood of adversely affecting) a PACE participant. | 2016 | 36,794 | 37,396 |
| | | | Penalty for involuntarily disenrolling a participant. | 2016 | 36,794 | 37,396 |
| | | | Penalty for discriminating or discouraging enrollment or disenrollment of participants on the basis of an individual's health status or need for health care services. | 2016 | 36,794 | 37,396 |
| 1396r(h)(3)(C)(ii)(I) | 42 CFR 488.408(d)(1)(iii). | CMS | Penalty per day for a nursing facility's failure to meet a Category 2 Certification: | | | |
| | | | Minimum | 2016 | 103 | 105 |
| | | | Maximum | 2016 | 6,188 | 6,289 |
| | 42 CFR 488.408(d)(1)(iv) | CMS | Penalty per instance for a nursing facility's failure to meet Category 2 certification: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(1)(iii) | CMS | Penalty per day for a nursing facility's failure to meet Category 3 certification: | | | |
| | | | Minimum | 2016 | 6,291 | 6,394 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(1)(iv) | CMS | Penalty per instance for a nursing facility's failure to meet Category 3 certification: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.408(e)(2)(ii) | CMS ... | Penalty per instance for a nursing facility's failure to meet Category 3 certification, which results in immediate jeopardy: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.438(a)(1)(i) | CMS ... | Penalty per day for nursing facility's failure to meet certification (Upper Range): | | | |
| | | | Minimum | 2016 | 6,291 | 6,394 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| | 42 CFR 488.438(a)(1)(ii) | CMS ... | Penalty per day for nursing facility's failure to meet certification (Lower Range): | | | |
| | | | Minimum | 2016 | 103 | 105 |
| | | | Maximum | 2016 | 6,188 | 6,289 |
| | 42 CFR 488.438(a)(2) | CMS ... | Penalty per instance for nursing facility's failure to meet certification: | | | |
| | | | Minimum | 2016 | 2,063 | 2,097 |
| | | | Maximum | 2016 | 20,628 | 20,965 |
| 1396r(f)(2)(B)(iii)(I)(c) ..... | 42 CFR 483.151(b)(2)(iv) and (b)(3)(iii). | CMS ... | Grounds to prohibit approval of Nurse Aide Training Program—if assessed a penalty in 1819(h)(2)(B)(i) or 1919(h)(2)(A)(ii) of ''not less than $5,000'' [Not CMP authority, but a specific CMP amount (CMP at this level) that is the triggering condition for disapproval]. | 2016 | 10,314 | 10,483 |
| 1396r(h)(3)(C)(ii)(I) ..... | 42 CFR 483.151(c)(2) ... | CMS ... | Grounds to waive disapproval of nurse aide training program—reference to disapproval based on imposition of CMP ''not less than $5,000'' [Not CMP authority but CMP imposition at this level determines eligibility to seek waiver of disapproval of nurse aide training program]. | 2016 | 10,314 | 10,483 |
| 1396t(j)(2)(C) ..... | ..... | CMS ... | Penalty for each day of noncompliance for a home or community care provider that no longer meets the minimum requirements for home and community care: | | | |
| | | | Minimum | 2016 | 2 | 2 |
| | | | Maximum | 2016 | 17,816 | 18,107 |
| 1396u–2(e)(2)(A)(i) ..... | 42 CFR 438.704 ..... | CMS ... | Penalty for a Medicaid managed care organization that fails substantially to provide medically necessary items and services. | 2016 | 36,794 | 37,396 |
| | | | Penalty for Medicaid managed care organization that imposes premiums or charges on enrollees in excess of the premiums or charges permitted. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicaid managed care organization that misrepresents or falsifies information to another individual or entity. | 2016 | 36,794 | 37,396 |
| | | | Penalty for a Medicaid managed care organization that fails to comply with the applicable statutory requirements for such organizations. | 2016 | 36,794 | 37,396 |
| 1396u–2(e)(2)(A)(ii) ..... | 42 CFR 438.704 ..... | CMS ... | Penalty for a Medicaid managed care organization that misrepresents or falsifies information to the HHS Secretary. | 2016 | 147,177 | 149,585 |
| | | | Penalty for Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status. | 2016 | 147,177 | 149,585 |
| 1396u–2(e)(2)(A)(iv) ..... | 42 CFR 438.704 ..... | CMS ... | Penalty for each individual that does not enroll as a result of a Medicaid managed care organization that acts to discriminate among enrollees on the basis of their health status. | 2016 | 22,077 | 22,438 |
| 1396u(h)(2) ..... | 42 CFR Part 441, Subpart I. | CMS ... | Penalty for a provider not meeting one of the requirements relating to the protection of the health, safety, and welfare of individuals receiving community supported living arrangements services. | 2016 | 20,628 | 20,965 |
| 1396w–2(c)(1) ..... | ..... | CMS ... | Penalty for disclosing information related to eligibility determinations for medical assistance programs. | 2016 | 11,002 | 11,182 |
| 18041(c)(2) ..... | 45 CFR 150.315; 45 CFR 156.805(c). | CMS ... | Failure to comply with requirements of the Public Health Services Act; Penalty for violations of rules or standards of behavior associated with issuer participation in the Federally-facilitated Exchange. (42 U.S.C. 300gg–22(b)(2)(C)). | 2016 | 150 | 152 |
| 18081(h)(1)(A)(i)(II) ..... | 42 CFR 155.285 ..... | CMS ... | Penalty for providing false information on Exchange application. | 2016 | 27,186 | 27,631 |
| 18081(h)(1)(B) ..... | 42 CFR 155.285 ..... | CMS ... | Penalty for knowingly or willfully providing false information on Exchange application. | 2016 | 271,862 | 276,310 |

CIVIL MONETARY PENALTY AUTHORITIES ADMINISTERED BY HHS AGENCIES AND PENALTY AMOUNTS—Continued
[Effective February 3, 2017]

| Citation | | HHS agency | Description [2] | Date of last penalty figure or adjustment [3] | 2016 Maximum adjusted penalty ($) | 2017 Maximum adjusted penalty ($) [4] |
|---|---|---|---|---|---|---|
| U.S.C. | CFR [1] | | | | | |
| 18081(h)(2) | 42 CFR 155.260 | CMS | Penalty for knowingly or willfully disclosing protected information from Exchange. | 2016 | 27,186 | 27,631 |
| 31 U.S.C. 1352 | 45 CFR 93.400(e) | HHS | Penalty for the first time an individual makes an expenditure prohibited by regulations regarding lobbying disclosure, absent aggravating circumstances. | 2016 | 18,936 | 19,246 |
| | | | Penalty for second and subsequent offenses by individuals who make an expenditure prohibited by regulations regarding lobbying disclosure: | | | |
| | | | Minimum | 2016 | 18,936 | 19,246 |
| | | | Maximum | 2016 | 189,361 | 192,459 |
| | | | Penalty for the first time an individual fails to file or amend a lobbying disclosure form, absent aggravating circumstances. | 2016 | 18,936 | 19,246 |
| | | | Penalty for second and subsequent offenses by individuals who fail to file or amend a lobbying disclosure form, absent aggravating circumstances: | | | |
| | | | Minimum | 2016 | 18,936 | 19,246 |
| | | | Maximum | 2016 | 189,361 | 192,459 |
| | 45 CFR Part 93, Appendix A | HHS | Penalty for failure to provide certification regarding lobbying in the award documents for all sub-awards of all tiers: | | | |
| | | | Minimum | 2016 | 18,936 | 19,246 |
| | | | Maximum | 2016 | 189,361 | 192,459 |
| | | | Penalty for failure to provide statement regarding lobbying for loan guarantee and loan insurance transactions: | | | |
| | | | Minimum | 2016 | 18,936 | 19,246 |
| | | | Maximum | 2016 | 189,361 | 192,459 |
| 3801–3812 | 45 CFR 79.3(a)(1)(iv) | HHS | Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department. | 2016 | 9,894 | 10,056 |
| | 45 CFR 79.3(b)(1)(ii) | | Penalty against any individual who—with knowledge or reason to know—makes, presents or submits a false, fictitious or fraudulent claim to the Department. | 2016 | 9,894 | 10,056 |

[1] Some HHS components have not promulgated regulations regarding their civil monetary penalty-specific statutory authorities.
[2] The description is not intended to be a comprehensive explanation of the underlying violation; the statute and corresponding regulation, if applicable should be consulted.
[3] Statutory or Inflation Act Adjustment.
[3] Statutory or Inflation Act Adjustment.
[4] The cost of living multiplier for 2017, based on the Consumer Price Index (CPI–U) for the month of October 2016, not seasonally adjusted, is 1.01636, as indicated in OMB Memorandum M–17–11, ''Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Adjustment Act Improvements Act of 2015'' (December 16, 2016).

Dated: January 30, 2017.

**Norris Cochran,**

*Acting Secretary, Department of Health and Human Services.*

[FR Doc. 2017–02300 Filed 2–2–17; 8:45 am]

**BILLING CODE 4150–24–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 101206604–1758–02]**

**RIN 0648–XF179**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Commercial Trip Limit Reduction for Spanish Mackerel

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

**ACTION:** Temporary rule; trip limit reduction.

**SUMMARY:** NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the Atlantic migratory group southern zone to 1,500 lb (680 kg), round weight, per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

**DATES:** Effective 6:00 a.m., local time, February 6, 2017, until 12:01 a.m., local time, March 1, 2017.

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

**SUPPLEMENTARY INFORMATION:** The fishery for coastal migratory pelagic fish

(king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Framework Amendment 1 to the FMP (79 FR 69058, November 20, 2014) implemented a commercial annual catch limit (equal to the commercial quota) of 3.33 million lb (1.51 million kg) for the Atlantic migratory group of Spanish mackerel. Atlantic migratory group Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone consists of Federal waters off South Carolina, Georgia, and Florida. The boundaries for the southern zone for Atlantic migratory group Spanish mackerel extend between North Carolina/South Carolina, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N. lat. and 78°32′32.6″ W. long. to the intersection point with the outward boundary of the EEZ, at 25°20′24″ N. lat., which is a line directly east from the boundary between Miami-Dade/Monroe Counties, Florida.

The southern zone quota for Atlantic migratory group Spanish mackerel is 2,667,330 lb (1,209,881 kg). Seasonally variable trip limits are based on an adjusted commercial quota of 2,417,330 lb (1,096,482 kg). The adjusted commercial quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the current fishing year, through February 28, 2017, in accordance with 50 CFR 622.385(b)(2). As specified at 50 CFR 622.385(b)(1)(ii)(B), after 75 percent of the adjusted commercial quota of Atlantic migratory group Spanish mackerel is reached or projected to be reached, Spanish mackerel in or from the EEZ in the southern zone may not be possessed onboard or landed from a permitted vessel in amounts exceeding 1,500 lb (680 kg) per day.

NMFS has determined that 75 percent of the adjusted commercial quota for Atlantic group Spanish mackerel has been reached. Accordingly, the commercial trip limit of 1,500 lb (680 kg) per day applies to Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone effective 6 a.m., local time February 6, 2017, until 12:01 a.m., local time, March 1, 2017, unless changed by subsequent notification in the **Federal Register**.

## Classification

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

This action is taken under 50 CFR 622.385(b)(1)(ii)(B) and is exempt from review under Executive Order 12866.

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

This action responds to the best scientific information available. The Acting Assistant Administrator for Fisheries (AA) finds that the need to immediately reduce the trip limit for the commercial sector for Spanish mackerel constitutes good cause to waive the requirements to provide prior notice and the opportunity for public comment pursuant to 5 U.S.C. 553(b)(B) as such procedures would be unnecessary and contrary to the public interest. Such procedures are unnecessary because the rules implementing the quotas and trip limits have already been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction.

Prior notice and opportunity for public comment is contrary to the public interest, because any delay in the trip limit reduction of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the Spanish mackerel resource, because the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require additional time and could potentially result in a harvest well in excess of the established quota.

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

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

Dated: January 31, 2017.

**Jennifer M. Wallace,**

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

[FR Doc. 2017–02345 Filed 1–31–17; 4:15 pm]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 82, No. 22
Friday, February 3, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Nevada State Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 1:00 p.m. (Pacific Time) Thursday, March 2, 2017, for the purpose of selecting the Vice-Chair of the Committee and familiarizing members with the mission of the Committee and project process.

**DATES:** The meeting will be held on Thursday, March 2, 2017, at 1:00 p.m. PST.

*Public Call Information:*

*Dial:* 800–967–7140

*Conference ID:* 6063836

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes (DFO) at *afortes@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 800–967–7140, conference ID number: 6063836. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (312) 353–8311, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=261.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Introductions
II. Advisory Committee Orientation
III. Selection of Committee Vice-Chair
IV. Public Comment
V. Adjournment

*Exceptional Circumstance:* Pursuant to the Federal Advisory Committee Management Regulations (41 CFR 102–3.150), the notice for this meeting is given less than 15 calendar days prior to the meeting due to exceptional circumstance of the Committee project supporting the Commission's 2017 statutory enforcement report.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2017–02311 Filed 2–2–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[1/24/2017 through 1/27/2017]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| West River Conveyors & Machinery Company. | 8936 Dismal River Road, Oakwood, VA 24631. | 1/25/2017 | The firm manufactures conveyor systems. |
| Visiontron Corporation | 720 Old Willets Path, Hauppauge, NY 11788. | 1/27/2017 | The firm manufactures crowd control products. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Miriam Kearse,**

*Lead Program Analyst.*

[FR Doc. 2017–02179 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 2026]**

### Approval of Subzone Status CGT U.S. Limited New Braunfels, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas,* the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

*Whereas,* the City of San Antonio, grantee of Foreign-Trade Zone 80, has made application to the Board for the establishment of a subzone at the facility of CGT U.S. Limited located in New Braunfels, Texas (FTZ Docket B–70–2016, docketed October 20, 2016);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (81 FR 74763, October 27, 2016) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

*Now, therefore,* the Board hereby approves subzone status at the facility of CGT U.S. Limited, located in New Braunfels, Texas (Subzone 80E), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: January 25, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman Foreign-Trade Zones Board.*

[FR Doc. 2017–02349 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–68–2016]**

### Foreign-Trade Zone (FTZ) 277—Western Maricopa County, Arizona; Authorization of Production Activity; IRIS USA, Inc. (Plastic Household Storage/Organizational Containers); Surprise, Arizona

On September 29, 2016, IRIS USA, Inc. (IRIS) submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 277—Site 12, in Surprise, Arizona.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 71045, October 14, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: January 27, 2017.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2017–02350 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[S–152–2016]**

### Approval of Subzone Status; AGFA Corporation; Branchburg, New Jersey

On October 28, 2016, the Acting Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the New Jersey Department of State, grantee of FTZ 44, requesting subzone status subject to the existing activation limit of FTZ 44, on behalf of AGFA Corporation, in Branchburg, New Jersey.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (81 FR 76915, November 4, 2016). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 44I is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 44's 407.5-acre activation limit.

Dated: January 27, 2017.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2017–02351 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–863]**

### Honey From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review; 2015–2016

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

**DATES:** Effective February 3, 2017.

**SUMMARY:** The Department of Commerce (''the Department'') is initiating a new shipper review (''NSR'') with respect to Jiangsu Runchen Agricultural/Sideline Foodstuff Co., Ltd. (''Jiangsu Runchen'') in the context of the antidumping duty order on honey from the People's Republic of China (''PRC''). The period of review (''POR'') for this NSR is December 1, 2015, through November 30, 2016.

**DATES:** Effective February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Carrie Bethea, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–1491.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department published the antidumping duty order on honey from the PRC in the **Federal Register** on

December 10, 2001.[1] On December 23, 2016, the Department received a NSR request from Jiangsu Runchen.[2] Jiangsu Runchen certified that it is the exporter and producer of the honey upon which the request for a NSR is based.[3] Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b)(2)(ii), Jiangsu Runchen certified that it did not export honey for sale to the United States during the period of investigation (''POI'').[4] Moreover, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Jiangsu Runchen certified that, since the initiation of the investigation, it has never been affiliated with any PRC exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation.[5] Further, as required by 19 CFR 351.214(b)(2)(iii)(B), it certified that its export activities were not controlled by the central government of the PRC.[6] Jiangsu Runchen also certified it had no shipments of subject merchandise subsequent to the POR.[7]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Jiangsu Runchen submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment and subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.[8]

The Department queried the database of U.S. Customs and Border Protection (''CBP'') in an attempt to confirm that the shipment reported by Jiangsu Runchen had entered the United States for consumption and that liquidation had been properly suspended for antidumping duties. The information which the Department examined was consistent with that provided by Jiangsu Runchen in its request.[9]

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China,* 66 FR 63670 (December 10, 2001) (''*Order*'').

[2] *See* Letter to the Secretary from Jiangsu Runchen, ''Honey from the People's Republic of China Request for New Shipper Review,'' dated December 23, 2015 (''NSR Request'').

[3] *Id.* at 2 and Attachment 1.

[4] *Id.* at Attachment 1.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at Attachment 2.

[9] *See* Memorandum to the File from Carrie Bethea, International Trade Compliance Analyst, Office V, ''U.S. Customs and Border Protection Query Results for Jiangsu Runchen,'' dated concurrently with this notice.

**Period of Review**

Pursuant to 19 CFR 351.214(c), an exporter or producer may request a NSR within one year of the date on which its subject merchandise was first entered. Moreover, 19 CFR 351.214(d)(1) states that if the request for the review is made during the six-month period ending with the end of the anniversary month, the Secretary will initiate a NSR in the calendar month immediately following the anniversary month. Further, 19 CFR 351.214(g)(1)(i)(A) states that if the NSR was initiated in the month immediately following the anniversary month, the POR will be the 12-month period immediately preceding the anniversary month. Jiangsu Runchen made the request for a NSR that included all documents and information required by the statute and regulations, within one year of the date on which its honey first entered. Its request was filed in December, which is the anniversary month of the *Order.* Therefore, the POR is December 1, 2015, through November 30, 2016.

**Initiation of New Shipper Review**

Pursuant to section 751(a)(2)(B) of the Act, 19 CFR 351.214(b) and based on the information on the record, the Department finds that Jiangsu Runchen's request meets the threshold requirements for initiation of a NSR for shipments of honey from the PRC produced and exported by Jiangsu Runchen. Accordingly, the Department is initiating a NSR of Jiangsu Runchen.[10] Absent a determination that the new shipper review is extraordinarily complicated, the Department intends to issue the preliminary results of this NSR within 180 days from the date of initiation and the final results within 90 days after the date on which the preliminary results are issued.[11] If the information supplied by Jiangsu Runchen is found to be incorrect or insufficient during the course of this proceeding, the Department may rescind the review for Jiangsu Runchen or apply facts available pursuant to section 776 of the Act, depending on the facts on the record.

It is the Department's usual practice, in cases involving non-market economies (''NMEs''), to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate (*i.e.,* a separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.[12] Accordingly, the Department will issue questionnaires to Jiangsu Runchen that will include a section requesting information concerning its eligibility for a separate rate. The NSR will proceed if the responses provide sufficient indication that Jiangsu Runchen is not subject to either *de jure* or *de facto* government control with respect to its exports of honey from the PRC.

On February 24, 2016, the President signed into law the ''Trade Facilitation and Trade Enforcement Act of 2015,'' Public Law 114–125, which made several amendments to section 751(a)(2)(B) of the Act. We will conduct this new shipper review in accordance with section 751(a)(2)(B) of the Act, as amended by the Trade Facilitation and Trade Enforcement Act of 2015.[13]

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order, in accordance with 19 CFR 351.305 and 19 CFR 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214, and 19 CFR 351.221(c)(1)(i).

Dated: January 30, 2017.

**Gary Taverman,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2017–02299 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[10] *See* 'Memorandum to the File, from Carrie Bethea, International Trade Compliance Analyst, ''Honey from the People's Republic of China: New Shipper Initiation Checklist,'' dated concurrently with this notice.

[11] *See* Section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i).

[12] *See* Import Administration Policy Bulletin Number: 05.1. (*http://ia.ita.doc.gov/policy/bull05-1.pdf*).

[13] The Trade Facilitation and Trade Enforcement Act of 2015 removed from section 751(a)(2)(B) of the Act the provision directing the Department to instruct Customs and Border Protection to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of a new shipper review.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (''Sunset'') Reviews

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

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating the five-year reviews (''Sunset Reviews'') of the antidumping and countervailing duty (''AD/CVD'') order(s) listed below. The

International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order(s).

**DATES:** Effective February 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

## Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping and countervailing duty order(s):

| DOC Case No. | ITC Case No. | Country | Product | Department contact |
|---|---|---|---|---|
| A–821–802 ..... | 731–TA–539–C | Russia ..... | Uranium (4th Review) (Suspension Agreement) ..... | Matthew Renkey (202) 482–2312. |

## Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Web site at the following address: *http://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''), can be found at 19 CFR 351.303.[1]

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[2] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in these segments.[3] The formats for the revised certifications are provided at the end of the *Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

On April 10, 2013, the Department modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).[4] Parties are advised to review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at *http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt,* prior to submitting factual information in these segments.[5]

## Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d)). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (''APO'') to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

## Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.[6]

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are

[1] *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[2] *See* section 782(b) of the Act.

[3] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (''*Final Rule*'') (amending 19 CFR 351.303(g)).

[4] *See Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013).

[5] *See Extension of Time Limits,* 78 FR 57790 (September 20, 2013).

[6] *See* 19 CFR 351.218(d)(1)(iii).

set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews. Consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 27, 2017.

**Gary Taverman,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2017–02343 Filed 2–1–17; 11:15 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–889]**

## Dioctyl Terephthalate From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination

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

**SUMMARY:** The Department of Commerce (the ''Department'') preliminarily determines that dioctyl terephthalate (''DOTP'') from the Republic of Korea (''Korea'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''). The period of investigation (''POI'') is April 1, 2015, through March 31, 2016. The estimated weighted-average dumping margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

**DATES:** Effective February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita or Shanah Lee, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–4243, (202) 482–6386, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department published the notice of initiation of this investigation on July 28, 2016.[1] For a complete description of the events that followed the initiation of this investigation, see the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice.

The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

### Scope of the Investigation

The product covered by this investigation is DOTP from Korea. For a full description of the scope of this investigation, *see* the ''Scope of the Investigation,'' in Appendix I.

### Scope Comments

In accordance with the preamble to the Department's regulations,[3] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* ''scope'').[4] No interested party submitted comments on the scope of this investigation.

### Methodology

The Department is conducting this investigation in accordance with section 731 of the Tariff Act of 1930, as amended (''the Act''). There are two mandatory respondents participating in this investigation: Aekyung Petrochemical Co., Ltd. (''AKP'') and LG Chem Ltd. (''LG Chem''). Export price and, where appropriate, constructed export price are calculated in accordance with section 772 of the Act. Normal value (''NV'') is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

### Negative Preliminary Determination of Critical Circumstances

On November 15, 2016, Eastman Chemical Company (''Petitioner'') filed a timely critical circumstances allegation, pursuant to section 733(e)(1) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of DOTP.[5] In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist no later than the date of the preliminary determination. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist in a LTFV investigation if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (2) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period. We have conducted an analysis of critical circumstances in accordance with section 733(e) of the Act and 19 CFR 351.206, and preliminarily determine that critical circumstances do not exist with regard to imports of DOTP from Korea. For a full description of this issue, see the Preliminary Decision Memorandum at the section, ''Preliminary Determination of Critical Circumstances.''

[1] *See Dioctyl Terephthalate from the Republic of Korea: Initiation of Less-Than-Fair-Value Investigation,* 81 FR 49628 (July 28, 2016) (''*Initiation Notice*'').

[2] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Dioctyl Terephthalate from the Republic of Korea,'' dated concurrently with this notice (''Preliminary Decision Memorandum'').

[3] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[4] *See Initiation Notice,* 81 FR at 49629.

[5] *See* letter from Petitioner, ''Re: Dioctyl Terephthalate from Korea; Critical Circumstances Allegation,'' dated November 15, 2016 (''Critical Circumstances Allegation'').

**All-Others Rate**

Section 735(c)(5)(A) of the Act provides that the estimated ''all-others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act.

We calculated the all-others rate based on a weighted average of AKP and LG Chem's publicly ranged total sales values.[6]

**Preliminary Determination**

The Department preliminarily determines that DOTP from Korea is being, or is likely to be, sold in the United States at LTFV, pursuant to section 733 of the Act, and that the following estimated weighted-average dumping margins exist during the POI:

| Exporter/Producer | Weighted-average dumping margins (percent) |
|---|---|
| Aekyung Petrochemical Co., Ltd | 3.96 |
| LG Chem, Ltd | 5.75 |
| All Others | 4.47 |

**Suspension of Liquidation**

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of DOTP from Korea as described in Appendix I of this notice, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds U.S. price, as indicated in the chart above, as follows: (1) The rate for the mandatory respondents listed above will be the respondent-specific rates we determined in this preliminary determination; (2) if the exporter is not a mandatory respondent identified above, but the producer is, the rate will be the specific rate established for the producer of the subject merchandise; and (3) the rate for all other producers or exporters will be the all-others rate. These suspension-of-liquidation instructions will remain in effect until further notice.

**Disclosure**

We intend to disclose the calculations performed to interested parties in this proceeding within five days of the public announcement of this preliminary determination in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

**Public Comment**

Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time.

**Postponement of Final Determination and Extension of Provisional Measures**

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final antidumping determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On January 10, 2017, pursuant to 19 CFR 351.210(e), LG Chem, Ltd. requested that, contingent upon an affirmative preliminary determination of sales at LTFV for the respondents, the Department postpone the final determination and that provisional measures be extended from a four-month period to a period not to exceed six months.[8]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, we are postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

**International Trade Commission (''ITC'') Notification**

In accordance with section 733(f) of the Act, we are notifying the ITC of our affirmative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45

[6] With two respondents, we normally calculate (A) a weighted-average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted-average of the dumping margins calculated for the mandatory respondents using each company's publicly-ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

[7] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[8] *See* Letter from LG Chem, Ltd. ''LG Chem's Request for Extension of Final Determination and Provisional Measures,'' dated January 10, 2017.

days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.[9]

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: January 26, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix I

### Scope of the Investigation

The merchandise covered by this investigation is dioctyl terephthalate (''DOTP''), regardless of form. DOTP that has been blended with other products is included within this scope when such blends include constituent parts that have not been chemically reacted with each other to produce a different product. For such blends, only the DOTP component of the mixture is covered by the scope of this investigation.

DOTP that is otherwise subject to this investigation is not excluded when commingled with DOTP from sources not subject to this investigation. Commingled refers to the mixing of subject and non-subject DOTP. Only the subject component of such commingled products is covered by the scope of the investigation.

DOTP has the general chemical formulation $C_6H_4(C_8H_{17}COO)_2$ and a chemical name of ''bis (2-ethylhexyl) terephthalate'' and has a Chemical Abstract Service (''CAS'') registry number of 6422–86–2. Regardless of the label, all DOTP is covered by this investigation.

Subject merchandise is currently classified under subheading 2917.39.2000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Subject merchandise may also enter under subheadings 2917.39.7000 or 3812.20.1000 of the HTSUS. While the CAS registry number and HTSUS classification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination and Extension of Provisional Measures
V. Scope Comments
VI. Selection of Respondents
VII. Preliminary Determination of Critical Circumstances
VIII. Discussion of Methodology
  A. Determination of the Comparison Period
  B. Results of the Differential Pricing Analysis
IX. Product Comparisons
X. Date of Sale
XI. U.S. Price
  A. Export Price
  B. Constructed Export Price
  C. Duty Drawback
XII. Normal Value
  A. Comparison Mark Viability
  B. Affiliated-Party Transactions and Arm's-Length Test
  C. Level of Trade
  D. COP Analysis
  E. Calculation of NV Based on Comparison Market Prices
XIII. Currency Conversion
XIV. Conclusion

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BILLING CODE 3510–DS–P

[9] *See* section 735(b)(2) of the Act.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–549–820]**

## Prestressed Concrete Steel Wire Strand From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2015

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

**SUMMARY:** The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on prestressed concrete steel wire strand (PC strand) from Thailand. The period of review (POR) is January 1, 2015, through December 31, 2015. The review covers one producer/exporter of the subject merchandise, The Siam Industrial Wire Co., Ltd. (SIW). We preliminarily determine that SIW did not make sales of subject merchandise at prices below normal value (NV). We invite interested parties to comment on these preliminary results.

**DATES:** Effective February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Sergio Balbontin or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6478 or (202) 482–1677, respectively.

**SUPPLEMENTARY INFORMATION:**

### Scope of the Order

The merchandise covered by the *Order* [1] is PC strand from Thailand. The product is currently classified under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff System of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive.[2]

### Methodology

The Department is conducting this administrative review in accordance with section 751(a)(1)(B) and 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

### Preliminary Results of Review

As a result of this administrative review, we preliminarily determine that a weighted-average dumping margin of 0.00 percent exists for SIW for the POR.

### Verification

As provided in section 782(i)(3) of the Act, we intend to verify information relied upon in the final results.

### Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to the parties within five days of the

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Prestressed Concrete Steel Wire Strand from Thailand,* 69 FR 4111 (January 28, 2004) (*Order*).

[2] A full description of the scope of the *Order* is contained in the memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Decision Memorandum for Preliminary Results of the Antidumping Duty Administrative Review: Prestressed Concrete Steel Wire Strand from Thailand'' (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice.

date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs not later than seven days after we issue the final verification report in this proceeding. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.[4]

Interested parties who wish to request a hearing, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[5] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined.[6] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless the deadline is extended.[7]

**Assessment Rates**

Upon completion of the administrative review, the Department shall determine and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[8]

If SIW's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). If SIW's weighted-average dumping margin continues to be zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[9]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for SIW will be the rate established in the final results of this administrative review, except if the rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1) (*i.e.,* less than 0.50 percent), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently-completed period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.91 percent, the all-others rate established in the less-than-fair-value investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.213.

Dated: January 30, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Preliminary Decision Memorandum**

Summary
Background
Scope of the Order
Discussion of the Methodology
*Bona Fides* Analysis
Comparisons to Normal Value
A. Determination of Comparison Method
B. Results of Differential Pricing Analysis
C. Product Comparisons
Constructed Export Price
Normal Value
A. Home-Market Viability and Comparison Market
B. Level of Trade
C. Cost of Production Analysis
1. Calculation of COP
2. Test of Comparison Market Sales Prices
3. Results of the COP Test
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Currency Conversion
Recommendation

[FR Doc. 2017–02347 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–832]**

### Pure Magnesium From the People's Republic of China: Final Results of Expedited Fourth Sunset Review of the Antidumping Duty Order

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

**SUMMARY:** As a result of this sunset review, the Department of Commerce (''Department'') finds that revocation of the antidumping duty (''AD'') order on pure magnesium from the People's Republic of China would be likely to lead to continuation or recurrence of dumping at the dumping margins identified in the ''Final Results of Review'' section of this notice.

**DATES:** Effective February 3, 2017.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4243.

**SUPPLEMENTARY INFORMATION:**

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.309(c)(2) and (d)(2).

[5] *See* 19 CFR 351.310(c).

[6] *See* 19 CFR 351.310(c).

[7] *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[8] *See* 19 CFR 351.212(b)(1).

[9] *See* 19 CFR 351.106(c)(2).

[10] *See Order.*

## Background

On October 3, 2016, the Department initiated the fourth sunset review of the antidumping duty order on pure magnesium from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1] On October 18, 2016, the Department received notice of intent to participate on behalf of US Magnesium LLC (''US Magnesium''), within the applicable deadline specified in 19 CFR 351.218(d)(1)(i).[2] The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of pure magnesium in the United States. On November 2, 2016, the Department received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[3] We received no substantive response from a respondent interested party in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited, 120-day, sunset review of this *Order.*

## Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[4] The issues discussed in the Issues and Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the *Order* was revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

## Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail is up to 108.26 percent.

## Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely 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 violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 31, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–02348 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Initiation of Five-Year (''Sunset'') Review,* 81 FR 67967 (October 3, 2016); *see also Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995) (''*Order*'').

[2] *See* letter from US Magnesium, ''Five-Year (''Sunset'') Review of Antidumping Duty Order on Pure Magnesium from The People's Republic of China: US Magnesium's Notice of Intent to Participate in Sunset Review,'' dated October 18, 2016.

[3] *See* letter from US Magnesium, ''Five-Year (''Sunset'') Review of Antidumping Duty Order of Pure Magnesium from The People's Republic of China: US Magnesium's Response to the Notice of Initiation,'' dated November 2, 2016 (''U.S. Magnesium's Substantive Response'').

[4] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of the Expedited Fourth Sunset Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China,'' dated concurrently with this notice (''Issues and Decision Memorandum.).

## 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:* West Coast Swordfish Fishery Survey.

*OMB Control Number:* 0648–xxxx.

*Form Number(s):* None.

*Type of Request:* Regular (request for a new information collection).

*Number of Respondents:* 77.

*Average Hours per Response:* 1 hour.

*Burden Hours:* 77.

*Needs and Uses:* This request is for a new information collection.

The Southwest Fisheries Science Center (SWFSC) is undertaking an economics data collection effort for the West Coast Swordfish Fishery (WCSF) in order to improve the SWFSC's capability to do the following: (1) Describe and monitor economic performance (*e.g.,* profitability, capacity utilization, efficiency, and productivity) and impacts (*e.g.,* sector, community, or region-specific employment and income); (2) determine the quantity and distribution of net benefits derived from living marine resources; (3) understand and predict the ecological, and behavior of participants in Federally managed commercial fisheries; (4) predict the biological, ecological, and economic impacts of existing management measures and alternative proposed management actions; and (5) in general, more effectively conduct the analyses required under the MSA, the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPDA), the National Environmental Policy Act (NEPA), and Regulatory Flexibility Act (RFA), Executive Order 12866, and other applicable laws.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* One time only.

*Respondent's Obligation:* Voluntary.

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

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

Dated: January 31, 2017.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2017–02296 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF094**

## Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Notice of Intent To Prepare an Environmental Impact Statement; Scoping Process; Request for Comments

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

**ACTION:** Announcement of revised scoping hearing schedule; request for comments.

**SUMMARY:** The New England Fishery Management Council announces its intent to prepare, in cooperation with NMFS, a draft environmental impact statement consistent with the National Environmental Policy Act. A draft environmental impact statement may be necessary to provide analytic support for Amendment 5 to the Northeast Skate Complex Fishery Management Plan. This notice alerts the interested public of the scoping process for a potential draft environmental impact statement and outlines opportunity for public participation in that process.

**DATES:** Written and electronic scoping comments must be received on or before March 6, 2017.

**ADDRESSES:** Written scoping comments on Amendment 5 may be sent by any of the following methods:

- *Email to the following address: comments@nefmc.org*;
- *Mail to:* Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; or
- *Fax to:* (978) 465–3116.

Requests for copies of the Amendment 5 scoping document and other information should be directed to Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492.

The scoping document is accessible electronically via the Internet at *http://www.nefmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council, (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

### Background

The New England Fishery Management Council, working through its public participatory committee and meeting processes, anticipates the development of an amendment to consider limited access to the skate (bait and non-bait) fishery that may require an environmental impact statement (82 FR 825, January 4, 2017). This notice announces a revised public scoping hearing schedule as outlined in Table 1 to meet applicable criteria in the Council on Environmental Quality regulations and guidance for implementing the National Environmental Policy Act (NEPA). Amendment 5 will consider limited access to the skate (bait and non-bait) fishery.

The Northeast Skate Complex is comprised of seven species (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate), managed as a single unit along the east coast from Maine to Cape Hatteras, NC. The skate bait fishery primarily targets little skate, with a small component of winter skate catch. The non-bait fishery, including the wing fishery, primarily targets winter skate.

Following the first skate stock assessment in 1999, the Northeast Skate Complex Fishery Management Plan was adopted in 2003. Amendment 3 established an annual catch limit and annual catch target for the skate complex, total allowable landings for the skate bait and non-bait fisheries, seasonal quotas for the bait fishery, new possession limits, and in-season possession limit triggers.

The skate fishery is an open access fishery—any vessel may join or leave the fishery at any time. Skate fishermen are concerned that increasingly strict regulations in other fisheries—particularly in the Northeast Multispecies (groundfish) fishery where several stocks are overfished and subject to strict catch restrictions—might cause these fishermen to switch their fishing effort onto skates. An increase in effort in the skate fishery could cause the fishery to harvest its catch limit in a shorter time period, trigger reduced skate trip limits, or have other negative economic impacts on current participants since developing skate markets could be negatively impacted by a flood of product.

A control date for the bait fishery was established on July 30, 2009 (74 FR 37977). A control date for the non-bait fishery was established on March 31, 2014 (79 FR 18002). The control dates may be used as a reference date for future management measures related to such rulemaking.

The Council has initiated the development of this amendment to address three issues:

• Limited access qualification criteria that would determine whether vessels may target skate. These criteria may differ by stock or management area and may treat older history differently than newer history;

• Limited access permit conditions (transfers, ownership caps, 'history' permits, etc.); and

• Permit categories and associated measures.

The amendment's objective would be to establish qualification criteria for skate (bait and non-bait ''wing'') fishing permits and possibly different qualification criteria or catch limits for each fishery, considering how they operate differently. For example, in the wing fishery, it may be desirable to have different permit tiers that distinguish between skate vessels that currently target skate, historically targeted, and/or vessels that catch and land small quantities. Qualification criteria might include several factors such as, but not limited to, the time period vessels have participated in the fishery (possibly using the control dates established for this fishery), historic levels of landings, and dependency on the fishery.

The Council may consider limiting access to the skate (bait and non-bait) fishery in a manner that may affect individual permit holder access to skates depending on the qualification criteria and other permit conditions developed. Based on individual fishing history, a vessel that has targeted skate may be distinguished differently from a vessel that caught and landed skates while fishing for other species. Landing limits for qualifiers and non-qualifiers could therefore be more consistent with the type of fishing that these vessels conduct in order to minimize discarding and economic effects. For example, the bait skate fishery currently requires a letter of authorization, but has substantially larger landing limits than the wing fishery. Some historic participants in the Northeast Skate Complex fisheries also may desire limited access privileges (a catch share program, for example).

Following the scoping period, the Council and its Skate Committee will identify the specific goals and objectives of the amendment and develop alternatives to meet the purpose and need of the action. With input from its committees and the public, the Council would select a range of alternatives to implement limited access in the skate fishery.

**Public Comment**

All persons affected by or otherwise interested in Northeast skate management are invited to comment on the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the six scoping meetings for this amendment. Scoping consists of identifying the range of actions, alternatives, and impacts to be considered. At this time in the process, the Council believes that the alternatives considered in Amendment 5 should include limited access to the skate fishery. After the scoping process is completed, the Council will begin development of Amendment 5 and, if necessary, will prepare a draft EIS to analyze the impacts of the range of alternatives under consideration. Impacts may be direct, individual, or cumulative.

The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the draft EIS. The hearings will be recorded. Consistent with U.S.C. 1852, a copy of the recordings are available upon request. In addition to soliciting comment on this notice, the public will have the opportunity to comment on the measures and alternatives being considered by the Council through public meetings and public comment periods consistent with NEPA, the Magnuson-Stevens Fishery Conservation and Management Act, and the Administrative Procedure Act. Any amendment developed and approved by the Council would have to be approved and implemented by NMFS.

The Council will take and discuss scoping comments on this amendment at the public meetings listed in Table 1.

TABLE 1—PAST AND UPCOMING AMENDMENT 5 PUBLIC SCOPING MEETING INFORMATION

| Meeting date and time | Meeting location |
|---|---|
| Portsmouth, NH, Tuesday, January 24, 2017, 5 p.m. *(or immediately following the Council Meeting).* | Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801 04101, Telephone: (603) 431–2300. |
| Via Webinar, Tuesday, January 31, 2017, 6–8 p.m | Webinar Hearing, Register to participate:, *https://global.gotomeeting.com/join/194149773*, Call in info: Toll: +1 (646) 749–3122, Access Code: 194–149–773. |
| Buzzards Bay, MA, Tuesday, February 7, 2017, 6 p.m.–8 p.m | Mass Maritime, 101 Academy Drive, Buzzards Bay, MA 02532, Telephone: (508) 830–5000. |
| Narragnasett, RI, Thursday, February 9, 2017, 6 p.m.–8 p.m | Graduate School of Oceanography, Coastal Institute Building–Hazard Room, 215 S Ferry Rd, Narragansett, RI 02882, Telephone: (401) 874–6222. |
| ***PLEASE NOTE NEW DATE***: Cape May, NJ, Thursday, February 21, 2017, 6 p.m.–8 p.m. | Grand Hotel of Cape May, 1045 Beach Avenue, Cape May, NJ 08204, Telephone: (609) 884–5611. |
| ***PLEASE NOTE NEW DATE***: Montauk, NY, Wednesday, February 22, 2017, 6 p.m.–8 p.m. | Montauk Playhouse Community Center Foundation, Inc., 240 Edgemere St., Montauk, New York 11954, Telephone: (631) 668–1124. |

A scoping document with additional background information is available on the Council's Web site at *http://www.nefmc.org/management-plans/skates* or may be obtained by contacting the Council. Additional information on the scoping meetings can be accessed online *at http://www.nefmc.org/.*

**Special Accommodations**

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least five days prior to each meeting date.

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

Dated: January 31, 2017.

**Jennifer M. Wallace,**

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

[FR Doc. 2017–02307 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Tactical Encryption and Key Management Workshop

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Institute for Telecommunication Sciences (ITS) of the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, will host a two-day workshop on Tactical Encryption and Key Management. The goal of the workshop is to identify solutions to the problem of how to dynamically key and re-key different groups with varying levels of access and for varying lengths of time using existing infrastructure or over an ad hoc network that is reliable and user friendly.

**DATES:** The workshop will be held on February 15–16, 2017, from 8:00 a.m. to 5:00 p.m., Mountain Standard Time.

**ADDRESSES:** The workshop will be located in Building 1 Lobby, Department of Commerce Boulder Laboratories, 325 Broadway, Boulder, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Joseph Parks, Institute for Telecommunication Sciences, National Telecommunications and Information Administration, U.S. Department of Commerce, 325 Broadway, Boulder, CO 80305; telephone: (303) 497–5865; email: *jparks@ntia.doc.gov.* Please direct media inquires to NTIA's Office of Public Affairs: (202) 482–7002; email: *press@ntia.doc.gov.*

**SUPPLEMENTARY INFORMATION:** The Institute for Telecommunication Sciences (ITS) is the research and engineering laboratory of the National Telecommunications and Information Administration (NTIA), an agency of the U.S. Department of Commerce. ITS research enhances scientific knowledge and understanding in cutting-edge areas of telecommunications technology. The Institute's research capacity and expertise is used to analyze new and emerging technologies, and to contribute to standards creation. Research results are broadly disseminated through peer-reviewed publications as well as through technical contributions and recommendations to standards bodies. ITS research helps to drive innovation and contributes to the development of communications and broadband policies that enable a robust telecommunication infrastructure, ensure system integrity, support e-commerce, and protect an open global Internet.

Today, encryption and key management (E&KM) is a process that can be onerous, difficult, and time-consuming. We hypothesize that advances in processing efficiency and networking technologies can greatly simplify (or perhaps even automate) E&KM thus enabling secure dynamic coalitions and information flow control in mobile, tactical applications. We further hypothesize that these secure, dynamic coalitions and information control schemes can be constructed and maintained without a central, off-site coordination authority.

ITS will host a two-day workshop on Tactical EK&M to look into the future to see what E&KM may look like and will look at the present to see what technologies can be leveraged to take us there. The workshop is sponsored by the Defense Advanced Research Projects Agency (DARPA) and organized and hosted as a joint effort between ITS and the RAND Corporation.

ITS will post a detailed agenda on its Web site, *https://www.its.bldrdoc.gov/resources/workshops/tekm-agenda.aspx,* prior to the workshop, but such agenda is subject to change. Please refer to the ITS Web site for the most up-to-date meeting agenda and access information.

The meeting will be open to the public (U.S. Citizens only) and press on a first-come, first-served basis. Space is limited. Attendees must present valid government-issued photo identification upon arrival in order to enter the building, and must RSVP with Joseph Parks at least 48 hours in advance to be sponsored to access the site.

The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Joseph Parks via the contact information provided above at least five (5) business days before the meeting.

Dated: January 31, 2017.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2017–02323 Filed 2–2–17; 8:45 am]

**BILLING CODE 3510–60–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the procurement list.

**SUMMARY:** This action adds product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** Effective February 26, 2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** Amy B. Jensen, Telephone: (703) 603–2132, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:**

### Additions

On 12/9/2016 (81 FR 89086), 12/16/2016 (81 FR 91140–91141) and 12/23/2016 (81 FR 94340), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product and

services proposed for addition to the Procurement List.

**End of Certification**

Accordingly, the following product and services are added to the Procurement List:

*Product*

*NSN(s)—Product Name(s):* 6840–01–523–9645—Kit, Hydration Bladder Cleaning
*Mandatory for:* 100% of the requirement of the U.S. Army
*Mandatory Source(s) of Supply:* The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
*Contracting Activity:* Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division
*Distribution:* C-List

*Services*

*Service Type:* Janitorial and Grounds Maintenance Service
*Mandatory for:* Federal Aviation Administration, Flight Inspection Field Office, 4185 Martin Luther King Jr. Drive, Atlanta, GA
*Mandatory Source(s) of Supply:* Bobby Dodd Institute, Inc., Atlanta, GA
*Contracting Activity:* Dept of Transportation, Federal Aviation Administration

*Service Type:* Mail and Courier Service
*Mandatory for:* U.S. Customs and Border Protection, New York Field Office Mail Room, One World Trade Center, 285 Fulton Street, Floors 50 and 51, New York, NY
*Mandatory Source(s) of Supply:* The Corporate Source, Inc., New York, NY
*Contracting Activity:* U.S. Customs and Border Protection, Border Enforcement Ctr Div

*Service Type:* Document Destruction Service
*Mandatory for:* U.S. Department of Labor (DOL), Office of Workers' Compensation Programs, Charles E. Bennett Federal Building, 400 West Bay Street, Suites 722, 826 and 943, Jacksonville, FL
*Mandatory Source(s) of Supply:* Challenge Enterprises of North Florida, Inc., Green Cove Springs, FL
*Contracting Activity:* Dept of Labor, Office of the Assistant Secretary for Administration and Management, OASAM–ATLANTA REG

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017–02333 Filed 2–2–17; 8:45 am]

**BILLING CODE 6353–01–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

*Comments Must Be Received on or Before:* 3/5/2017.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Amy B. Jensen, Telephone: (703) 603–2132, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

*Products*

*NSN(s)—Product Name(s):*
3920–00–NIB–0001—Hand Truck, 48″ H x 22″ W, 8″ Solid Rubber Wheels
3920–00–NIB–0002—Hand Truck, 45″ H x 18″ W, 10″ Solid Rubber Wheels
3920–00–NIB–0003—Hand Truck, Economy, 40″ H x 18″ W, 8″ Zero-Pressure Rubber Tires
3920–00–NIB–0004—Hand Truck, Double Handle, 48″ H x 22″ W, 10″ Pneumatic Tires
3920–00–NIB–0005—Hand Truck, Convertible, 48″ H x 22″ W, 10″ Pneumatic Tires with Wheel Guards
*Mandatory for:* Total Government Requirement
*Mandatory Source(s) of Supply:* Envision Enterprises Inc., Wichita, KS
*Contracting Activity:* Defense Logistics Agency Troop Support
*Distribution:* B-List

**Deletions**

The following products are proposed for deletion from the Procurement List:

*Products*

*NSN(s)—Product Name(s):* 2540–00–402–2157—Curtain, Vehicular
*Mandatory Source(s) of Supply:* APEX, Inc., Anadarko, OK
*Contracting Activity:* Defense Logistics Agency Land and Maritime.

*NSN(s)—Product Name(s):*
1440–01–126–8966—Tarpaulin
1440–01–132–7799—Cover, Protective
*Mandatory Source(s) of Supply:* Huntsville Rehabilitation Foundation, Huntsville, AL
*Contracting Activity:* Defense Logistics Agency Land and Maritime.

*NSN(s)—Product Name(s):* 2590–01–114–7396—Kit, Repair
*Mandatory Source(s) of Supply:* Association of Retarded Citizens of Sabine, Inc., Many, LA
*Contracting Activity:* Defense Logistics Agency Land and Maritime.

*NSN(s)—Product Name(s):*
8415–01–579–8677—Multi-Cam Trouser Size: L–S
8415–01–579–8744—Multi-Cam Trouser Size: L–XL
8415–01–579–8553—Multi-Cam Trouser Size: M–S
8415–01–579–8570—Multi-Cam Trouser Size: M–XL
8415–01–579–8227—Multi-Cam Trouser Size: S–XS
8415–01–579–8354—Multi-Cam Trouser Size: S–L
8415–01–579–8791—Multi-Cam Trouser Size: XL–R
8415–01–579–9119—Multi-Cam Trouser Size: XL–XXL
8415–01–579–8112—Multi-Cam Trouser Size: XS–L
8415–01–579–7850—Multi-Cam Trouser Size: XS–XS
8415–01–579–9132—Multi-Cam Trouser Size: XXL–XXL
8415–01–579–9120—Multi-Cam Trouser Size: XXL–R
8415–01–579–8719—Multi-Cam Trouser Size: L–L
8415–01–579–8385—Multi-Cam Trouser Size: S–XL
8415–01–579–8558—Multi-Cam Trouser Size: M–R
8415–01–579–8580—Multi-Cam Trouser Size: M–XXL
8415–01–579–8263—Multi-Cam Trouser Size: S–S
8415–01–579–8365—Multi-Cam Trouser Size: S–XXL
8415–01–579–8771—Multi-Cam Trouser Size: XL–L
8415–01–579–8080—Multi-Cam Trouser Size: XS–S
8415–01–579–8126—Multi-Cam Trouser Size: XS–XL
8415–01–579–9121—Multi-Cam Trouser Size: XXL–L
8415–01–579–8591—Multi-Cam Trouser Size: XXL–XS
8415–01–579–8784—Multi-Cam Trouser Size: XL–XS
8415–01–579–8551—Multi-Cam Trouser Size: M–XS
8415–01–579–8684—Multi-Cam Trouser Size: L–XS
8415–01–579–8276—Multi-Cam Trouser Size: S–R
*Mandatory Source(s) of Supply:*

Goodwill Industries of South Florida, Inc., Miami, FL
ReadyOne Industries, Inc., El Paso, TX
*Contracting Activity:* Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division
*NSN(s)—Product Name(s):* 6135–01–486–1443—Battery, Non-Rechargeable, 6V, Alkaline, NEDA 915A
*Mandatory Source(s) of Supply:* Eastern Carolina Vocational Center, Inc., Greenville, NC
*Contracting Activity:* Defense Logistics Agency Land and Maritime

**Amy B. Jensen,**

*Director, Business Operations.*

[FR Doc. 2017–02344 Filed 2–2–17; 8:45 am]

**BILLING CODE 6353–01–P**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

**DATE AND TIME:** Wednesday, February 15, 2017, 10:00–11:30 a.m. (ET).

**PLACE:** Corporation for National and Community Service, 250 E Street SW., Suite 4026, Washington, DC 20525 (Please go to the first floor lobby reception area for escort).

**CALL-IN INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 800–779–9469 conference call access code number 6366753. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–944–3743. TTY: 402–998–1748. The end replay date is March 1, 2017 at 11:59 p.m. (ET).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

I. Chair's Opening Comments
II. Acting CEO Report
III. Public Comments
IV. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *eharsch@cns.gov* with subject line: February 2017 CNCS Board Meeting by 5:00 p.m. (ET) on February 13, 2017. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

**REASONABLE ACCOMMODATIONS:** The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Eric Harsch at *eharsch@cns.gov* or 202–606–6928 by 5 p.m. (ET) on February 10, 2017.

**CONTACT PERSON FOR MORE INFORMATION:** Eric Harsch, Program Support Assistant, Corporation for National and Community Service, 250 E Street SW., Washington, DC 20525. Phone: 202–606–6928. Fax: 202–606–3460. TTY: 800–833–3722. Email: *eharsch@cns.gov.*

**Angela Williams,**

*Acting General Counsel.*

[FR Doc. 2017–02402 Filed 2–1–17; 11:15 am]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2015–OS–0017]**

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Fred Licari, 571–372–0493.

**SUPPLEMENTARY INFORMATION:**

*Title, Associated Form and OMB Number:* Associated Form; and OMB Number: Child Annuitant's School Certification; DD Form 2788; OMB Control Number 0730–0001.

*Type of Request:* Reinstatement.

*Number of Respondents:* 7,200.

*Responses per Respondent:* 1.

*Annual Responses:* 7,200.

*Average Burden per Response:* 1 hour.

*Annual Burden Hours:* 7,200.

*Needs and Uses:* The DoD Financial Management Regulation (FMR) 7000.14, Volume 7B, titled ''Military Pay Policy—Retired Pay,'' instructs the child annuitant or payee to provide evidence of intent to continue studying or training each semester (or any other period in which the school year is divided). Without this certification, funds cannot be released to annuitant/payee.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain benefits.

*OMB Desk Officer:* Ms. Jasmeet Seehra.

Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

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

*DOD Clearance Officer:* Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 03F09, Alexandria, VA 22350–3100.

Dated: January 31, 2017.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2017–02286 Filed 2–2–17; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Invention for Licensing; Government-Owned Invention

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available

for licensing by the Department of the Navy (DoN). The following patent application is available for licensing: U.S. Patent Application No. 14/978,040 entitled ''Mixed Odor Delivery Device (MODD)'', Navy Case No. 103,340 and any continuations, divisionals or re-issues thereof.

**ADDRESSES:** Requests for copies of the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue SW., Washington, DC 20375–5320 and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:** U.S. Naval Research Laboratory (NRL), Technology Transfer Office, 4555 Overlook Avenue SW., Washington, DC 20375–5320, telephone 202–767–3083 or email: *techtran@research.nrl.navy.mil* or use courier delivery to expedite response.

**SUPPLEMENTARY INFORMATION:** The DoN intends to move expeditiously to license this invention. Potential licensees are required to submit a license application and commercialization plan. The license application is available online at: *https://www.nrl.navy.mil/techtransfer/for-inventors-and-industry/license-agreements.* Commercialization plans and completed applications must be submitted to NRL for evaluation by March 15, 2017, with final negotiations and awards occurring during the months of March–May, 2017. The DoN, in its decisions concerning the granting of licenses, will give special consideration to small business firms and consortia involving small business firms. The DoN intends to ensure that its licensed invention is commercialized throughout the United States.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: January 30, 2017.

**A.M. Nichols,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2017–02295 Filed 2–2–17; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2017–ICCD–0007]**

### Agency Information Collection Activities; Comment Request; 2017–18 National Teacher and Principal Survey (NTPS 2017–18)

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before April 4, 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–0007. 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 224–84, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* 2017–18 National Teacher and Principal Survey (NTPS 2017–18).

*OMB Control Number:* 1850–0598.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 101,383.

*Total Estimated Number of Annual Burden Hours:* 46,749.

*Abstract:* The National Teacher and Principal Survey (NTPS), conducted biennially by the National Center for Education Statistics (NCES), is a system of related questionnaires that provides descriptive data on the context of elementary and secondary education. Redesigned from the Schools and Staffing Survey (SASS) with a focus on flexibility, timeliness, and integration with other ED data, the NTPS system allows for school, principal, and teacher characteristics to be analyzed in relation to one another. NTPS is an in-depth, nationally representative survey of first through twelfth grade public school teachers, principals, and schools. Kindergarten teachers in schools with at least a first grade are also surveyed. NTPS utilizes core content and a series of rotating modules to allow timely collection of important education trends as well as trend analysis. Topics covered include characteristics of teachers, principals, schools, teacher training opportunities, retention, retirement, hiring, and shortages. Preliminary activities for NTPS 2017–18, namely: (a) Contacting and seeking research approvals from public school districts with an established research approval process (''special contact districts''), (b) notifying districts that their school(s) have been selected for NTPS 2017–18, and (c) notifying sampled schools of their selection for the survey and verifying their mailing addresses, were approved in November 2016 (OMB #1850–0598 v.16). This request is to conduct NTPS 2017–18, including all of its recruitment and data collection activities. Because of the overlap in time, this request also carries over the burden and materials for the approved preliminary activities.

Dated: January 31, 2017.

**Kate Mullan,**

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

[FR Doc. 2017–02279 Filed 2–2–17; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2017–ICCD–0006]**

### Agency Information Collection Activities; Comment Request; 2008/18 Baccalaureate and Beyond (B&B:08/18) Field Test

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

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

**DATES:** Interested persons are invited to submit comments on or before April 4, 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–0006. 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 224–84, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact NCES Information Collections at *NCES.Information.Collections@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* 2008/18 Baccalaureate and Beyond (B&B:08/18) Field Test.

*OMB Control Number:* 1850–0729.

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

*Respondents/Affected Public:* Individuals or Households.

*Total Estimated Number of Annual Responses:* 4,242.

*Total Estimated Number of Annual Burden Hours:* 905.

*Abstract:* The Baccalaureate and Beyond Longitudinal Study (B&B), conducted by the National Center for Education Statistics (NCES), part of the U.S. Department of Education, examines students' education and work experiences after they complete a bachelor's degree, with a special emphasis on the experiences of school teachers. The B&B-eligible cohort is initially identified in the National Postsecondary Study Aid Study (NPSAS). The first cohort (B&B:93) was identified in NPSAS:93, and consisted of students who received their bachelor's degree in the 1992–93 academic year. The second cohort (B&B:2000) was selected from the NPSAS:2000, and the third cohort (B&B:08) was selected from NPSAS:2008, which became the base year for follow-up interviews in 2009 and 2012. The B&B:08/18 data collection will be the third and final follow-up for the third cohort of the B&B series (OMB #1850–0729). The fourth cohort of baccalaureate recipients (B&B:16/17), identified in NPSAS:2016, is entering full-scale data collection in 2017 (OMB #1850–0926). This request is to conduct the B&B:08/18 field test in 2017, which will collect data from B&B:08 sample members after they were first surveyed 10 years earlier. The B&B:08/18 field test includes several data collection experiments and will inform the materials and procedures for the full-scale B&B:08/18 to be conducted in 2018.

Dated: January 31, 2017.

**Kate Mullan,**

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

[FR Doc. 2017–02278 Filed 2–2–17; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2503–161]**

### Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

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

a. *Application Type:* Recreation Management Plan.

b. *Project No:* 2503–161.

c. *Date Filed:* November 14, 2016.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* The project is located on the Toxaway, Keowee, and Little Rivers in Transylvania County, North Carolina, and Oconee and Pickens counties, South Carolina.

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

h. *Applicant Contact:* John Crutchfield, Duke Energy Carolinas, LLC, 526 S. Church Street, Charlotte, NC 28202, (980) 373–2288.

i. *FERC Contact:* Kevin Anderson, (202) 502–6465, *kevin.anderson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 1, 2017.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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 number P–2503–161. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request:* The licensee filed for Commission approval a revised recreation management plan pursuant to Article 406 of the license order issued August 16, 2016. The revised plan includes provisions to operate, maintain, and construct recreation facilities at specific recreation sites, monitor the capacity and condition of the Warpath Access Area, and stabilize 6,250 linear feet of shoreline on islands in Lake Keowee. The revised plan also includes an updated implementation schedule.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–02289 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

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

*Docket Numbers:* EC17–70–000.

*Applicants:* American Electric Power Service Corporation, Public Service Company of Oklahoma.

*Description:* Application for Authorization under Section 203 of the FPA of American Electric Power Service Corporation, et al.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5295.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* EC17–71–000.

*Applicants:* Broadview Energy JN, LLC, Broadview Energy KW, LLC.

*Description:* Application for Authorization for Disposition of Jurisdictional Facilities and Requests for Waivers, Confidential Treatment, and Expedited Consideration of Broadview Energy JN, LLC, et al.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5304.

*Comments Due:* 5 p.m. ET 2/17/17.

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

*Docket Numbers:* EG17–45–000.

*Applicants:* Bayshore Solar A, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator (EWG) of Bayshore Solar A, LLC.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5208.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* EG17–46–000.

*Applicants:* Bayshore Solar B, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator (EWG) of Bayshore Solar B, LLC.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5212.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* EG17–47–000.

*Applicants:* Bayshore Solar C, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator (EWG) of Bayshore Solar C, LLC.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5213

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* EG17–48–000.

*Applicants:* Port Comfort Power LLC.

*Description:* Notice of Self-Certification as Exempt Wholesale Generator of Port Comfort Power LLC.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5040.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* EG17–49–000.

*Applicants:* Chamon Power LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Chamon Power LLC.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5041.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* EG17–50–000.

*Applicants:* Arkwright Summit Wind Farm LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Arkwright Summit Wind Farm LLC.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5081.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* EG17–51–000.

*Applicants:* Quilt Block Wind Farm LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Quilt Block Wind Farm LLC.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5083.

*Comments Due:* 5 p.m. ET 2/21/17.

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

*Docket Numbers:* ER10–2331–063; ER10–2319–054; ER10–2317–054; ER13–1351–036; ER10–2330–061.

*Applicants:* J.P. Morgan Ventures Energy Corporation, BE CA LLC, BE Alabama LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

*Description:* Non-Material Change in Status of the J.P. Morgan Sellers.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5299.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER11–4267–010; ER17–692–001; ER11–4270–010; ER16–2169–002; ER16–2364–002; ER11–4269–011; ER16–2703–001; ER11–4694–007; ER14–1282–001; ER16–2412–004; ER12–1680–008; ER15–2631–006; ER11–113–011; ER10–2738–004.

*Applicants:* Algonquin Energy Services Inc., Algonquin Power Sanger LLC, Algonquin Power Windsor Locks LLC, Algonquin SKIC 20 Solar, LLC, Algonquin SKIC 10 Solar, LLC, Algonquin Tinker Gen Co., Deerfield Wind Energy, LLC, GSG 6, LLC, Liberty Utilities (Granite State Electric) Corp., Luning Energy LLC, Minonk Wind, LLC, Odell Wind Farm, LLC, The Empire District Electric Company, Sandy Ridge Wind, LLC.

*Description:* Notice of Change in Status of Algonquin Energy Services Inc., et. al.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5285.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER13–1159–002.

*Applicants:* National Grid Generation LLC.

*Description:* Compliance filing: A&R PSA, Amendment No. 2 to be effective 1/1/2016.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5225.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER15–1026–003; ER10–1533–014; ER10–2374–013; ER12–673–010; ER12–672–010.

*Applicants:* Utah Red Hills Renewable Park, LLC, Puget Sound Energy, Inc., Macquarie Energy LLC, Brea Generation LLC, Brea Power II LLC.

*Description:* Notice of Non-Material Change in Status of Utah Red Hills Renewable Park, LLC, et. al.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5288.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER16–833–004.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2017–01–27_Compliance regarding Default Technology-Specific Avoidable Cost to be effective 9/1/2016.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5206.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–253–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: Deficiency Response in ER17–253—OPPD Formula Rate Revisions to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5131.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–873–000.

*Applicants:* Wisconsin Public Service Corporation.

*Description:* Tariff Cancellation: Cancellation of WPSC—Village of Daggett to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5219.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–874–000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Tariff Cancellation: Cancellation of WDA between Wisconsin Electric and Alger Delta to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5230.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–876–000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Tariff Cancellation: Cancellation of WDA between Wisconsin Electric and Ontonagon to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5243.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–877–000.

*Applicants:* Wisconsin Public Service Corporation.

*Description:* Tariff Cancellation: Cancellation WPSC—MSCPA to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5244.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–878–000.

*Applicants:* Wisconsin Electric Power Company.

*Description:* Tariff Cancellation: Cancellation of WDA between Wisconsin Electric and Crystal Falls to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5246

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–879–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2017–01–27 NERC Outages Reliability Standard Amendment to be effective 4/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5001.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–880–000.

*Applicants:* Wisconsin Public Service Corporation.

*Description:* Tariff Cancellation: Cancellation of WPSC—Stephenson Agreement to be effective 1/1/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5247.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–881–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: City of Wauchula NITSA–NOA Amendment SA No. 150 to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5035.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–881–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* Report Filing: Refund Report—City of Wauchula to be effective N/A.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5050.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–882–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: DEF–KUA Pole Attachment Agreement RS No. 225 to be effective 4/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5038.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–883–000.

*Applicants:* Duke Energy Florida, LLC.

*Description:* § 205(d) Rate Filing: QF Contracts with Mulberry Energy, Orange CoGen and Covanta Lake to be effective 4/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5049.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–884–000.

*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 205 Modifications to NPMC TSC Formula Rate to be effective 4/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5109.

*Comments Due:* 5 p.m. ET 2/21/17.

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: January 30, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–02328 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

**NYISO Business Issues Committee Meeting**

*February 8, 2017, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2017-02-08.*

**NYISO Operating Committee Meeting**

*February 9, 2017, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2017-02-09.*

**NYISO Electric System Planning Working Group Meeting**

*February 9, 2017, 1:30 p.m.–3:30 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2017-02-07.*

**NYISO Management Committee Meeting**

*February 22, 2017, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2017-02-22.*

**NYISO Electric System Planning Working Group Meeting**

*February 23, 2017, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2017-02-23.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

*New York Independent System Operator, Inc.,* Docket No. ER13–102.

*New York Independent System Operator, Inc.,* Docket No. ER15–2059.

*New York Transco, LLC,* Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: January 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–02291 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD13–9–000]**

### Hydropower Regulatory Efficiency Act of 2013; Notice of Workshop

The Federal Energy Regulatory Commission (FERC or Commission) staff will hold a workshop on March 30, 2017, from 12:00 p.m. to 5:00 p.m. Eastern Time in the Commission Meeting Room at 888 First Street NE., Washington, DC 20426. The purpose of the workshop is to solicit public comment on the effectiveness of the tested two-year pilot process as required by section 6 of the Hydropower Regulatory Efficiency Act of 2013. The workshop will be open to the public and all interested parties are invited to participate. The workshop will be led by Commission staff, and may be attended by one or more Commissioners. An agenda for the workshop, including a list of issues for commenter and panelist consideration, is attached to this notice.

This workshop will be transcribed. Transcripts of the workshop will be available for a fee from Ace-Federal Reporters, Inc. at (202) 347–3700. A free webcast will be available through *www.ferc.gov.* Anyone with internet access who wants to view this event can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating this event in the Calendar. The event listing will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the workshop via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call (703) 993–3100.

Registration is not required, but is encouraged. Please register at *https://www.ferc.gov/whats-new/registration/03-30-17-form.asp.*

In addition to the webcast, a limited number of phone lines will be available on a first-come, first-served basis for those who wish to participate via teleconference. If you would like to participate via teleconference, please contact Ryan Hansen at (202) 502–8074 or *ryan.hansen@ferc.gov* by February 22, 2017 to reserve a line. Please put ''Telephone line for Hydro Workshop'' in the subject line of your email.

Commission workshops are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call (866) 208–3372 (toll free) or (202) 208–8659 (TTY),

or send a FAX to (202) 208–2106 with the required accommodations.

Those who wish to file written comments may do so within 75 days of this notice, or by April 14, 2017. The Commission strongly encourages electronic filing. Please file 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 number AD13–9–000.

All comments will be placed in the Commission's public files and will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the eLibrary link. Enter AD13–9 in the docket number field to access documents. For assistance, please contact FERC Online Support.

For more information about this workshop, please contact:

Sarah Salazar (Technical Information), Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6863, *sarah.salazar@ferc.gov*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov*

Dated: January 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–02290 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

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

*Docket Numbers:* EC17–72–000.

*Applicants:* Great Western Wind Energy, LLC.

*Description:* Application under Section 203 of the FPA of Great Western Wind Energy, LLC.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5154.

*Comments Due:* 5 p.m. ET 2/21/17.

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

*Docket Numbers:* ER17–305–001.

*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Illinois Company, Ameren Transmission Company of Illinois, Northern States Power Company, a Wisconsin corporation.

*Description:* Compliance filing: 2017–01–30_Compliance filing re AIC_ATXI_NSP Attachment O ADIT revisions to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5140.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–469–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Report Filing: Supplement to ER17–469—Midwest Energy Formula Rate Revisions to be effective N/A.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5091.

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–482–001.

*Applicants:* BREG Aggregator LLC.

*Description:* Tariff Amendment: Supplement to Application for Market Based Rate Authority to be effective 1/31/2017.

*Filed Date:* 1/27/17.

*Accession Number:* 20170127–5216

*Comments Due:* 5 p.m. ET 2/17/17.

*Docket Numbers:* ER17–637–001.

*Applicants:* Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Penelec and MAIT Submit Amendment to Agency Agreement No. 4555 to be effective 12/31/9998.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5110.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–885–000.

*Applicants:* GridLiance West Transco LLC.

*Description:* Initial rate filing: GWT Western Mead IA to be effective 3/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5111.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–886–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: SWE (SMEPA) NITSA Amendment Filing (To Remove Leaf River and Southern Pines DPs) to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5145.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–887–000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: SMEPA NITSA Amendment Filing (To Add Leaf River and Southern Pines DPs) to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5149.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–888–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Queue Position #AB1–125, Original Service Agreement No. 4617 to be effective 12/29/2016.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5153.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–889–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2646R3 Kansas Municipal Energy Agency NITSA NOA to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5163.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–890–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 1636R17 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 1/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5167.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–891–000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* § 205(d) Rate Filing: IMEA–IMPA Revised PTP Service Agreements to be effective 2/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5219.

*Comments Due:* 5 p.m. ET 2/21/17.

*Docket Numbers:* ER17–892–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2017–01–30_Compliance filing regarding calculations for SRIC and SREC to be effective 2/1/2017.

*Filed Date:* 1/30/17.

*Accession Number:* 20170130–5243.

*Comments Due:* 5 p.m. ET 2/21/17.

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: January 30, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–02329 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IN12–17–000]**

### Total Gas & Power North America, Aaron Hall and Therese Tran; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on April 28, 2016 in the above-captioned docket,[1] with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket. Accordingly, pursuant to 18 CFR 385.2202 (2016), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2016), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Demetra Anas
Jennifer Auchterlonie
Martin Lawera
Taylor Martin
Lisa Owings
Eric Primosch
Felice Richter
Derek Shiau
Nicholas Stavlas
Andrew Tamayo
David Zlotnick

Dated: January 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–02287 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

[1] *Total Gas & Power North America, Aaron Hall and Therese Tran,* 155 FERC 61,105 (2016).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2232–653]**

### Duke Energy Carolinas, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

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

a. *Application Type:* Recreation Management Plan.

b. *Project No:* 2232–653.

c. *Date Filed:* November 14, 2016.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* The project is located on the Catawba and Wateree Rivers in Burke, McDowell, Caldwell, Catawba, Alexander, Iredell, Mecklenburg, Lincoln, and Gaston counties in North Carolina, and York, Lancaster, Chester, Fairfield, and Kershaw counties in South Carolina.

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

h. *Applicant Contact:* John Crutchfield, Duke Energy Carolinas, LLC, 526 S. Church St., Charlotte, NC 28202, (980) 373–2288.

i. *FERC Contact:* Dr. Tara Perry, (202) 502–6546, *tara.perry@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* March 1, 2017.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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 number P–2232–653. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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. *Description of Request:* As required by article 407 of the license, Duke Energy Carolinas, LLC requests Commission approval of a proposed recreation management plan (RMP) for the project. The RMP includes an inventory of existing project recreation sites, proposed new sites or enhancements to existing sites, provisions for operation and maintenance of existing and proposed recreation sites and facilities, conceptual drawings, maps, an implementation schedule, evaluation of the need for wildlife viewing platforms, a procedure for temporary closure of recreation sites, how the needs of persons with disability and low impact practices are considered in planning and designing recreation sites, a description of the signage program at the recreation sites, provisions for trash removal, provisions for recreation use monitoring over the license term, and the consultation record.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h)

above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–02288 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

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

**Filings Instituting Proceedings**

*Docket Number:* PR17–20–000.

*Applicants:* Atmos Pipeline—Texas.

*Description:* Tariff filing per 284.123(b), (e)/: Atmos Pipeline—Texas Revisions to Statement of Operating Conditions to be effective 12/21/2016; Filing Type: 980.

*Filed Date:* 1/23/17.

*Accession Number:* 201701235002.

*Comments/Protests Due:* 5 p.m. ET 2/13/17.

*Docket Numbers:* RP17–348–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: Negotiated Rate—Bay State release to BBPC 792857 to be effective 2/1/2017.

*Filed Date:* 1/25/17.

*Accession Number:* 20170125–5063.

*Comments Due:* 5 p.m. ET 2/6/17.

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: January 26, 2017.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2017–02330 Filed 2–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**(ER–FRL–9031–6)**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EISs)
Filed 01/23/2017 through 01/27/2017
Pursuant to 40 CFR 1506.9.

*Notice:* Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

*EIS No. 20170021, Draft, USAF, MD,* Presidential Aircraft Recapitalization Program at Joint Base Andrews-Naval Air Facility, Comment Period Ends: 03/20/2017, Contact: Jean Reynolds 210–925–4534.

*EIS No. 20170022, Final, RUS, PR,* Arecibo Waste-to-Energy and Resource Recovery Project, Review Period Ends: 03/06/2017, Contact: Steven Polacek 202–205–9805.

Dated: January 31, 2017.

**Dawn Roberts,**

*Management Analyst, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2017–02339 Filed 2–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Multilevel Interventions in Cancer Care Delivery.

*Date:* February 22, 2017.

*Time:* 12:30 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 4W032/034, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI R03/R21 SEP–1.

*Date:* March 2–3, 2017.

*Time:* 8:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review

Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W634, Rockville, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Provocative Question—6.

*Date:* March 7, 2017.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 6W032/034, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Provocative Question—7.

*Date:* March 8, 2017.

*Time:* 1:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7E032, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W112, Rockville, MD 20892–9750, 240–276–6386, *twinters@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; NCI Provocative Question—8.

*Date:* March 16, 2017.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W108, Rockville, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Member Conflict SEP.

*Date:* March 16, 2017.

*Time:* 12:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20892–9750, 240–276–7755, *byeong-chel.lee@nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel; Conference Grant Review (R13).

*Date:* March 28, 2017.

*Time:* 1:00 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20850 (Telephone Conference Call).

*Contact Person:* Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W556, Rockville, MD 20892–9750, 240–276–6411, *sahab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 30, 2017.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–02252 Filed 2–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Countermeasures Against Select Pathogens (R01).

*Date:* February 28–March 2, 2017.

*Time:* 11:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G42A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5069, *lrust@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 30, 2017.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–02246 Filed 2–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Heart, Lung, and Blood Initial Review Group; NHLBI Mentored Patient-Oriented Research Review Committee.

*Date:* February 23–24, 2017.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Cambria Suites—Rockville, 1 Helen Heneghan Way, Rockville, MD 20895.

*Contact Person:* Stephanie Johnson Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–827–7992, *stephanie.webb@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 27, 2017.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–02247 Filed 2–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2016–1078]**

### Recertification of Prince William Sound Regional Citizens' Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Coast Guard seeks comments on the recertification of the Prince William Sound Regional Citizen's Advisory Council (PWSRCAC) for March 1, 2017, through February 28, 2018. Under the Oil Pollution Act of 1990 (OPA 90), the Coast Guard may certify the PWSRCAC on an annual basis. This advisory group monitors the activities of terminal facilities and crude oil tankers under the Prince William Sound program established by the statute. The Coast Guard may certify an alternative voluntary advisory group in lieu of the PWSRCAC. The current certification for the PWSRCAC will expire February 28, 2017.

**DATES:** Public comments on PWSRCAC's recertification application must reach the Seventeenth Coast Guard District on or before February 17, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG–2014–1078 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this recertification, call or email LT Patrick Grizzle, Seventeenth Coast Guard District (dpi); telephone (907)463–2809; email *patrick.j.grizzle@uscg.mil.* If you have questions on viewing or submitting material to the docket, contact the U.S. Coast Guard Headquarters, Regulations and Administrative Law office, telephone 202–372–3862.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

#### Public Meeting

The Coast Guard does not plan to hold a public meeting. But you may submit a request for one on or before February 10, 2017 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid the process of thoroughly considering the application for recertification, we will hold one at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For the two years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that PWSRCAC must provide comprehensive information.

The Coast Guard is accepting comments concerning the recertification of PWSRCAC. At the conclusion of the comment period, February 17, 2017, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify PWSRCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: December 22, 2016.

**M.F. McAllister,**

*Commander, Seventeenth Coast Guard District.*

[FR Doc. 2017–02338 Filed 2–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2016–1010]**

### Certificate of Alternative Compliance for the M/V TURTLE

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice.

**SUMMARY:** The Coast Guard announces that the District Five Prevention Division (Dp) has issued a Certificate of Alternate Compliance (COAC) from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) for the M/V TURTLE as required by statue. Due to the construction and placement of the pilothouse aft and starboard of amidships it cannot fully comply with the masthead light provisions of the 72 COLREGS without interfering with the vessel's operations as an open deck vehicle ferry as there are no structures forward of amidships to affix a masthead light. This notice promotes the Coast Guard's maritime safety and stewardship missions.

**ADDRESSES:** Documents mentioned in the preamble are part of docket USCG–2016–1010. To view documents mentioned in this preamble as being available in the docket, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associate with this notice.

**FOR FURTHER INFORMATION CONTACT:** For information or questions about this notice call or email: CDR Scott W. Muller, District Five, Chief, Inspections and Investigations, U.S. Coast Guard, telephone 757–398–6389, email: *Scott.W.Muller@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, and sound signal provisions of the 72 COLREGS. Under statutory law [1] and Coast Guard regulation,[2] a vessel may instead meet alternative requirements and the vessel's owner, builder, operator, or agent may apply for a COAC. For vessels of special construction, the cognizant Coast Guard District Office determines whether the vessel for which the COAC is sought complies as closely as possible with the 72 COLREGS, and decides whether to issue the COAC. Once issued, a COAC remains valid until information supplied in the COAC application or the COAC terms become inapplicable to the vessel. Under the governing statute [3] and regulation,[4] the Coast Guard must publish notice of this action.

The Prevention Division, Fifth Coast Guard District hereby finds and certifies that M/V TURTLE is a vessel of special construction or purpose, and that, with respect to the position of the masthead light, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the operations of the vessel as an open deck vehicle ferry. The Prevention Division, Fifth Coast Guard District, further finds and certifies that the proposed placement of the masthead light is in the closest possible compliance with the applicable provisions of the 72 COLREGS and that full compliance with the 72 COLREGS would not significantly enhance the safety of the vessel's operation.

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.

Dated: January 24, 2017.

**Capt. Jerry R. Barnes,**

*Chief, Prevention Division, U.S. Coast Guard.*

[FR Doc. 2017–02248 Filed 2–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

[1] 33 U.S.C. 1605(c).

[2] 33 CFR 81.3.

[3] 33 U.S.C. 1605(c).

[4] 33 CFR 81.18.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2009–0973]**

### Random Drug Testing Rate for Covered Crewmembers for 2017

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of minimum random drug testing rate.

**SUMMARY:** The Coast Guard has set the calendar year 2017 minimum random drug testing rate at 25 percent of covered crewmembers.

**DATES:** The minimum random drug testing rate is effective January 1, 2017 through December 31, 2017. Marine employers must submit their 2016 Management Information System (MIS) reports no later than March 15, 2017.

**ADDRESSES:** Annual MIS reports may be submitted by electronic submission to the following Internet address: *http://homeport.uscg.mil/Drugtestreports.*

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Patrick Mannion, Drug and Alcohol Prevention and Investigation Program Manager, Office of Investigations and Casualty Analysis (CG–INV), U.S. Coast Guard Headquarters, telephone 202–372–1033.

**SUPPLEMENTARY INFORMATION:** The Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels in accordance with 46 CFR 16.230. Every marine employer is required by 46 CFR 16.500 to collect and maintain a record of drug testing program data for each calendar year, and submit this data by 15 March of the following year to the Coast Guard in an annual MIS report.

Each year, the Coast Guard will publish a notice reporting the results of random drug testing for the previous calendar year's MIS data and the minimum annual percentage rate for random drug testing for the next calendar year. The purpose of setting a minimum random drug testing rate is to assist the Coast Guard in analyzing its current approach for deterring and detecting illegal drug abuse in the maritime industry.

The Coast Guard announces that the minimum random drug testing rate for calendar year 2017 is 25 percent. The Coast Guard may increase this rate if MIS data indicates a qualitative deficiency of reported data or the positive random testing rate is greater than 1.0 percent in accordance with 46 CFR part 16.230(f)(2). MIS data for 2016 indicates that the positive rate is less than one percent.

For 2017, the minimum random drug testing rate will continue at 25 percent of covered employees for the period of January 1, 2017 through December 31, 2017 in accordance with 46 CFR 16.230(e).

Dated: January 12, 2017.

**Verne B. Gifford, Jr.,**

*Captain, USCG, Director of Inspections and Compliance.*

[FR Doc. 2017–02337 Filed 2–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

### Agency Information Collection Activities: Extension, Without Changes, of an Existing Information Collection; Comment Request; OMB Control No. 1653–0048

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** 30-day notice of information collection for review; Forms No. 73–028; ICE Mutual Agreement between Government and Employers (IMAGE); OMB Control No. 1653–0048.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE) is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** on November 28, 2016, Vol. 81 No. 228 allowing for a 60 day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension, without changes, of a currently approved information collection.

(2) *Title of the Form/Collection:* U.S. Immigration and Customs Enforcement (ICE) Mutual Agreement between Government and Employers (IMAGE) Self-Assessment Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* ICE Form 73–028; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit; Not-for-profit institutions. The U.S. Immigration and Customs Enforcement Mutual Agreement between Government and Employers (IMAGE) program is the outreach and education component of the Homeland Security Investigations (HSI) Worksite Enforcement (WSE) program. IMAGE is designed to build cooperative relationships with the private sector to enhance compliance with immigration laws and reduce the number of unauthorized aliens within the American workforce. Under this program ICE will partner with businesses representing a cross-section of industries. A business will initially complete and prepare an IMAGE application so that ICE can properly evaluate the company for inclusion in the IMAGE program. The information provided by the company plays a vital role in determining its suitability for the program. While 8 U.S.C. 1324(a) makes it illegal to knowingly employ a person who is not in the U.S. legally, there is no requirement for any entity in the private sector to participate in the program and the information obtained from the company should also be available to the public.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 90 minutes (1.5 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

Dated: January 31, 2017.

**Scott Elmore,**

*PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.*

[FR Doc. 2017–02322 Filed 2–2–17; 8:45 am]

**BILLING CODE 9111–28–P**

## DEPARTMENT OF HOMELAND SECURITY

### Immigration and Customs Enforcement

### Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request; Form No. G–146; Non-Immigrants Checkout Letter; OMB Control No. 1653–0020

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Notice.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty day until April 4, 2017.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, PRA Clearance Officer, U.S. Immigrations and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the Form/Collection:* Non-Immigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form G–146); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Dated: January 31, 2017.

**Scott Elmore,**

*PRA Clearance Officer, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.*

[FR Doc. 2017–02346 Filed 2–2–17; 8:45 am]

**BILLING CODE 9111–28–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5997–N–04]**

## 30-Day Notice of Proposed Information Collection: Housing Finance Agency Risk-Sharing Program

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* March 6, 2017.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806, Email: *OIRA Submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Inez C. Downs, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Inez C. Downs@hud.gov,* or telephone 202–402–8046. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Downs.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 12, 2016 at 81 FR 70435.

**A. Overview of Information Collection**

*Title of Information Collection:* Housing Finance Agency Risk-Sharing Program.

*OMB Approval Number:* 2502–0500.

*Type of Request:* Revision of currently approved.

*Form Number:* HUD–27038, HUD–92080, HUD–9807, HUD–92426, HUD–94195, HUD–94193, HUD–94196, HUD–2744–A, HUD–2744–B, HUD–2744–C, HUD–2744–D, HUD–2744–E, HUD–94194, HUD–94192, SF–LLL, HUD–7015.15, HUD–7015.16.

*Description of the need for the information and proposed use:* Section 542 of the Housing and Community Development Act of 1992 directs the Secretary to implement risk sharing with State and local housing finance agencies (HFAs). Under this program, HUD provides full mortgage insurance on multifamily housing projects whose loans are underwritten, processed, and serviced by HFAs. The HFAs will reimburse HUD a certain percentage of any loss under an insured loan depending upon the level of risk the HFA contracts to assume.

*Respondents:* (*i.e.* affected public): Business and other for profit.

*Estimated Number of Respondents:* 1200.

*Estimated Number of Responses:* 19,090.

*Frequency of Response:* Annually, semi-annually, and on-occasion.

*Average Hours per Response:* 1 hour to 40 hours.

*Total Estimated Burden:* 34,838.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

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

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond: including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: January 17, 2017.

**Colette Pollard,**

*Department Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 2017–02047 Filed 2–2–17; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5995–N–5]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov*.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 12–07, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–2265 (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 or send an email to *title5@hud.gov* for detailed instructions, or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*e.g.,* acreage, floor plan, condition of property, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address(es): AGRICULTURE: Ms. Debra Kerr, Department of Agriculture, OPPM, Property Management Division, Agriculture South Building, 300 7th Street SW., Washington, DC 20024, (202)–720–8873; COE: Ms. Brenda Johnson-Turner, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314, (202)–761–7238; ENERGY: Mr. David Steinau, Department of Energy, Office of Asset Management (MA–50), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0002, (202)–287–1503; INTERIOR: Mr. Michael Wright, Acquisition and Property Management, Department of the Interior, 3960 N. 56th Ave., #104 Hollywood, FL. 33021, (754)–400–7381; NAVY: Ms. Nikki Hunt, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202)–685–9426; (These are not toll-free numbers).

Dated: January 26, 2017.

**Brian P. Fitzmaurice,**

*Director, Division of Community Assistance Office of Special Needs Assistance Programs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 02/03/2017**

**Suitable/Available Properties**

*Land*

California

A Portion of Tehama Colusa
Canal Site Unit T–277 & T–268
Arbuckle CA 95912
Landholding Agency: Interior
Property Number: 61201710015
Status: Excess
Directions: T–277 (7.72 acres); T–268 (4.62 acres)
Comments: Contact Interior for more details on a specify property.

**Unsuitable Properties**

*Building*

California

Tuolumne Meadows Gas Station
Yosemite National Park
Yosemite CA 95389
Landholding Agency: Interior
Property Number: 61201710014
Status: Excess
Comments: Soil and groundwater contaminates.
Reasons: Contamination

Colorado

Buford Guard Station
2 Buildings
27085 County Road 8
Meeker CO 81641
Landholding Agency: Agriculture
Property Number: 15201710001
Status: Excess
Directions: Barn & Dwelling
Comments: Severe infestation of mice/rodents; high-risk of hantavirus.
Reasons: Extensive deterioration

Illinois

5 Buildings
Argonne National Laboratory
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41201710001
Status: Excess
Directions: Building 399; 607; 202 X&Y; 606; 384
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

6 Buildings
Argonne National Laboratory
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41201710002
Status: Excess
Directions: Building 391; 390; 389B; 375D; 375A; 311
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Kansas

Big Hill Lake
Mound Valley
Big Hill Lake Office–PO BOX 426
Cherryvale KS 67335
Landholding Agency: COE
Property Number: 31201710001
Status: Unutilized
Comments: Documented deficiencies: major cracks in foundation/wall; clear threat to physical safety.
Reasons: Extensive deterioration

Maryland

Radio Repeater Station Shed
Assateague Island Nat'l Seashore
Snow Hill MD 21863
Landholding Agency: Interior
Property Number: 61201710007
Status: Excess
Comments: Property located within floodway which has not been correct or contained.
Reasons: Floodway

Nevada

2 Buildings
Nevada National Security Site
Area 23
Mercury NV 89093
Landholding Agency: Energy
Property Number: 41201710003
Status: Unutilized
Directions: FIMS Asset ID 997075 (Building 23–425); FIMS Asset ID 993330 (Building 23–152)
Comments: Public access denied and no alternative method to gain access without compromising national security; friable asbestos.
Reasons: Secured Area; Contamination

North Carolina

Bill Smith House
Cape Lookout National Seashore
North Core Banks NC 28531
Landholding Agency: Interior
Property Number: 61201710008
Status: Unutilized
Comments: Dilapidated; unsound structurally; located on Barrier Island only accessible by boat.
Reasons: Isolated area; Floodway; Secured Area

Sammy Mason House
Cape Lookout National Seashore
North Core Banks NC 28531
Landholding Agency: Interior
Property Number: 61201710009
Status: Unutilized
Comments: Dilapidated; unsound structurally; located in Barrier Island only accessible by boat.
Reasons: Floodway; Extensive deterioration; Isolated area

Julian Hamilton House
Cape Lookout National Seashore
North Core Banks NC 28531
Landholding Agency: Interior
Property Number: 61201710010
Status: Unutilized
Comments: Structurally unsound; dilapidated; located on Barrier Island only accessible by boat.
Reasons: Floodway; Isolated area; Extensive deterioration

Utah

R01320000000100B Scofield Dam
Scofield Reservoir
Scofield UT 84526
Landholding Agency: Interior
Property Number: 61201710011
Status: Excess
Directions: Tenders House, R01320000000200B Scofield Shop Building
Comments: Property located within floodway which has not been correct or contained.
Reasons: Floodway

Storage Shed Lost Creek
Provo Area Office Weber Basin
Croydon UT 84108
Landholding Agency: Interior
Property Number: 61201710012
Status: Unutilized
Directions: R0526201400B
Comments: Ceiling collapsing, foundation has cracked; severe rodent infestation.
Reasons: Extensive deterioration

0244000200B & 02440004B
300 West 1100 North
Pleasant Grove UT 84062
Landholding Agency: Interior
Property Number: 61201710013
Status: Excess
Directions: Drill Crew Shop Warehouse & Equipment Shed
Comments: Dilapidated roof.
Reasons: Extensive deterioration

Virginia

Archie Martin Shed
Tract 26–136
Blue Ridge Parkway
Fancy Gap VA 24328
Landholding Agency: Interior
Property Number: 61201710001
Status: Excess
Comments: Overgrow by vegetation; structurally unsound.
Reasons: Extensive deterioration

Bowman Barn/Tract 26–135
Blue Ridge Parkway
Fancy Gap VA 24328
Landholding Agency: Interior
Property Number: 61201710002
Status: Excess
Comments: Overgrow by vegetation; structurally unsound; highly likely to collapse.
Reasons: Extensive deterioration

Branscombe Shed & Branscombe Hay Shed/Tract 27–132
Blue Ridge Parkway
Fancy Gap VA 24328
Landholding Agency: Interior
Property Number: 61201710003
Status: Excess
Comments: Structurally unsound.
Reasons: Extensive deterioration

Coy Martin Shed/Barn
Tract 26–114
Blue Ridge Parkway
Fancy Gap VA 24328
Landholding Agency: Interior
Property Number: 61201710004
Status: Excess
Comments: Overgrow by vegetation; structurally unsound.
Reasons: Extensive deterioration

Hawks A-Frame Dwelling
Tract 66–145
Blue Ridge Parkway
Fancy Gap VA 24328
Landholding Agency: Interior
Property Number: 61201710005
Status: Excess
Comments: Overgrow by vegetation; structurally unsound.
Reasons: Extensive deterioration

Thomas Barn Tract 22–107
Blue Ridge Parkway
Floyd VA 24091
Landholding Agency: Interior
Property Number: 61201710006
Status: Excess
Comments: Overgrow by vegetation; unsound structurally; highly likely to collapse.
Reasons: Extensive deterioration

*Land*

Connecticut

Approx. (.20) acre of Land
NAVFAC Midlant PW NLON
Box 400, Bldg. 135 Grayling Ave.
Groton CT 06349
Landholding Agency: Navy
Property Number: 77201710006
Status: Underutilized
Directions: (8,690 sq. ft.)
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Approx. (.45) acre of Land
NAVFAC Midlant PW NLON
Box 400, Bldg. 135 Grayling Ave.
Groton CT 06349
Landholding Agency: Navy
Property Number: 77201710007
Status: Underutilized
Directions: (19,947 sq. ft.)
Comments: Public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

[FR Doc. 2017–02045 Filed 2–2–17; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORN00100.L63340000.PH0000. 17XL1116AF.LXSSH1020000.HAG 17–0069]**

### Notice of Public Meeting for the Northwest Oregon Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Northwest Oregon Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The RAC will meet on Thursday, March 16, 2017 from 9:00 a.m. to 5:00 p.m.

**ADDRESSES:** The meeting will be held at the BLM Northwest Oregon District Office, 1717 Fabry Rd SE., Salem, OR 97306. The RAC members will consider recreation-related subcommittee work and approve a new Chairperson among other topics. Members of the public will have the opportunity to make comments to the RAC during a public comment period at 12:00 p.m. The public also may send written comments to the RAC at the Northwest Oregon District Office, 1717 Fabry Road SE., Salem, OR 97306.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Velez, Coordinator for the Northwest Oregon RAC, 1717 Fabry Road SE., Salem, OR 97306, (541) 222–9241, *jvelez@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1(800) 877–8339 to contact the above individuals during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The fifteen-member Northwest Oregon RAC was chartered to serve in an advisory capacity concerning the planning and management of the public land resources located within the BLM's Northwest Oregon District. Members represent an array of stakeholder interests in the land and resources from within the local area and statewide. All advisory council meetings are open to the public. Persons wishing to make comments during the public comment period of the meeting should register in person with the BLM, at the meeting location, preceding that meeting day's public comment period. Depending on the number of persons wishing to comment, the length of comments may be limited. The public may also send written comments to the RAC at the Northwest Oregon District Office, 1717 Fabry Road SE., Salem, OR 97306. The BLM appreciates all comments.

**Richard T. Cardinale,**

*Acting Assistant Secretary, Land and Minerals Management.*

[FR Doc. 2017–02354 Filed 2–2–17; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTC 00900.L16100000.DP0000 MO#4500103670]**

### Notice of Public Meeting, Dakotas Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Dakotas RAC meeting will be held on February 16, 2017.

**ADDRESSES:** The RAC will meet at the BLM South Dakota Field Office, 309 Bonanza Street in Belle Fourche, South Dakota. The meeting location and times will also be announced in a local news release.

**FOR FURTHER INFORMATION CONTACT:** Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301; (406) 233–2831; *mjacobse@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in North and South Dakota. At this meeting, topics will include: An Eastern Montana/Dakotas District report, North Dakota Field Office and South Dakota Field Office manager reports, new member introductions, discussion on the Montana/Dakotas RAC chair meeting, individual RAC member reports and other topics and issues the council may wish to cover. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

**Authority:** 43 CFR 1784.4–2.

**Richard T. Cardinale,**

*Acting Assistant Secretary, Land and Minerals Management.*

[FR Doc. 2017–02302 Filed 2–2–17; 8:45 am]

**BILLING CODE 4310–DN–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[17X L1109AF LLUT980300–L10100000.PH0000–24–1A]**

### Utah Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will host a meeting.

**DATES:** On Feb. 23 and 24, 2017, the Utah RAC will hold a meeting in St. George, Utah. On Feb. 23, the RAC will meet from 8:30 a.m. to 5 p.m. On Feb. 24, the RAC will meet from 8 a.m. to 10 a.m. An optional field tour of the Red Cliffs National Conservation Area will take place on Feb. 24 from 10 a.m. to 1 p.m.

**ADDRESSES:** The RAC will meet at the BLM Arizona Strip District Office, 345 E. Riverside Drive, St. George, Utah 84770. Written comments may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

**FOR FURTHER INFORMATION CONTACT:** If you wish to attend the field tour, contact Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or, *lbird@blm.gov* no later than Wednesday, Feb. 15, 2017.

**SUPPLEMENTARY INFORMATION:** Agenda topics will include an introduction of new BLM managers, an update on the Planning 2.0 Rule, implementation of Greater Sage-Grouse plans, and updates on current resource management planning efforts and major projects.

A public comment period will take place on Feb. 23 from 3 p.m. to 4 p.m., where the public may address the RAC. Written comments may also be sent to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this notice.

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to leave a message or question for the above individual. The FRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

**Authority:** 43 CFR 1784.4–1.

**Richard T. Cardinale,**

*Acting Assistant Secretary, Land and Minerals Management.*

[FR Doc. 2017–02301 Filed 2–2–17; 8:45 am]

**BILLING CODE 4310–DQ–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–972]**

### Certain Automated Teller Machines, ATM Modules, Components Thereof, and Products Containing the Same; Commission Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding; and Granting a Motion To Amend the Complaint and Notice of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''final ID'') issued by the presiding administrative law judge (''ALJ'') on November 30, 2016, finding a violation of section 337 of the Tariff Act of 1930, in the above-captioned investigation. The Commission has also determined to grant the motion filed on December 23, 2016, by the complainants to amend the complaint and notice of investigation. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing from the parties and interested persons on the issues of remedy, the public interest, and bonding.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on November 20, 2015, based on a complaint filed by Diebold Incorporated and Diebold Self-Service Systems (collectively, ''Diebold''). 80 FR 72735–36 (Nov. 20, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 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 automated teller machines, ATM modules, components thereof, and products containing the same by reason of infringement of certain claims of six United States Patents: 7,121,461 (''the '461 patent''); 7,249,761 (''the '761 patent''); 7,314,163 (''the '163 patent''); 6,082,616 (''the '616 patent''); 7,229,010 (''the '010 patent''); and 7,832,631 (''the '631 patent''). *Id.* The notice of investigation named as respondents Nautilus Hyosung Inc. of Seoul, Republic of Korea; Nautilus Hyosung America Inc. of Irving, Texas; and HS Global, Inc. of Brea, California (collectively, ''Nautilus''). *Id.* at 72736. The Office of Unfair Import Investigations was not named as a party. *Id.*

The '461 patent, '761 patent, and '163 patent were previously terminated from the investigation. *See* Order No. 12 (Apr. 28, 2016), *not reviewed,* Notice (May 11, 2016); Order No. 21 (June 28, 2016), *not reviewed,* Notice (July 28, 2016). The presiding administrative law judge (''ALJ'') conducted an evidentiary hearing from August 29, 2016 through September 1, 2016. On November 30, 2016, the ALJ issued the final Initial Determination (''final ID'' or ''ID''). The final ID found a violation of section 337 with respect to the '616 and '631 patents, and no violation with respect to the '010 patent. ID at 207–09. The ALJ recommended that a limited exclusion order and cease and desist orders issue against Nautilus.

Nautilus and Diebold each filed a petition for review of the ID. No party petitioned for review concerning the '010 patent, the Commission has determined not to review the ID's finding of no violation as to the '010 patent, and the investigation is hereby terminated as to that patent. What remain are asserted claims 1, 5–8, 10, 16, 26 and 27 of the '616 patent; and asserted claims 1–7 and 18–20 of the '631 patent. Diebold's petition deals principally with the '616 patent, and Nautilus's petition deals principally with the '631 patent.

Separately, on December 23, 2016, Diebold moved the Commission for leave to amend the complaint and notice of investigation to change the name of Diebold, Incorporated (one of the two complainants) to Diebold Nexdorf, Incorporated. Nautilus did not oppose the motion. The Commission hereby grants the motion.

On December 30, 2016, the parties submitted statements on the public interest. Diebold contends that the investigation does not raise any public interest concerns. Nautilus asserts that a Commission exclusion order should include a certification provision and that any Commission remedial orders be tailored to allow repair of existing Nautilus ATMs in the United States. In addition, the Commission received submissions from United States Representative James B. Renacci, United States Senator Sherrod Brown, and certain Nautilus customers.

Having reviewed the record of investigation, including the ALJ's orders and initial determinations, including the final ID, as well as the parties' petitions for review and responses thereto, the Commission has determined to review the ID in part.

For the '616 patent, the Commission has determined to review the constructions of the terms ''service opening'' and ''a second position

wherein . . . the service opening is not accessible from outside the housing.'' The Commission finds that the term ''service opening'' is to receive its plain and ordinary meaning. The Commission finds that the term means ''an opening through which a component may be serviced.'' The Commission finds that the term ''second position wherein . . . the service opening is not accessible from outside the housing'' is to be afforded its plain and ordinary meaning. The claim language ''the service opening is not accessible from outside the housing'' in the second position, read in view of the intrinsic record of the '616 patent, expressly states that ''the service opening is not accessible''; it does not state that the ''service point'' is not accessible from outside the housing in the second position. The Commission's reasoning in support of its claim construction determinations is set forth more fully in the Commission Claim Construction Opinion.

In view of the Commission's determination to review and modify the construction of these two claim limitations, the Commission has also determined to review:

(1) Whether the accused products infringe each of the asserted claims of the '616 patent literally or under the doctrine of equivalents;

(2) whether the asserted claims of the '616 patent are obvious in view of Diebold's 1064i ATM; and

(3) whether Diebold has satisfied the technical prong for the domestic industry requirement for the '616 patent.

The Commission has determined to review and to take no position on whether, for the '631 patent, Diebold satisfied the economic prong of the domestic industry requirement under 19 U.S.C. 1337(a)(3)(B) based on its field service labor expenditures.

The Commission has determined not to review the remainder of the ID.

The parties are asked to brief the issues for the '616 patent of infringement, obviousness in view of Diebold's 1064i ATM, and the technical prong, in view of the Commission's constructions, and with reference to the applicable law and the existing evidentiary record. For each argument presented, the parties' submissions should demonstrate that the argument has been preserved in accordance with the ALJ's Ground Rules as well as Commission Rule 210.43(b), 19 CFR 210.43(b).

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues under review as set forth above. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. The complainants are requested to submit proposed remedial orders for the Commission's consideration. The complainants are also requested to state the date that the '631 and '616 patents expire, the HTSUS numbers under which the accused products are imported, and the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on February 10, 2017, and should not exceed 40 pages. Reply submissions must be filed no later than the close of business on February 17, 2017, and such replies should not exceed 30 pages. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–972'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 30, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–02276 Filed 2–2–17; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1306 (Final)]**

### Large Residential Washers From China

#### Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (''the Act''), that an industry in the United States is materially injured by reason of imports of large residential washers from China, provided for in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').

#### Background

The Commission instituted this investigation effective December 16, 2015, following receipt of a petition filed with the Commission and Commerce by Whirlpool Corporation, Benton Harbor, Michigan. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of large residential washers from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 18, 2016 (81 FR 55231). The hearing was held in Washington, DC, on December 7, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on January 30, 2017. The views of the Commission are contained in USITC Publication 4666 (January 2017), entitled *Large Residential Washers from China: Investigation No. 731–TA–1306 (Final).*

By order of the Commission.

Issued: January 30, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–02245 Filed 2–2–17; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–718 (Fourth Review)]**

### Glycine From China; Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted this review on August 1, 2016 (81 FR 50547) and determined on November 4, 2016 that it would conduct an expedited review (81 FR 87589, December 5, 2016).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on January 31, 2017. The views of the Commission are contained in USITC Publication 4667 (January 2017), entitled *Glycine From China: Investigation No. 731–TA–718 (Fourth Review).*

By order of the Commission.

Issued: January 31, 2017.

**Katherine M. Hiner,**

*Acting Supervisory Attorney.*

[FR Doc. 2017–02340 Filed 2–2–17; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Richard W. Walker, Jr., M.D.; Decision and Order

On October 3, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Richard W. Walker, M.D. (Registrant), of League City, Texas. The Show Cause Order proposed the revocation of his DEA Certificate of Registration No. AW2558750, on the ground that he does not have authority to dispense controlled substances in Texas, the State in which he is registered with the Agency. Order to Show Cause, at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Registration No. AW2558750, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 4604 Hispania View Drive, League City, Texas. *Id.* The Order also alleges that Registrant's registration does not expire until May 31, 2017. *Id.*

As ground for the proposed action, the Show Cause Order alleged that ''[t]he Texas Medical Board issued an order, effective June 10, 2016, which accepted [the] surrender of [his] authority to practice medicine.'' *Id.* The Order thus asserted that as a consequence of the Board's action, Registrant is without authority to dispense controlled substances in Texas, the State in which he is registered, and thus, ''DEA must revoke'' his Registration. *Id.* at 1 (citing 21 U.S.C. 802(21), 823(f)(1) and 824(a)(3)).

The Show Cause Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence of failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43).

The Show Cause Order also notified Registrant of his right to submit a corrective action plan. *Id.* at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

On or about October 3, 2016, a Diversion Investigator (DI) from the Houston Division Office sent the Order to Show Cause by Certified Mail to Registrant at the address of his registered location. Appendix 4, at 2 (Declaration of DI). According to the DI, on or about October 11, 2016 she received back the signed return-receipt card showing that the Show Cause Order had been received at Registrant's registered address. *Id.* at 2. The DI further averred that while the date of receipt was not marked on the card, the Postal Service's Web site shows that the mailing ''was signed for on October 7, 2016.'' *Id.*

On December 12, 2016, the Government submitted a Request for Final Agency Action (RFFA) and an evidentiary record to my Office. Therein, the Government represents that more than 30 days have passed since the Order to Show Cause was served on Registrant and that it ''has not received a request for hearing or any other reply from'' Registrant. RFFA at 2.

Based on the Government's representation and the record, I find that more than 30 days have passed since the date of service of the Show Cause Order, and that neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing, and issue this Decision and Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

**Findings**

Registrant is the holder of Certificate of Registration No. AW2558750, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 4604 Hispania View Drive, League City, Texas; his registration does not expire until May 31, 2017. Appendix 2 (Certificate of Registration).

On June 10, 2016, Registrant entered into an Agreed Order of Revocation with the Texas Medical Board (the Board) ''to avoid further investigation, hearings, and the expense and inconvenience of litigation.'' Appendix 3, at 4 (Agreed Order of Revocation). The Board specifically found that Registrant ''failed to adequately supervise his prescriptive delegate . . . who non[-]therapeutically prescribed controlled substances and who operated an unregistered pain management clinic.'' *Id.* at 3. While ''[n]one of the patients involved in the allegations were [his] personal patients'' and Registrant ''denied the allegation,'' he ''surrender[ed] his license because of his inability to practice due to health reasons.'' *Id.* He further ''accept[ed] that the revocation of his Texas medical license will be accepted in lieu of further disciplinary proceedings and that it [was] effective on the date of the entry of th[e] Agreed Order.'' *Id. See also id.* at 4 (citing Tex. Occ. Code Ann. §§ 164.053(a)(8) and 164.057; 22 Tex. Admin. Code 196.2). The Board thus ordered that Registrant's medical license be revoked and that he ''immediately cease practice in Texas.'' *Id.*

Based on the Board's Order, and Registrant's failure to submit any evidence to show that his medical license has been reinstated, I find that Registrant is no longer currently authorized to dispense controlled substances in Texas, the State in which he is registered with the Agency.

**Discussion**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has had [his] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which he engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices medicine. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988); *Blanton,* 43 FR at 27616.

As found above, by virtue of the Agreed Order of Revocation, Registrant currently lacks authority to practice medicine and dispense controlled substances in Texas, the State in which he holds his DEA registration. Accordingly, I will order that his registration be revoked.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration AW2558750, issued to Richard W. Walker, Jr., M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Richard W. Walker, Jr., M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective March 6, 2017.

Dated: January 27th, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2017–02320 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Janet Carol Dean, M.D.; Decision and Order

On September 22, 2016, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Janet Carol Dean, M.D. (Registrant), of Denver, Colorado. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration No. BD2298621, the denial of any applications to renew or modify her registration, and the denial of any applications for any other DEA registration, on the ground that she does not have authority to handle controlled

substances in Colorado, the State in which she is registered with the DEA. Order to Show Cause, at 1 (citing 21 U.S.C. 824(a)(3)).

With respect to the Agency's jurisdiction, the Show Cause Order alleged that Registrant is the holder of Certificate of Registration No. BD2298621, pursuant to which she is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 710 E. Speer Blvd., Denver, Colorado. *Id.* The Order also alleged that this registration does not expire until June 30, 2017. *Id.*

As ground for the proceeding, the Show Cause Order alleged that on August 22, 2016, the Colorado Medical Board issued an order ''which suspended [her] medical license'' and that she is ''currently without authority to practice medicine or handle controlled substances in the State of Colorado, the [S]tate in which [she is] registered with the'' Agency. *Id.* at 2. Based on her ''lack of authority to [dispense] controlled substances in . . . Colorado,'' the Order asserted that ''DEA must revoke'' her registration. *Id.* (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order notified Registrant of her right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for electing either option, and the consequence for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The Show Cause Order also notified Registrant of her right to submit a corrective action plan. *Id.* at 2–3.

On or about September 29, 2016, a Diversion Investigator from the Denver Field Division mailed the Order to Show Cause to Registrant by Certified Mail, Return Receipt Requested, addressed to her at the following addresses: (1) An address which, according to the Government was her registered address, but which is recorded on the Certified Mail Receipt as 710 E. Speed Blvd.; (2) her mailing address on file with the Agency; and (3) the address listed on her Colorado driver's license. Government Request for Final Agency Action (RFFA), at 1–2. According to both USPS tracking information and the signed return-receipt card, the mailing to Registrant's mailing address was signed for on October 6, 2016.[1] GX 3, at 2–3.

[1] Because of the discrepancy between the addresses listed in the registration history (710 E. Speer Blvd., Denver, CO) and the address as written on the Certified Mail receipt (710 E. Speed Blvd., Denver, CO), I cannot find that this attempt at service was effective. As for the mailing of the Show Cause Order to the address on her driver's license, it was returned unclaimed. Thus, I rely only on the mailing to the mailing address she provided to the Agency.

On December 7, 2016, the Government forwarded its Request for Final Agency Action and an evidentiary record to my Office. Therein, the Government represents that Registrant has neither requested a hearing nor ''otherwise corresponded or communicated with DEA regarding'' the Show Cause Order. RFFA, at 2.

Based on the Government's representation and the record, I find that more than 30 days have passed since the Order to Show Cause was served on Registrant and she has neither requested a hearing nor submitted a written statement in lieu of a hearing. *Id.* at 2 (citing 21 CFR 1301.43(d)). Accordingly, I find that Registrant has waived her right to a hearing or to submit a written statement and issue this Decision and Order based on relevant evidence submitted by the Government. I make the following findings.

## Findings

Registrant is the holder of DEA Certificate of Registration BD2298621, pursuant to which she is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 710 E. Speer Blvd., Denver, Colorado. GX 1, at 1 (Certification of Registration History). Her registration does not expire until June 30, 2017. *Id.*

On August 22, 2016, the Colorado Medical Board (the Board) issued an Order of Suspension to Registrant, which was effective the same day. GX 4, at 2 (Order of Suspension). According to the Board's Order, an Inquiry Panel reviewed information that ''during the period of January 1, 2016 to May 27, 2016, [Registrant] signed in excess of 450 certifications recommending the medical use of marijuana which authorized the individual to possess more marijuana plants than were medically necessary to treat the patients' conditions.'' *Id.* at 1. The Inquiry Panel also found that the ''certifications f[ell] below generally accepted standards of medical practice and lack[ed] medical necessity,'' in violation of Colorado law. *Id.* (citing, *inter alia,* Col. Rev. Statutes §§ 12–36–117(l)(p) and (mm)).

The Panel further found that the ''significant number of standard of care deviations, within a six-month period, raise[d] significant concerns regarding Respondent's medical judgment and decision-making.'' *Id.* at 2. And based on its conclusion that there were ''objective and reasonable grounds to believe . . . that [Registrant] deliberately and willfully violated the Medical Practice Act and/or that the public health, safety or welfare imperatively requires emergency action,'' the Panel ordered the suspension of her medical license which ''shall remain in effect until resolution'' of the Board's matter. *Id.*

## Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of Title 21, ''upon a finding that the registrant . . . has had [her] State license . . . suspended [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, DEA has repeatedly held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a registration. *See, e.g., James L. Hooper,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *see also Frederick Marsh Blanton,* 43 FR 27616 (1978) (''State authorization to dispense or otherwise handle controlled substances is a prerequisite to the issuance and maintenance of a Federal controlled substances registration.'').

This rule derives from the text of two provisions of the CSA. First, Congress defined ''the term 'practitioner' [to] mean[ ] a . . . physician . . . or other person licensed, registered or otherwise permitted, by . . . the jurisdiction in which [s]he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which [s]he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the Act, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever she is no longer authorized to dispense controlled substances under the laws of the State in which she engages in professional practice. *See, e.g., Calvin Ramsey,* 76 FR 20034, 20036 (2011); *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR

11919, 11920 (1988); *Blanton,* 43 FR 27616 (1978).

Moreover, because ''the controlling question'' in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration ''is currently authorized to handle controlled substances in the [S]tate,'' *Hooper,* 76 FR at 71371 (quoting *Anne Lazar Thorn,* 62 FR 12847, 12848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner has lost his state authority by virtue of the State's use of summary process and the State has yet to provide a hearing to challenge the suspension. *Bourne Pharmacy,* 72 FR 18273, 18274 (2007); *Wingfield Drugs,* 52 FR 27070, 27071 (1987). Thus, it is of no consequence that the Colorado Medical Board has employed summary process in suspending Registrant's state license. What is consequential is that Registrant is no longer currently authorized to dispense controlled substances in the State in which she is registered. I will therefore order that her registration be revoked.

**Order**

Pursuant to the authority vested in me by 21 U.S.C. 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BD2298621, issued to Janet Carol Dean, M.D., be, and it hereby is, revoked. Pursuant to the authority vested in me by 21 U.S.C. 823(f), I further order that any pending application of Janet Carol Dean, M.D., to renew or modify her registration, or for any registration in the State of Colorado, be, and it hereby is, denied. This Order is effective immediately.[2]

Dated: January 27th, 2017.

**Chuck Rosenberg,**

*Acting Administrator.*

[FR Doc. 2017–02321 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 19, 2017, the Department of Justice lodged a proposed settlement agreement with the United States Bankruptcy Court for the District of Delaware in the lawsuit entitled *In re SRC Liquidation LLC, et al.,* Case No. 15–10541–BLS (Bankr. D. Del). The proposed settlement agreement, if approved, will fully resolve the proof of claim filed by the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), against SRC Liquidation LLC (''SRC''), formerly known as The Standard Register Company, contending that SRC is liable under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601–9675, for response costs incurred and to be incurred by the United States at the Valleycrest Landfill Superfund Site (a/k/a/North Sanitary Landfill) in the City of Dayton, Montgomery County, Ohio (''Site''). Under the proposed settlement agreement, the United States, on behalf of EPA, shall have an allowed general unsecured claim against SRC of $4,300,000, which shall be entitled to the same treatment as other allowed general unsecured claims under SRC's approved plan of liquidation.

The publication of this notice opens a period for public comment on the proposed settlement agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *In re SRC Liquidation LLC, et al.,* D.J. Ref. No. 90–11–3–11076/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| To submit comments: | Send them to: |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed settlement agreement may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will also provide a paper copy of the proposed settlement agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $3.00 (12 pages at 25 cents per page reproduction cost) payable to the United States Treasury.

**Randall M. Stone,**

*Acting Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2017–02334 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1121–0220]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Bureau of Justice Assistance Application Form: Public Safety Officers Educational Assistance

**AGENCY:** Bureau of Justice Assistance, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** 81 FR 84617 on November 23, 2016 allowing for a 60-day comment period.

**DATES:** Comments are encouraged and will be accepted for an additional 30 days until March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michelle Martin, Senior Management Analyst, Bureau of Justice Assistance, 810 Seventh Street NW., Washington, DC 20531 (phone: 202 514–9354). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

[2] For the same reasons that led the Colorado Board to summarily suspend Registrant's medical license, I find that the public interest necessitates that this Order be effective immediately. 21 CFR 1316.67.

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

Overview of this information collection:

1 *Type of Information Collection:* Extension of a currently approved collection.

2 *The Title of the Form/Collection:* Public Safety Officers Educational Assistance.

3 *The agency form number:* None.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for-profit.

*Others:* None.

*Abstract:* BJA's Public Safety Officers' Benefits (PSOB) Office will use the PSOEA Application information to confirm the eligibility of applicants to receive PSOEA benefits. Eligibility is dependent on several factors, including the applicant having received or being eligible to receive a portion of the PSOB Death Benefit, or having a spouse or parent who received the PSOB Disability Benefit. Also considered are the applicant's age and the schools being attended. In addition, information to help BJA identify an individual is collected, such as contact numbers and email addresses.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that no more than 200 new respondents will apply a year. Each application takes approximately 30 minutes to complete.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 100 hours. It is estimated that new respondents will take 30 minutes to complete an application. The burden hours for collecting respondent data sum to 100 hours (200 respondents × 0.5 hours = 100 hours).

*If additional information is required contact:* Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: January 31, 2017.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2017–02324 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0003]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the STOP Formula Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 56 STOP state administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)) and their subgrantees. The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. The STOP Formula Grants Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grants Program. The grant funds must be distributed by STOP state administrators to subgrantees according to a statutory formula (as amended by VAWA 2000 and by VAWA 2005).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly

2500 subgrantees [1] to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grants Program is divided into sections that pertain to the different types of activities that subgrantees may engage in and the different types of subgrantees that receive funds, *i.e.* law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the annual progress report is 2,556 hours.

*If additional information is required contact:* Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: January 30, 2017.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2017–02244 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–NEW]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 30-day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** at 81 FR 85641 on November 28, 2016, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for 30 days until March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

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

**Overview of This Information Collection**

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* STOP Formula Grant Program Match Documentation Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states and the District of Columbia The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which are awarded to states and territories to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women. Each state and territory must allocate 25 percent for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which at least 10 percent must be distributed to culturally specific community-based organizations), 5 percent to state and local courts, and 15 percent for discretionary distribution. VAWA provides for a 25 percent match requirement imposed on grant funds under the STOP Formula Grant Program. Thus, a grant made under this program may not cover more than 75 percent of the total costs of the project being funded. Under VAWA 2005, the state cannot require matching funds for a grant or subgrant for any tribe, territory, or victim service provider, regardless of funding allocation category. The state is exempted from matching the portion of the state award that goes to a victim service provider for victim services or that goes to tribes. Territories are also exempted in full. States can receive additional waiver of match based on a petition to OVW and a demonstration of financial need. OVW will look at the time of closeout at the entities and purposes of funds and base the required match on that.

The purpose of this new information collection is to provide a worksheet for documenting the amount of matching funds required at the closeout of a specific fiscal year award under the STOP Formula Grant Program. The type of questions on the worksheet will include award number, award amount, amount of funds sub-awarded to victim service providers for victim services or to tribes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 51 respondents

[1] Each year the number of STOP subgrantees changes. The number 2,500 is based on the number of reports that OVW has received in the past from STOP subgrantees.

approximately ten minutes to complete a STOP Formula Grant Program match documentation worksheet.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 8.5 hours, that is 51 STOP State Administrators completing an assessment tool one time with an estimated completion time being ten minutes.

*If additional information is required contact:* Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E, 405B, Washington, DC 20530.

Dated: January 31, 2017.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2017–02318 Filed 2–2–17; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 6, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-1240-009* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act (LHWCA) information collection. The regulations and forms cover the submission of information relating to the processing of claims for benefits under the LHWCA and its extensions. The LHWCA authorizes this information collection. *See* 33 U.S.C. 901 *et seq.*

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0014.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 28, 2016 (81 FR 75160).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0014. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OWCP.

*Title of Collection:* Regulations Governing the Administration of the Longshore and Harbor Workers' Compensation Act.

*OMB Control Number:* 1240–0014.

*Affected Public:* Private Sector—businesses or other for-profit.

*Total Estimated Number of Respondents:* 90,759.

*Total Estimated Number of Responses:* 90,759.

*Total Estimated Annual Time Burden:* 32,971 hours.

*Total Estimated Annual Other Costs Burden:* $26,203.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: January 25, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02312 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employment and Training Administration Quick Turnaround Surveys

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Employment and Training Administration Quick Turnaround Surveys'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 6, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-1205-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the ETA Quick Turnaround Surveys generic clearance. The ICR is for eight (8) to twenty (20) surveys over the next three years, with each survey being simple and relatively short (10–30 questions). The surveys will be designed on an ad hoc basis and will focus on emerging topics of pressing policy interest in order to fill critical gaps in ETA's information needs about the workforce system. Survey results will inform development of legislation, regulations, and technical assistance. The surveys could focus on the state or local level, or some combination of both, and respondents could include management, staff or leadership in state workforce agencies, local boards, American Job Centers, Employment Service offices, or other partners. This information collection has been classified as a revision, because the ETA seeks to have the surveys be available for the variety of issues concerning the very broad spectrum of programs administered by ETA, instead of the single statute focus previously approved. The nature of the surveys will remain unchanged.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0436. The current approval is scheduled to expire on January 31, 2017; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 13, 2016 (81 FR 62923).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0436. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Title of Collection:* Employment and Training Administration Quick Turnaround Surveys.

*OMB Control Number:* 1205–0436.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 5,000.

*Total Estimated Number of Responses:* 5,000.

*Total Estimated Time Burden:* 7,500 hours.

*Total Estimated Annual Other Costs Burden:* $0.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: January 25, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02313 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Noise Exposure Standard

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled,

''Occupational Noise Exposure Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 6, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201611-1218-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Occupational Noise Exposure Standard information collection requirements specified in regulations 29 CFR 1910.95 that require an Occupational Safety and Health Act (OSH Act) covered employer to monitor worker exposure to noise when it is likely such exposures may equal or exceed 85 decibels measured on the A scale (dBA) on an 8-hour time-weighted average (TWA) (action level); to take action to reduce noise exposures to the 90 dBA permissible exposure limit; and to provide an effective hearing conservation program (HCP) for all workers exposed to noise at a level greater than, or equal to, a TWA of 85 dBA. The HCP contains annual audiometric testing for workers; a provision for providing hearing protection devices to exposed workers; education and training of exposed workers; and maintenance of records pertaining to noise exposure-monitoring and audiometric testing. OSH Act sections 2(b), 6, and 8 authorize the information collection provisions. *See* 29 U.S.C. 651(b), 655, and 657. *See* 29 U.S.C. 651(b), 29 U.S.C. 655 and 29 U.S.C. 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0048.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 4, 2016 (81 FR 68457).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0048. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Occupational Noise Exposure Standard.

*OMB Control Number:* 1218–0048.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 216,055.

*Total Estimated Number of Responses:* 15,356,111.

*Total Estimated Annual Time Burden:* 2,184,591 hours.

*Total Estimated Annual Other Costs Burden:* $31,242,929.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: January 25, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02317 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Evaluation of Round 4 of the Trade Adjustment Assistance Community College and Career Training Grant Program

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the information collection request (ICR) proposal titled, ''National Evaluation of Round 4 of the Trade Adjustment Assistance Community College and Career Training Grant Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 6, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation;

including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201608-1291-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OASAM, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks PRA approval in order to conduct the National Evaluation of Round 4 of the Trade Adjustment Assistance Community College and Career Training (TAACCCT) Grant Program information collection. The TAACCCT grant program provides community colleges and other eligible institutions of higher education with funds to expand and improve their ability to deliver education and career training programs that can be completed in two years or less and are suited for workers who are eligible for training under the Trade Adjustment Assistance for Workers Program. This ICR seeks approval for the following information collections: Participant tracking data form, 12-month follow-up survey, college survey, and employer interviews.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on June 22, 2016 (81 FR 40720).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201608–1291–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OASAM.

*Title of Collection:* National Evaluation of Round 4 of the Trade Adjustment Assistance Community College and Career Training Grant Program.

*OMB ICR Reference Number:* 201608–1291–001.

*Affected Public:* Individuals or Households; State, Local, and Tribal Governments; Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 3,095.

*Total Estimated Number of Responses:* 4,762.

*Total Estimated Annual Time Burden:* 853 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: January 23, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02342 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–HX–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Asbestos in General Industry Standard

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Asbestos in General Industry Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 6, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201611-1218-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Asbestos in General Industry Standard information collections codified in regulations 29 CFR 1910.1001 that require an Occupational Safety and Health Act (OSH Act) covered employer subject to the Standard to monitor worker exposure; to notify workers of their asbestos exposures; to develop a written compliance program; to maintain records concerning the presence, location, and quantity of asbestos-containing materials and/or presumed asbestos-containing materials; to provide medical surveillances; to provide examining physicians with specific information; to ensure workers receive a copy of the physician's written opinion; to maintain workers' exposure monitoring and medical records for specific periods; and to provide the OSHA, National Institute for Occupational Safety and Health, affected workers, and their authorized representatives access to these records. Employers, workers, physicians, and the Government use these records to ensure exposure to asbestos in the workplace does not harm workers. OSH Act sections 2, 6, and 8 authorize this information collection. *See* 29 U.S.C. 651, 655, and 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0133.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on February 28, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 21, 2018 (81 FR 47440).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0133. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Asbestos in General Industry Standard.

*OMB Control Number:* 1218–0133.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 121.

*Total Estimated Number of Responses:* 32,173.

*Total Estimated Annual Time Burden:* 11,688 hours.

*Total Estimated Annual Other Costs Burden:* $963,650.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: January 19, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02315 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Job Corps Application Data

**ACTION:** Notice.

**SUMMARY:** On January 31, 2017, the Department of Labor (DOL) will submit the Employment Training Administration (ETA) sponsored information collection request (ICR) titled, ''Job Corps Application Data,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before March 2, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201612-1205-003* (this link will only become active February 1, 2017) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064 (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks continued PRA authorization for Job Corps application data collected on three forms (ETA–652, Job Corps Data Sheet; ETA–655, Statement from Court or Other Agency; and ETA–682, Child Care Certification) used for screening and enrollment purposes to determine eligibility for the Job Corp program in accordance with Workforce Innovation and Opportunity Act (WIOA) requirements. The information collected concerns economic criteria and past behavior as well as information needed to certify an applicant's arrangements for care of dependent children while the applicant is in the Job Corps. WIOA section 145 authorizes this information collection. *See* 29 U.S.C. 3196.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0025.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2016 (81 FR 86015).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by March 2, 2017. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0025. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–ETA.

*Title of Collection:* Job Corps Application Data.

*OMB Control Number:* 1205–0025.

*Affected Public:* Individuals and Households.

*Total Estimated Number of Respondents:* 139,955.

*Total Estimated Number of Responses:* 139,955.

*Total Estimated Annual Time Burden:* 12,556 hours.

*Total Estimated Annual Other Costs Burden:* $ 0.

Dated: January 25, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–02319 Filed 2–2–17; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before March 6, 2017.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

#### II. Petitions for Modification

*Docket Number:* M–2016–009–M.

*Petitioner:* Coeur Alaska, Inc., 1700 Lincoln Street, Suite 4700, Denver, Colorado 80203.

*Mine:* Kensington Mine, MSHA I.D. No. 50–01544, located in Juneau County, Alaska.

*Regulation Affected:* 30 CFR 57.11052(d) (refuge areas).

*Modification Request:* The petitioner requests a modification of the existing

standard for refuge areas applied to the development and exploration areas at its Kensington mine. The petitioner seeks approval to use the recently installed Strata-manufactured, 12-person emergency refuge chambers—portable (ERCP), which are equipped with internal air and water supplies, without having to provide compressed air and waterlines. The petitioner states that:

(1) On July 12, 2016, Coeur submitted a petition for modification (PFM #1) seeking relief from § 57.11050. PFM #1 seeks relief from MSHA's requirement that Coeur provides a refuge chamber within 1,000 feet of the development face in the mine. During Coeur's discussions with MSHA as part of the review of PFM #1 and Coeur's compliance with § 57.11050, Coeur learned that a second petition for modification (PFM #2) was necessary to seek relief from § 57.11052(d). The petitioner requests that MSHA consider PFM #2 in conjunction with information submitted previously for PFM #1 because the factual basis for both petitions and means of compliance for both standards are intertwined. These means of compliance will provide the same or greater measure of safety as the existing regulations.

(2) The petitioner owns and operates the Kensington mine, an underground gold mine located in Juneau County, Alaska. Kensington utilizes both transverse and longitudinal long-hole stoping. In both methods, a single development drift is driven through waste rock adjacent to the ore body. When this drift reaches planned elevations, level accesses are developed to provide entry points to the ore body for exploration and later ore production. Once the level development and exploration are completed at a planned elevation, the ore is extracted either perpendicular (transverse stoping) or parallel to the strike of the ore (longitudinal stoping).

(3) With PFM #1, Coeur sought relief from MSHA's interpretation of 30 CFR 57.11050 that would require that a refuge chamber be located within 1,000 feet of the development face. Part of the basis for PFM #1 is that the petitioner's miners at the development face can walk to the existing refuge chamber within 30 minutes as required by the standard and the existing location of the permanent refuge chamber complies with § 57.11050. Also, the petitioner has voluntarily elected to provide an ERCP in the vicinity of the development face, and to reposition that ERCP from time to time as development advances.

(4) Because ERCP is equipped with a minimum of a 72-hour internal air supply for up to 12 miners, and more than 20 gallons of potable water, the petitioner seeks relief from the requirement in § 57.11052(d) to connect compressed air and waterlines to the ECRP each time it is repositioned.

(5) The ERCP as constructed by the manufacturer complies with § 57.11052 because the ERCP has internal air and water sources. Kensington has been in operation since 1987. The petitioner has operated the mine since 1995, and between 1995 and 2009, activities were exclusively exploration and development. Coeur did not begin production until 2010, with limited production areas. The portions of the Kensington mine that are relevant to PFM #2 are still in the exploration and development phases—no production is occurring in these areas. During the fourth quarter of 2016, Kensington typically had nine stopes associated with production, and approximately three main development drifts in which exploration and development are taking place. The precise number of stopes and drifts may vary slightly from one month to the next.

Currently, 100 percent of Kensington's operations below the 480 level are either development or exploration. At present, the ERCP is positioned within 1,000 feet from the development face, and the current location of Kensington's permanent refuge station adjacent to the 585 Downramp complies with the requirements of §§ 57.11050 and 57.11052(d) because the miners working in the development area can reach it within 30 minutes, and compressed airlines and waterlines are installed at that station.

(6) The ERCP is located directly below the 330 level access, and has air and waterlines connected to it. However, the ERCP will not remain in this location permanently. The petitioner will relocate the ERCP in the future as development activities advance. The ERCP is more than a reinforced metal compartment to physically shield miners following an underground emergency—it is a self-contained chamber with own sources for electrical power, breathable air, water, food, and a lavatory. Even without being connected to mine services, the ERCP can provide electrical power and breathable air to occupants for a minimum of 72 hours if the atmosphere outside the ERCP is contaminated. The ERCP is equipped with enough potable water to last three days with up to 12 occupants.

(7) Section 57.11052(d) requires that every refuge area be provided with compressed air lines, waterlines, suitable hand tools, and stopping materials. Based on our research, there is no regulatory or judicial history that explains the purpose behind a requirement for compressed air lines and waterlines. Accordingly, petitioner assumes that these lines are intended to serve the purpose a reasonably prudent person, familiar with the mining industry, would expect—to provide a source of breathable air and potable water to miners inside a refuge area.

As a matter of simple logic, an operator complies with § 57.11052(d) by prepositioning hand tools and stoping materials inside the refuge area for future use. Similarly, if air and water could be prepositioned in a refuge area for future use, the operator would be complying with the standard. Historically, it was difficult to ensure that sufficient breathable air and potable water would be available in a refuge area. Today, the technology behind the ERCP enables the petitioner to provide a sustainable environment for its miners and a viable time window for mine rescue teams to reach the ERCP following an emergency, thereby rendering the requirement for external air waterlines obsolete—particularly when the ERCP is a supplemental device in addition to Kensington's existing permanent refuge stations.

(8) Section 57.11052(d) does not specify a minimum quantity, volume or pressure for air lines and water lines, and the regulation makes no mention of independent power sources or lengths of time the air and waterlines need to be available at the refuge area. The standard simply requires they be provided. The ERCP provides breathable air and potable water. Kensington already complies with the standards requirement. This capability to provide known quantities of air and water internally is a benefit to the ERCP occupants because there is no risk of interrupted air and water access from external damage to the lines, and the known quantities allow mine rescue teams to make informed decisions regarding the length of time that an ERCP can provide a sustainable environment for its occupants.

(9) Installing air lines and water lines each time the ERCP is relocated to remain in proximity to the development face would result in a diminution of safety; however, requested relief provides an equivalent degree of safety to § 57.11051(d).

Kensington's underground operations take place in a dynamic environment, and its exploration and development areas are dominated by self-propelled mobile equipment and blasting activities. At desired development rates, Kensington typically advances its faces

in development drifts twice per day, with each advance being a 12-foot length. If the ERCP will have to be relocated from time to time to remain in the vicinity of the development face, as contemplated in PFM #1, the ERCP would have to be relocated on a recurring basis.

(10) Repeated movement of the ERCP puts miners at risk for several reasons. An ERCP cannot simply be parked on the decline because of its size—it would block access between the development drift face and the escapeways. To allow for the decline to remain clear, a cutout into the rib must be made to park the ERCP, making the relocation more complex.

(11) Damage to the ERCP will put miners at risk as the refuge may not function as intended. Each time the ERCP is relocated, there is a potential that the ERCP will be damaged in some manner. Similarly, if a compressed air line and waterline need to be run and connected to each new location for the ERCP, there is a chance that the lines or the connections will be damaged. Potential damage to the ERCP and the external airline and waterlines increases each time they are moved, disconnected, rerouted, reconnected, and tested. The risk of damaging the lines and connectors is eliminated by relying on the ERCP's self-contained capabilities.

The ERCP can only provide a safety benefit to miners while the device is operational. To the extent an ERCP is unavailable while being relocated, that window of non-availability will increase while the air and water lines are being run, connected and tested for the new location. As such, complying with § 57.11052(d) with respect to the relocating of the ERCP will have a detrimental effect on miner safety.

(12) There are significant costs associated with each movement of an ERCP. The ERCP is roughly 15-feet long, and requires a cutout that is 30-feet deep. The development costs at Kensington are approximately $1,500 per foot, meaning that each 30-foot cutout will cost $45,000 to create. Installing air, water and shotcrete will add to the figure. Moving the unit will take 2 miners approximately 12 hours, at a labor cost of $1,136. In total, the average cost to relocate a portable refuge one time is almost $50,000. To the extent these costs can be controlled by alleviating redundant or unnecessary requirements, Coeur's submits this petition.

The petitioner asserts that the alternative method will at all times provide the same measure of protection as the existing standard.

**Sheila McConnell,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 2017–02297 Filed 2–2–17; 8:45 am]

**BILLING CODE 4520–43–P**

## LEGAL SERVICES CORPORATION

### Request for Letters of Intent To Apply for 2017 Technology Initiative Grant Funding

**AGENCY:** Legal Services Corporation.

**ACTION:** Notice.

**SUMMARY:** The Legal Services Corporation (LSC) issues this Notice describing the process for submission of Letters of Intent to Apply for 2017 funding from the LSC Technology Initiative Grant program. This notice and application information are posted at *http://tinyurl.com/TIGProcess2017.*

**DATES:** *Deadline:* Letters of Intent must be completed and submitted into the online system at *http://lscgrants.lsc.gov* no later than 11:59 p.m. EDT, Friday, March 13, 2017. The online system may experience technical difficulties due to heavy traffic on the day of the deadline. Applicants are strongly encouraged to complete LOI submissions as early as possible.

LSC will not accept applications submitted after the application deadline unless an extension of the deadline has been approved in advance (see Waiver Authority). Therefore, allow sufficient time for online submission.

LSC will provide confirmation via email upon receipt of the completed electronic submission of each Letter of Intent. Keep this email as verification that the program's LOI was submitted and received. If no confirmation email is received, inquire about the status of your LOI at *Techgrants@lsc.gov.*

**ADDRESSES:** Letters of Intent must be submitted electronically at *http://lscgrants.lsc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information on the status of a current TIG project, contact Eric Mathison, Program Analyst, 202–295–1535; *emathison@lsc.gov.*

For questions about projects in CT, IL, IN, ME, MA, MI, NH, NJ, NY, OH, PA, RI, WI, WV, VT, contact David Bonebrake, Program Counsel, 202–295–1547; *dbonebrake@lsc.gov.*

For questions about projects in AK, AZ, CA, CO, GU, HI, ID, IA, KS, MP, MN, MT, NE, NV, NH, NM, ND, OK, OR, SD, TX, UT, WA, WY, contact Glenn Rawdon, Senior Program Counsel, 202.295.1552; *grawdon@lsc.gov.*

For questions about projects in AL, AR, DC, FL, GA, KY, LA, MD, MS, MO, NC, PR, SC, TN, VI, VA, contact Jane Ribadeneyra, Program Analyst, 202.295.1554, *ribadeneyraj@lsc.gov.*

If you have a general question, please email *techgrants@lsc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Summary

The Legal Services Corporation (LSC) issues this Notice describing the criteria governing submission and processing of Letters of Intent to Apply for Technology Initiative Grants (TIG). Since LSC's TIG program was established in 2000, LSC has made over 670 grants totaling more than $57 million. This grant program funds technology tools that help achieve LSC's goal of increasing the quantity and quality of legal services available to eligible persons. Projects funded under the TIG program develop, test, and replicate innovative technologies that can enable grant recipients and state justice communities to improve low-income persons' access to high-quality legal assistance through an integrated and well managed technology system.

#### II. General Information

The Legal Services Corporation awards Technology Initiative Grant funds through an open, competitive, and impartial selection process. All prospective applicants for 2017 TIG funds must submit a Letter of Intent to Apply (LOI) prior to submitting a formal application. The format and contents of the LOI should conform to the requirements specified below in Section IV.

Through the LOI process, LSC selects those projects that have a reasonable chance of success in the competitive grant process based on LSC's analysis of the project description and other information provided in the LOI. LSC will solicit full proposals for the selected projects.

*LSC Requirements*

Technology Initiative Grant funds are subject to all LSC requirements, including the requirements of the Legal Services Corporation Act (LSC Act), any applicable appropriations acts and any other applicable laws, rules, regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (LSC), including, but not limited to, the LSC Audit Guide for Recipients and Auditors, the Accounting Guide for LSC Recipients, the CSR Handbook, the 1981 LSC Property Manual (as amended) and the

Property Acquisition and Management Manual, with any amendments to the foregoing adopted before or during the period of the grant. Before submitting a Letter of Intent to Apply, applicants should be familiar with LSC's subgrant and transfer requirements at 45 CFR parts 1610 and 1627 (see *http://www.lsc.gov/about/laws-regulations/lsc-regulations-cfr-45-part-1600-et-seq*), particularly as they pertain to payments of LSC funds to other entities for programmatic activities.

For additional information and resources regarding TIG compliance, including transfers, subgrants, third-party contracting, conflicts of interest, grant modification procedures, and special TIG grant assurances, see LSC's TIG compliance Web page.

*Eligible Applicants*

Only current LSC basic field grant recipients awarded at least a one-year basic field grant term are eligible to apply for TIG.

LSC will not award a TIG to any applicant that is not in good standing on any existing TIG projects. Applicants must be up to date according to the milestone schedule on all existing TIG projects prior to submitting an LOI, or have requested and received an adjustment to the original milestone schedule. LSC will not award a TIG to any applicant that has not made satisfactory progress on prior TIGs. LSC recipients that have had a previous TIG terminated for failure to provide timely reports and submissions are not eligible to receive a TIG for three years after their earlier grant was terminated. This policy does not apply to applicants that worked with LSC to end a TIG early after an unsuccessful project implementation resulting from technology limitations, a failed proof of concept, or other reasons outside of the applicant's control.

*Funding Availability*

The amount of TIG funding available will depend on the 2017 fiscal year appropriation to the LSC from Congress, which had not been determined by January 26, 2017, the date this notice was issued. The federal government is currently operating under a Continuing Resolution (CR) that expires April 28, 2017. The Continuing Resolution maintains funding at FY 2017 levels, which for TIG is $4 million, but with an across-the-board reduction of 0.19 percent, or $7,600 for TIG. In 2016, 34 TIG projects received funding with a median funding amount of $87,211. (See TIG's past awards Web page for more information on past grants). LSC recommends a minimum amount for TIG funding requests of $40,000, but projects with lower budgets will be considered. There is no maximum amount for TIG funding requests that are within the total appropriation for TIG.

*Collaborations*

The TIG program encourages applicants to reach out to and include in TIG projects others interested in access to justice—the courts, bar associations, pro bono projects, libraries, and social service agencies. Partnerships can enhance the reach, effectiveness, and sustainability of many projects.

*Grant Categories*

LSC will accept projects in two application categories:

(1) Innovations and Improvements
(2) Replication and Adaptation

*Grant Category 1: Innovations and Improvements*

The Innovations and Improvements Category is designated for projects that: (1) Implement new or innovative approaches for using technology in legal services delivery; or (2) enhance the effectiveness and efficiency of existing technologies so that they may be better used to increase the quality and quantity of services to clients.

Although there is no funding limit or matching requirement for applications in this category, additional weight is given to projects with strong support from partners. Proposals for initiatives with broad applicability and/or that would have impact throughout the legal services community are strongly encouraged.

*Grant Category 2: Replication and Adaptation*

The Replication and Adaptation category is for proposals that seek to replicate, adapt, or provide added value to the work of prior technology projects. This includes, but is not limited to, the implementation and improvement of tested methodologies and technologies from previous TIG projects. Applicants may also replicate technology projects funded outside of the TIG program, including sectors outside the legal aid community, such as social services organizations, the broader non-profit community, and the private sector.

Project proposals in the Replication and Adaptation category may include, but are not limited to:

*A: Replication of Previous TIG Projects*

LSC requires that any original software developed with TIG funding be available to other legal services programs at little or no cost. Applicants should look to previous successful TIG projects and determine how they could be replicated at a reduced cost from the original project, and/or how they could be expanded and/or enhanced. Projects where original software or content has already been created lend themselves to replication, and LSC encourages programs to look to these projects to see how they could benefit the delivery systems in their state.

*B: Automated Form Replication*

LawHelp Interactive (LHI) LHI is an automated document server powered by HotDocs Server and made available to any LSC funded program at no charge. LHI is deployed across the country with thousands of active HotDocs templates and A2J Author modules hosted on the LawHelp Interactive National HotDocs Server at *https://lawhelpinteractive.org.* Despite differences from state to state in the content and format, many of these forms can be edited for use in other jurisdictions with less effort, hence at a lower cost, than developing the form from scratch.

Even if a form differs from one state to another, the information needed to populate a form will, for the most part, be similar. (What are the names of the plaintiff, the defendant, the children, etc.?). This means the interviews are more easily replicated than form templates. All of these form templates and interviews are available to be modified as needed. Applicants should identify which forms and templates are to be adapted, and then estimate the cost to do this and compare that to the cost of developing them from scratch.

LHI has the capacity to support Spanish, Vietnamese, Mandarin and Korean language interviews. In addition, LHI has been integrated with other systems to allow the flow of information between LHI and court e-filing systems and legal aid case management systems. The ''Connect'' feature enables pro bono programs from across a state to use LHI interviews and forms to assign pre-screened pro bono cases and their documents to panel attorneys. For additional information, including examples, best practices, models and training materials, see the LawHelp Interactive Resource Center at *http://www.probono.net/dasupport* (you may need to request a free membership to access this Web site).

*C: Replication of Technology Projects in Other Sectors*

In addition to replicating other TIG funded technology projects, LSC encourages replication of proven technologies from non-LSC funded legal

aid organizations as well as sectors outside the legal aid community. Ideas for replication may be found through resources and organizations such as the Legal Services National Technology Assistance Project (LSNTAP), the American Bar Association, international legal aid providers such as the Legal Services Society of British Columbia and HiiL's Innovating Justice project, Idealware (see the article on Unleashing Innovation), NTEN, and TechSoup.

**III. Area of Interest—Projects That Respond to LSC's Statewide Web Site Evaluation**

Through support from the Ford Foundation, LSC worked closely over the last year with a user-centered research and design agency to assess the quality and usability of statewide legal aid Web sites across the country. By February 8, 2017, LSC will share individual assessment results with each Web site and provide sites and stakeholders access to a toolkit and set of how-to guides for implementing the findings and recommendations from the evaluation.

This area of interest focuses on projects that build on the key insights from the assessment to improve statewide Web site(s). Projects may address enhancements to an individual statewide Web site and/or to one of the national legal aid Web site templates (LawHelp or DLAW-OpenAdvocate). Proposals should demonstrate how the proposed project responds to one or more of the nine focus areas identified through the assessment: 1. Plain Language; 2. Language Access; 3. Content Presentation; 4. Accessibility; 5. User Support; 6. Mobile Friendly; 7. Community Engagement; 8. Ease of Navigation; and 9. Visual Design & Iconography. In addition, proposals should highlight how the project will enhance the quality of user experience on the statewide Web site and how the improvements to the site will be measured. LSC welcomes both new Web site innovations and replications of successful initiatives under this area of interest.

**IV. Specific Letter of Intent To Apply Requirements**

*One Project per Letter of Intent*

Applicants may submit multiple LOIs, but a separate LOI should be submitted for each project for which funding is sought.

*Letter Requirements and Format*

Letters of Intent must be submitted using the online system at *http://lscgrants.lsc.gov.* Additional instructions and information can be found on the TIG Web site. This system will walk you through the process of creating a simple two-page LOI. The LOI should concisely provide the following information about the proposed project:

1. *Category*—select the appropriate category from the drop down list.

2. *Description of Project (maximum 2500 characters)*—Briefly describe the basic elements of the project, including the specific technology(ies) the project will develop or implement; how they will be developed, how they will operate, the function they will serve within the legal services delivery system, their expected impact, and other similar factors. (Only the impact should be highlighted here; more details about the system's benefits should be provided below.)

3. *Major Benefits (maximum 2500 characters)*—Describe the specific ways in which the project will increase or improve services to clients and/or enhance the effectiveness and efficiency of legal aid organization operations. To the extent feasible, discuss both the qualitative and quantitative aspects of these benefits.

4. *Estimated Costs (maximum 1500 characters)*—This should include the amount of funding you are seeking from the TIG program, followed by the estimated total project cost, summarizing the anticipated costs of the major components of the project. List anticipated contributions, both in-kind and monetary, from all partners involved in the project.

5. *Major Partners (maximum 1500 characters)*—Identify organizations that are expected to be important partners. Specify the role(s) each partner will play.

6. *Innovation/Replication (maximum 1500 characters)*—Identify how and why the proposed project is new and innovative and/or is a replication or adaptation of a previous technology project. Identify how and why the proposed project can significantly benefit and/or be replicated by other legal services providers and/or the legal services community at large.

*Selection Process*

LSC will initially review all Letters of Intent to Apply to determine whether they conform to the required format and clearly present all of the required elements listed and described above. Failure to meet these requirements may result in rejection of the Letter of Intent.

LSC will review each Letter of Intent to identify those projects likely to improve access to justice, or to improve the efficiency, effectiveness, and quality of legal services provided by grantees. The Letters of Intent will also be reviewed to determine the extent to which the project proposed is clearly described and well thought out, offers major benefits to our targeted client community, is cost-effective, involves all of the parties needed to make it successful and sustainable, and is either innovative or a cost-effective replication of prior successful projects. LSC will invite those applicants that satisfy these criteria to submit full applications.

*Next Steps for Successful Applicants*

LSC will notify successful applicants by April 21, 2017. Successful applicants will have until 11:59 p.m. EDT, Monday, June 5, 2017, to complete and submit full applications in the online application system.

*Waiver Authority*

LSC, upon its own initiative or when requested, may waive provisions in this Notice at its sole discretion. Waivers may be granted only for requirements that are discretionary and not mandated by statute or regulation. Any request for a waiver must set forth the reason for the request and be included in the application. LSC will not consider a request to extend the deadline for a Letter of Intent to Apply unless the extension request is received by LSC prior to the deadline.

Dated: January 30, 2017.

**Mark F. Freedman,**

*Senior Associate General Counsel.*

[FR Doc. 2017–02249 Filed 2–2–17; 8:45 am]

**BILLING CODE 7050–01–P**

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 2017–3]**

### Notice of Intent To Audit

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

**ACTION:** Public notice.

**SUMMARY:** The U.S. Copyright Office is announcing receipt of eight notices of intent to audit certain statements of account filed by cable operators and satellite carriers pursuant to the section 111 and 119 statutory licenses.

**FOR FURTHER INFORMATION CONTACT:** Regan A. Smith, Deputy General Counsel, by email at *resm@loc.gov* or by telephone at 202–707–8350; or Jason E. Sloan, Attorney-Advisor, by email at *jslo@loc.gov* or by telephone at 202–707–8350.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Sections 111 and 119 of the Copyright Act (''Act''), Title 17 of the United States Code, establish compulsory licenses under which cable operators and satellite carriers may, by complying with the license terms, retransmit copyrighted over-the-air broadcast programming. Among other requirements, cable and satellite licensees must file statements of account and deposit royalty fees with the U.S. Copyright Office (''Office'') on a semi-annual basis.

The Satellite Television Extension and Localism Act of 2010, Public Law 111–175 (2010), amended the Act by directing the Register of Copyrights (''Register'') to issue regulations to allow copyright owners to audit the statements of account and royalty fees that cable operators and satellite carriers file with the Office. *See* 17 U.S.C. 119(b)(2) (directing the Register to ''issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection''); 17 U.S.C. 111(d)(6) (directing the Register to ''issue regulations to provide for the confidential verification by copyright owners whose works were embodied in the secondary transmissions of primary transmissions pursuant to [section 111] of the information reported on the semiannual statements of account filed under this subsection for accounting periods beginning on or after January 1, 2010, in order that the auditor designated under subparagraph [111(d)(6)(A)] is able to confirm the correctness of the calculations and royalty payments reported therein''). Following a lengthy rulemaking proceeding, the Office issued such regulations, adopting the audit process now set forth in 37 CFR 201.16. *See* 79 FR 68623 (Nov. 18, 2014). Section 201.16(c)(1) requires any copyright owner who intends to audit a statement of account to provide written notice to the Register no later than three years after the last day of the year in which the statement of account was filed with the Office. 37 CFR 201.16(c)(1). Such notice may be submitted by an individual copyright owner or a designated agent that represents a group or multiple groups of copyright owners. *Id.* The notice must be received in the Office on or after December 1st and no later than December 31st. *Id.*

While the Office is supposed to publish a notice in the **Federal Register** announcing the receipt of any notices of intent to audit between January 1st and January 31st of the following calendar year, due to an internal mail-processing delay affecting the Office of the General Counsel's receipt of such notices, this year's publication of otherwise timely-received notices in the **Federal Register** was delayed. Consequently, the November 1 deadline for delivery of the final audit report is extended to November 4, 2017. *See id.* 201.16(i)(3). All other deadlines concerning the audit process shall remain as prescribed in 37 CFR 201.16, meaning, for example, that notices to participate in these audits are due within 30 days after the publication of this notice. *See id.* 201.16(c)(3).

## II. Notices

On December 31, 2016, the Office received the below notices of intent to audit statements of account. The notices were submitted jointly by the Office of the Commissioner of Baseball, National Football League, National Basketball Association, Women's National Basketball Association, National Hockey League, and National Collegiate Athletics Association pursuant to 37 CFR 201.16(c):

1. Notice of intent to audit the statements of account filed by DISH Network, LLC for the accounting periods January 1–June 30, 2013 and July 1–December 31, 2014.

2. Notice of intent to audit the statement of account filed by Bright House Networks LLC for the cable system serving Orlando, Florida and the surrounding area (Licensing Division No. 10444) for the accounting period July 1–December 31, 2014.

3. Notice of intent to audit the statement of account filed by Bright House Networks LLC for the cable system serving Hillsborough, Florida and the surrounding area (Licensing Division No. 20503) for the accounting period July 1–December 31, 2014.

4. Notice of intent to audit the statements of account filed by Comcast of Boston, Inc. for the cable system serving Boston, Massachusetts and the surrounding area (Licensing Division No. 1240) for the accounting periods July 1–December 31, 2014 and January 1–June 30, 2016.

5. Notice of intent to audit the statements of account filed by Time Warner Cable New York City, LLC for the cable system serving the borough of Manhattan in New York, New York and the surrounding area (Licensing Division No. 7761) for the accounting periods July 1–December 31, 2014 and January 1–June 30, 2016.

6. Notice of intent to audit the statements of account filed by Charter Communications Entertainment 1 LLC for the cable system serving St. Louis, Missouri and the surrounding area (Licensing Division No. 20437) for the accounting periods July 1–December 31, 2014 and July 1–December 31, 2015.

7. Notice of intent to audit the statement of account filed by MCC Iowa, LLC for the cable system serving Des Moines, Iowa and the surrounding area (Licensing Division No. 7649) for the accounting period July 1–December 31, 2014.

8. Notice of intent to audit the statement of account filed by Cox Communications Gulf Coast LLC for the cable system serving Pensacola, Florida and the surrounding area (Licensing Division No. 34160) for the accounting period July 1–December 31, 2014.

Dated: January 31, 2017.

**Sarang V. Damle,**

*General Counsel and Associate Register of Copyrights, U.S. Copyright Office.*

[FR Doc. 2017–02294 Filed 2–2–17; 8:45 am]

**BILLING CODE 1410–30–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (17–004)]**

### Aerospace Safety Advisory Panel; Meeting

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

**DATES:** Thursday, February 23, 2017, 2:15 p.m. to 3:45 p.m., Local Time.

**ADDRESSES:** NASA Kennedy Space Center, Headquarters Building, Room 2201, Kennedy Space Center, FL 32899.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Hamilton, Executive Director, Aerospace Safety Advisory Panel, NASA Headquarters, Washington, DC 20546, (202) 358–1857 or *carol.j.hamilton@nasa.gov.*

**SUPPLEMENTARY INFORMATION:** The Aerospace Safety Advisory Panel (ASAP) will hold its First Quarterly Meeting for 2017. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

—Updates on the Exploration Systems Development

—Updates on the Commercial Crew Program
—Updates on the International Space Station Program

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. This meeting is also available telephonically. Any interested person may call the USA toll free conference call number (800) 467–6272; pass code 612448. Attendees will be required to sign a visitor's register and to comply with NASA Kennedy Space Center security requirements, including the presentation of a valid picture ID and a secondary form of ID, before receiving an access badge. Due to the Real ID Act, Public Law 109–13, any attendees with driver's licenses issued from noncompliant states/territories must present a second form of ID. Noncompliant states/territories are Maine, Minnesota, Missouri, Montana, and Washington. All U.S. citizens desiring to attend the ASAP 2017 First Quarterly Meeting at the Kennedy Space Center must provide their full name; date of birth; place of birth; social security number; company affiliation and full address (if applicable); residential address; telephone number; driver's license number; email address; country of citizenship; and naturalization number (if applicable); to the Kennedy Space Center Protective Services Office no later than close of business on February 17, 2017.

All non-U.S. citizens must submit their full name; current address; driver's license number and state (if applicable); citizenship; company affiliation (if applicable) to include address, telephone number, and title; place of birth; date of birth; U.S. visa information to include type, number, and expiration date; U.S. Social Security Number (if applicable); Permanent Resident (green card) number and expiration date (if applicable); place and date of entry into the U.S.; and passport information to include country of issue, number, and expiration date; to the Kennedy Space Center Protective Services Office no later than close of business on February 7, 2017.

If the above information is not received by the dates noted, attendees should expect a minimum delay of two (2) hours. All visitors to this meeting will be required to process in through the Kennedy Space Center Badging Office, Building M6–0224, located just outside of Kennedy Space Center Gate 3, on SR 405, Kennedy Space Center, Florida. Please provide the appropriate data required above by email to Tina Delahunty at *tina.delahunty@nasa.gov* or fax (321) 867–7206, noting at the top of the page ''Public Admission to the NASA Aerospace Safety Advisory Panel Meeting at KSC.'' For security questions, please email Tina Delahunty at *tina.delahunty@nasa.gov.*

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety in NASA, not to exceed five (5) minutes in length. To do so, members of the public must contact Ms. Carol Hamilton at *carol.j.hamilton@nasa.gov* or at (202) 358–1857 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2017–02341 Filed 2–2–17; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2016–026]**

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules.

**DATES:** NARA must receive requests for copies in writing by March 6, 2017. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

*Mail:* NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

*Email: request.schedule@nara.gov.*

*Fax:* 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

**SUPPLEMENTARY INFORMATION:** NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many

of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

**SCHEDULES PENDING:**

1. Department of the Army, Agency-wide (DAA–AU–2016–0042, 1 item, 1 temporary item). Master files of an electronic information system that contains records relating to marketing in support of recruitment efforts.

2. Department of the Army, Agency-wide (DAA–AU–2016–0048, 9 items, 9 temporary items). Records related to individual and unit mobilization and duty assignments.

3. Department of the Army, Agency-wide (DAA–AU–2016–0051, 1 item, 1 temporary item). Records related to equipment requirements to support named operations.

4. Department of the Army, Agency-wide (DAA–AU–2016–0052, 1 item, 1 temporary item). Master files of an electronic information system that contains records related to ammunition accountability.

5. Department of the Army, Agency-wide (DAA–AU–2016–0062, 1 item, 1 temporary item). Master files of an electronic information system that contains records related to emergency management system calls and responses.

6. Department of Commerce, National Institute of Standards and Technology (DAA–0167–2016–0006, 5 items, 5 temporary items). Associates' records to include case files pertaining to guest researchers. Included are applications, travel information, and agreements.

7. Department of Commerce, National Institute of Standards and Technology (DAA–0167–2016–0007, 6 items, 6 temporary items). Records of the National Voluntary Laboratory Accreditation Program, including accreditation records, assessor files, laboratory files, and supporting documents for the accreditation program.

8. Department of Energy, Naval Nuclear Propulsion Program (DAA–0434–2015–0006, 30 items, 27 temporary items). Mission related records including policies and procedures, staging packages, power plant checks, fleet support, equipment history, project support and associated records. Proposed for permanent retention are records of nationally significant events, significant research, and program planning and execution.

9. Department of Homeland Security, U.S. Secret Service (DAA–0087–2016–0002, 2 items, 1 temporary item). Master files of a retired electronic information system used to manage internal investigations and security functions. Proposed for permanent retention are master files of an electronic information system used to manage mission-related criminal investigations and protective activities.

10. Department of Transportation, Federal Railroad Administration (DAA–0399–2015–0001, 2 items, 1 temporary item). Records pertaining to general correspondence. Proposed for permanent retention is correspondence pertaining to senior officials.

11. General Services Administration, Public Buildings Service (DAA–0121–2015–0001, 21 items, 14 temporary items). Records relating to durable property, routine building drawings and specifications, routine inspections, reports, studies, and certificates; routine equipment and art inventories; routine property appraisal, planning, and disposal records; construction program records and project files; and facility management, operations, and services, leasing, and building physical security records. Proposed for permanent retention are real property records documenting acquisition, ownership and disposal; significant building drawings and specifications, inspections, reports, studies, and certificates relating to buildings, equipment, and property; significant art inventory records; property disposal case records; significant new building methods and materials records; and buildings program records regarding nationwide agreements with Federal agencies.

12. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0001, 1 item, 1 temporary item). A General Records Schedule for Federal agency administrative and information technology help desk records.

13. National Archives and Records Administration, Government-wide (DAA–GRS–2017–0002, 2 items, 2 temporary items). A General Records Schedule for public customer service records.

14. Peace Corps, Office of Global Operations (DAA–0490–2017–0001, 1 item, 1 temporary item). Records of the Office of Staging and Pre-Departure, related to facilitating the orientation and departure of volunteers to overseas posts.

15. Vietnam Education Foundation, Agency-wide (DAA–0508–2017–0001, 17 items, 9 temporary items). Records to include biographies, routine photographs, compliance reports, grant applications, fellowship files, and immigration documents. Proposed for permanent retention are Board of Directors records, official photographs, Executive Director correspondence, publications, news releases, video recordings, and historical documents.

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2017–02327 Filed 2–2–17; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Submission for OMB Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice.

**SUMMARY:** The National Credit Union Administration (NCUA) will be submitting the following information

collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before March 6, 2017 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314, Suite 5067, or email at *PRAComments@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* 3133–0102.

*Title:* Truth in Lending Act (TILA); Regulation Z.

*Abstract:* The Truth in Lending Act (TILA) was enacted to foster comparison credit shopping and informed credit decision making by requiring accurate disclosure of the costs and terms of credit to consumers and to protect consumers against inaccurate and unfair credit billing practices. Regulation Z contains several provisions that impose information collection requirements: Open-end credit products; closed-end credit; both open- and closed-end mortgage credit; specific residential mortgage types—namely, reverse mortgages and high cost mortgages with rates and fees above specified thresholds; private education loans, and information collection requirements related to Regulation Z's advertising and record retention rules.

The collection of information pursuant to Part 1026 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. To ease the compliance cost (particularly for small credit unions), model forms and clauses are appended to the regulation.

*Type of Review:* Reinstatement of a previously approved collection.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 3,351,131.

*OMB Number:* 3133–0152.

*Title:* Management Official Interlocks, 12 CFR part 711.

*Abstract:* The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (''Interlocks Act'') generally prohibits financial institution management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies. The Interlocks Act exempts interlocking arrangements between credit unions and, therefore, in the case of credit unions, only restricts interlocks between credit unions and other institutions-banks and thrifts and their holdings. A credit union must obtain approval to have a director in common with a diversified savings and loan holding company before dual service is to begin and maintain records to comply with the small market share exemption. The collection of information under Part 711 is needed to provide evidence of compliance with the requirements of the Interlocks Act.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Annual Burden Hours:* 6.

*OMB Number:* 3133–0165.

*Title:* Fair Credit Reporting Act (FCRA); Regulation V.

*Abstract:* The Fair Credit Reporting Act (FCRA), sets standards for the collection, communication, and use of information bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living. The Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) amended a number of consumer financial protection laws, including most provisions of FCRA. In addition to substantive amendments, the DFA transferred rulemaking authority for most provisions of FCRA to the Consumer Financial Protection Bureau (CFPB). Pursuant to the DFA and FCRA, as amended, CFPB promulgated Regulation V, 12 CFR 1022, to implement those provisions of FCRA for which CFPB has rulemaking authority.

*Regulation V contains several requirements that impose information collection requirements:* The negative information notice; risk-based pricing; the procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies; the duties upon notice of dispute from a consumer; the affiliate marketing opt-out notice, and the prescreened consumer reports opt-out notice.

*The DFA did not transfer certain rulemaking authority under FCRA. Specifically, the DFA did not transfer to CFPB the authority to promulgate:* The requirement to properly dispose of consumer information; the rules on identity theft red flags and corresponding interagency guidelines on identity theft detection, prevention, and mitigation; and the rules on the duties of card issuers regarding changes of address. These provisions are promulgated in NCUA's Fair Credit Reporting regulation, 12 CFR 717, which applies to federal credit unions.

The collection of information pursuant to Parts 1022 and 717 is triggered by specific events and disclosures and must be provided to consumers within the time periods established under the regulation. To ease the compliance cost (particularly for small credit unions), model clauses and sample forms are appended to the regulations.

*Type of Review:* Reinstatement of a previously approved collection.

*Affected Public:* Individuals or Households; Private Sector: Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 303,546.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on January 31, 2017.

Dated: January 31, 2017.

**Dawn D. Wolfgang,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2017–02316 Filed 2–2–17; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2017–0001]**

### Sunshine Act Meeting Notice

**DATE:** February 6, 13, 20, 27, March 6, 13, 2017

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of February 6, 2017—Tentative**

There are no meetings scheduled for the week of February 6, 2017.

*February 13, 2017—Tentative*

*Thursday, February 16, 2017*

9:00 a.m. Briefing on Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: Andrew Proffitt: 301–415–1418).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

*Friday, February 17, 2017*

9:30 a.m. Briefing on Project Aim (Public Meeting) (Contact: Tammy Bloomer: 301–415–1785).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

**Week of February 20, 2017—Tentative**

There are no meetings scheduled for the week of February 20, 2017.

**Week of February 27, 2017—Tentative**

*Wednesday, March 1, 2017*

10:00 a.m. Briefing on NRC International Activities (Closed Ex. 1 & 9).

*Thursday, March 2, 2017*

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Nuclear Materials Users Business Lines (Public Meeting) (Contact: Soly Soto; 301–415–7528).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

**Week of March 6, 2017—Tentative**

There are no meetings scheduled for the week of March 6, 2017.

**Week of March 13, 2017—Tentative**

There are no meetings scheduled for the week of March 13, 2017.

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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 301–415–0981 or via email at *Denise.McGovern@nrc.gov*.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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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: February 1, 2017.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2017–02404 Filed 2–1–17; 4:15 pm]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–461, 72–1046, 50–254, 50–265, 72–53, 50–219 and 72–15; NRC–2017–0014]**

## Exelon Generation Company, LLC; Clinton Power Station, Unit No. 1; Quad Cities Nuclear Power Station, Units 1 and 2; Oyster Creek Nuclear Generating Station

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to an August 16, 2016, request from Exelon Generation Company, LLC (Exelon or the licensee), from certain regulatory requirements. The exemption would allow a certified fuel handler (CFH), besides a licensed senior operator, to approve the emergency suspension of security measures for Clinton Power Station, Unit No. 1 (CPS); Quad Cities Nuclear Power Station, Units 1 and 2 (QCNPS); and Oyster Creek Nuclear Generating Station (OCNGS) during certain emergency conditions or during severe weather.

**DATES:** The exemption was issued on January 23, 2017.

**ADDRESSES:** Please refer to Docket ID NRC–2017–0014 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–2017–0014. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** John G. Lamb, Office of Nuclear Reactor Regulation; U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–3100; email: *John.Lamb@nrc.gov.*

### I. Background

Exelon is the holder of Facility Operating License No. NPF–62 for CPS, Renewed Facility Operating License Nos. DPR–29 and DPR–30 for QCNPS, and Renewed Facility Operating License No. DPR–16 for OCNGS. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The CPS, QCNPS, and OCNGS facilities consist of boiling-water reactors located in DeWitt County, Illinois; Rock Island County, Illinois; and Ocean County, New Jersey, respectively, and site-specific licensed independent spent fuel storage installations (ISFSI) at CPS, QCNPS, and OCNGS.

By letter dated January 7, 2011, the licensee submitted Certification of Permanent Cessation of Operations for OCNGS. In this letter, Exelon provided notification to the NRC of its intent to permanently cease power operation no later than December 31, 2019.

By letter dated June 20, 2016, the licensee submitted Certification of Permanent Cessation of Operations for CPS. In this letter, Exelon provided notification to the NRC of its intent to permanently cease power operation by June 1, 2017.

By letter dated June 20, 2016, the licensee submitted Certification of Permanent Cessation of Operations for QCNPS. In this letter, Exelon provided notification to the NRC of its intent to permanently cease power operation by June 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 licenses for the facilities will no longer authorize reactor operation, placement, or retention of fuel in the respective reactor vessel after certifications of permanent cessation of operations and of permanent removal of fuel from the reactor vessel are docketed for CPS, QCNPS, and OCNGS.

By letter dated September 6, 2016, the NRC approved the Certified Fuel Handler Training and Retraining Program for CPS, QCNPS, and OCNGS.

By letters dated December 14, 2016, Exelon withdrew its ''Certification of Permanent Cessation of Power Operations'' for CPS and QCNPS. The withdrawal letters for CPS and QCNPS did not revise its request for exemption, and did not change the effectiveness of the exemption or the conditions required to implement the actions permitted by the exemption.

## II. Request/Action

On August 16, 2016, 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) require, in part, that the suspension of security measures during certain emergency conditions or during severe weather be approved by a licensed senior operator. Exelon requested an exemption from these rules to allow either a licensed senior operator or a CFH to approve the suspension of security measures. There is no need for an exemption from these rules for a licensed senior operator because the current regulation allows the licensed senior operator to approve the suspension of security measures. The exemption request relates solely to the licensing requirements specified in the regulations for the staff directing suspension of security measures in accordance with § 73.55(p)(1)(i) and (ii), and would allow a CFH, besides a licensed senior operator, to provide this approval. The exemption would allow the suspension of security measures during certain emergency conditions or during severe weather by a licensed senior operator or a CFH.

The current § 73.55(p)(1)(i) and (ii) regulations state the licensed senior operator can approve suspension of security measures.

The proposed exemption would authorize that the suspension of security measures must be approved as a minimum by either a licensed senior operator or a certified fuel handler, at a nuclear power plant reactor facility for which the certifications required under § 50.82(a)(1) 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, 10 CFR 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are ''needed to protect the public health and safety'' and there are no conforming comparable measures (48 FR 13970; April 1, 1983). As originally issued, the deviation from license conditions must be approved by, as a minimum, 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).

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 steps. Specifically, in addressing the role of the CFH during emergencies, the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37379; July 20, 1995):

> The Commission is 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. 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. 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 the following definition to § 50.2: ''*Certified fuel handler* means, 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 the rulemaking, so 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 site that otherwise no longer operates.

However, pursuant to § 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR 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 exemption from § 73.55(p)(1)(i) and (ii) would allow a CFH, besides a licensed senior operator, to approve the suspension of security measures, under certain emergency conditions or severe weather. The licensee intends to align these regulations with § 50.54(y) by using the authority of a CFH in place of a licensed senior operator to approve the suspension of security measures during certain emergency conditions or during severe weather.

Per § 73.5, the Commission is allowed to grant exemptions from the regulations in 10 CFR part 73, as authorized by law. The NRC staff has determined that granting of 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, besides a licensed senior operator, to approve suspension of security measures during emergencies or severe weather will not endanger life or property or the common defense and security for the reasons described in this section.

First, § 73.55(p)(2) continues 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

public health and safety even after the exemption is granted.

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. 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 September 6, 2016, the NRC approved Exelon's CFH training and retraining program for the CPS, QCNPS, and OCNGS facilities. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because the CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during emergencies or severe weather will not result in undue risk to public health and safety.

In addition, the exemption does not reduce the overall effectiveness of the physical security plan and has no adverse impacts to Exelon's ability to physically secure the sites or protect special nuclear material at CPS, QCNPS, and OCNGS, and thus would not have an effect on the common defense and security. The NRC staff has concluded that the exemption would not reduce security measures currently in place to protect against radiological sabotage. Therefore, relaxing the requirement to allow a CFH, besides a licensed senior operator, to approve the suspension of security measures in an emergency or during severe weather, does not adversely affect public health and safety issues or the assurance of the common defense and security.

*C. Is Otherwise in the Public Interest*

Exelon's proposed exemption would relax the requirement to allow a CFH, besides a licensed senior operator, to approve suspension of security measures 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.'' Without the exemption, the licensee cannot implement changes to its security plan to authorize a CFH to approve the temporary suspension of security regulations during an emergency or severe weather, comparable to the authority given to the CFH by the NRC when it published § CFR 50.54(y). Instead, the regulations would continue to require that a licensed senior operator be available to make decisions for a permanently shutdown plant, even though CPS, QCNPS, and OCNGS would no longer require a licensed senior operator after the certifications required by 10 CFR 50.82(a)(1)(i) and 10 CFR 50.82(a)(1)(ii) were submitted. It is unclear how the licensee would implement emergency or severe weather suspensions of security measures without a licensed senior operator. This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty on how the licensee will invoke temporary suspension of security matters that may be needed for protecting public health and safety or the safety of the security force during emergencies and severe weather. 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. 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. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the security regulations in 10 CFR part 73 and CFR 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 an alternative position, 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 safety of the security force, consistent with the similar authority provided by § 50.54(y). Therefore, the exemption is in the public interest.

*D. Environmental Considerations*

The NRC's approval of the exemption to security requirements 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 exemption is categorically excluded from further 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 Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that approval of the exemption request involves no significant hazards consideration because allowing a CFH, besides a licensed senior operator, to approve the security suspension at a defueled shutdown 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 exempted security regulation 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 exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation 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 of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions may be

viewed as involving either safeguards, materials control, or managerial 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 10 CFR 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 10 CFR 73.55(p)(1)(i) and (ii), to authorize that the suspension of security measures must be approved as a minimum by either a licensed senior operator or a certified fuel handler, at a nuclear power plant reactor facility for which the certifications required under 10 CFR 50.82(a)(1) have been submitted.

The exemption is effective upon receipt.

**V. Availability of Documents**

The documents identified in the following table are available to interested persons.

| Title | Date | ADAMS accession No. |
|---|---|---|
| Exelon letter to NRC, ''Permanent Cessation of Operations at Oyster Creek Nuclear Generating Station.'' .. | 1/07/2011 | ML110070507 |
| Exelon letter to NRC, Clinton Power Station, Unit 1, ''Certification of Permanent Cessation of Power Operations.'' | 6/20/2016 | ML16172A137 |
| Exelon letter to NRC, Quad Cities Nuclear Power Station, Units 1 and 2, ''Certification of Permanent Cessation of Power Operations.'' | 6/20/2016 | ML16172A151 |
| NRC letter to Exelon, Oyster Creek Nuclear Generating Station; ''Clinton Power Station, Unit No. 1; and Quad Cities Nuclear Power Station, Units 1 and 2—Approval of Certified Fuel Handler Training and Retraining Program.'' | 9/06/2016 | ML16222A787 |
| Exelon letter to NRC, Clinton Power Station, Unit No. 1, Quad Cities Nuclear Power Station, Units 1 and 2, and Oyster Creek Nuclear Generating Station, ''Request for Exemption from Specific Provisions in 10 CFR 7355(p)(1)(i) and (p)(1)(ii) Related to the Suspension of Security Measures in an Emergency or During Severe Weather.'' | 8/16/2016 | ML16229A133 |
| Exelon letter to NRC, Oyster Creek Nuclear Generating Station, ''License Amendment Request—Proposed Changes to Technical Specifications Section 6.0 Administrative Controls for Permanently Defueled Condition'' | 5/17/2016 | ML16138A129 |
| Exelon letter to NRC, Clinton Power Station, Unit No. 1, ''License Amendment Request—Proposed Changes to Technical Specifications Section 5.0 Administrative Controls for Permanently Defueled Condition'' | 7/28/2016 | ML16210A300 |
| Exelon letter to NRC, Quad Cities Nuclear Power Station, Units 1 and 2, ''License Amendment Request—Proposed Changes to Technical Specifications Section 5.0 Administrative Controls for Permanently Defueled Condition | 10/20/2016 | ML16294A203 |
| Exelon Letter to NRC, Quad Cities Nuclear Power Station, Units 1 and 2, ''Withdrawal of Certification of Permanent Cessation of Power Operations.'' | 12/14/2016 | ML16349A311 |
| Exelon Letter to NRC, Clinton Power Station, Unit No. 1, ''Withdrawal of Certification of Permanent Cessation of Power Operations.'' | 12/14/2016 | ML16349A314 |

Dated at Rockville, Maryland, this 23rd day of January 2017.

For the Nuclear Regulatory Commission.

**Anne T. Boland,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2017–02336 Filed 2–2–17; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2017–0016]**

## Guidance for Developing Principal Design Criteria for Non-Light Water Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1330, ''Guidance for Developing Principal Design Criteria for Non-Light Water Reactors.'' This DG is a proposed new regulatory guide (RG) to provide designers, applicants, and licensees of non-light water cooled nuclear reactors (non-LWR) guidance for developing principal design criteria (PDC) for a proposed facility. The PDC establish the necessary design, fabrication, construction, testing, and performance requirements for structures, systems, and components important to safety; that is, structures, systems, and components that provide reasonable assurance that the facility can be operated without undue risk to the health and safety of the public.

**DATES:** Submit comments by April 4, 2017. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0016. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Jan Mazza, Office of New Reactors, telephone: 301–415–0498, email: *Jan.Mazza@nrc.gov,* or Mark Orr, Office of Nuclear Regulatory Research, telephone: 301–415–6003, email:

*Mark.Orr@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2017–0016 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–2017–0016.
- *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.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2017–0016 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled ''Guidance for Developing Principal Design Criteria for Non-Light Water Reactors,'' is a proposed new RG. The proposed new RG is temporarily identified by its task number, DG–1330. The proposed new RG describes the NRC's proposed guidance on how the general design criteria (GDC) in Appendix A, ''General Design Criteria for Nuclear Power Plants,'' of title 10 of the *Code of Federal Regulations,* part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR part 50) apply to non-LWR designs. This guidance may be used by non-LWR reactor designers, applicants, and licensees to develop PDC for non-LWR designs, as required by 10 CFR part 50 for an application for a construction permit, and 10 CFR part 52 for an application for a design certification, combined license, standard design approval, or manufacturing license. The DG also describes the NRC's proposed guidance for modifying and supplementing the GDC to develop PDC that address two specific non-LWR design concepts: sodium-cooled fast reactors (SFRs), and modular high temperature gas-cooled reactors (mHTGRs).

The advanced reactor design criteria (ARDC) are intended to be technology-neutral and, therefore, could apply to any type of non-LWR design. In July 2013, the NRC and U.S. Department of Energy (DOE) established a joint initiative to review and address the existing GDC, which may not directly apply to non-LWR power plant designs. During the review it was determined that the safety objective for some of the current GDC were not applicable to SFR and mHTGR technologies, so entirely new design criteria were developed to address their unique design features.

## III. Backfitting and Issue Finality

The purpose of DG–1330 is to provide regulatory guidance to assist future applicants in developing PDC for non-LWR designs. The NRC approves the PDC, which form part of the licensing basis for the facility. The DG, if finalized, would not constitute regulatory requirements. For this reason, issuance of DG–1330, if finalized, would not constitute backfitting under 10 CFR 50.109 (the ''Backfit Rule''). Future applicants may choose to follow the guidance or utilize another approach in developing principle design criteria for their facilities. Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. Neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed below—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants. Therefore, the positions in any regulatory guide, if imposed on applicants under 10 CFR 50.34(a)(3), 52.47(a)(3), 52.79(a)(4), 52.137(a)(3), or 52.157(a), would not represent backfitting or a violation of issue finality (except as discussed below).

The exceptions to the general principle are applicable whenever a combined license applicant references a 10 CFR part 52 license (*i.e.,* an early site permit or a manufacturing license) and/or 10 CFR part 52 regulatory approval (*i.e.,* a design certification rule or design approval). There are no current non-LWR applicants or holders of licenses or design certifications for non-LWR designs. Therefore, issuance of DG–1330 in final form would not constitute a violation of issue finality.

Dated at Rockville, Maryland, this 31st day of January, 2017.

For the Nuclear Regulatory Commission.

**Edward O'Donnell,**

*Acting Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2017–02298 Filed 2–2–17; 8:45 am]

**BILLING CODE 7590–01–P**

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## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2017–82 and CP2017–111]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* February 7, 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
II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s).:* MC2017–82 and CP2017–111; *Filing Title:* Request of the United States Postal Service to Add Alternative Delivery Provider 1 Contracts to the Competitive Products List and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* January 30, 2017; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Gregory S. Stanton; *Comments Due:* February 7, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2017–02306 Filed 2–2–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2016–70; CP2017–108; CP2017–109; CP2017–110]**

## New Postal Products

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* February 6, 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**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

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**II. Docketed Proceeding(s)**

1. *Docket No(s).:* CP2016–70; *Filing Title:* Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Express, Priority Mail & First-Class Package Service Contract 7, with Portions Filed Under Seal; *Filing Acceptance Date:* January 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 6, 2017.

2. *Docket No(s).:* CP2017–108; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* January 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 6, 2017.

3. *Docket No(s).:* CP2017–109; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* January 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* February 6, 2017.

4. *Docket No(s).:* CP2017–110; *Filing Title:* Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* January 27, 2017; *Filing Authority:* 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 6, 2017.

This notice will be published in the **Federal Register**.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2017–02253 Filed 2–2–17; 8:45 am]

**BILLING CODE 7710–FW–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

*Summary:* In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulation 20 CFR 322.4(a), a claimant's certification or statement on an RRB-provided claim form, that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost, shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day(s), an investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following three forms to obtain information from railroad employers, nonrailroad employers, and claimants, that is needed to determine whether a claimed day(s) of unemployment or sickness were improperly or fraudulently claimed: Form ID–5i, Request for Employment Information; Form ID–5R (SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; and Form UI–48, Statement Regarding Benefits Claimed for Days Worked. Completion is voluntary. One response is requested of each respondent.

To qualify for unemployment or sickness benefits payable under Section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following forms to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, *Statement of Employment and Wages;* Form UI–44, *Claim for Credit for Military Service;* Form ID–4U, *Advising of Service/Earnings Requirements for Unemployment Benefits;* and Form ID–4X, *Advising of Service/Earnings Requirements for Sickness Benefits.* Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent. The RRB proposes no change to the forms in this collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| UI–9 | 69 | 10 | 11 |
| UI–44 | 10 | 5 | 1 |
| UI–48 | 14 | 12 | 3 |
| ID–4U | 35 | 5 | 3 |
| ID–4X | 25 | 5 | 2 |
| ID–5i | 1,050 | 15 | 262 |
| ID–5R (SUP) | 400 | 10 | 67 |
| Total | 1,603 | ..... | 349 |

2. *Title and purpose of information collection:* Self-Employment/Corporate Officer Work and Earnings Monitoring; OMB 3220–0202.

Section 2 of the Railroad Retirement Act (RRA) provides for the payment of disability annuities to qualified employees. Section 2 also provides that if the Railroad Retirement Board (RRB) receives a report of an annuitant working for a railroad or earning more than prescribed dollar amounts from either nonrailroad employment or self-employment, the annuity is no longer payable, or can be reduced, for the months worked. The regulations related to the nonpayment or reduction of the annuity by reason of work are prescribed in 20 CFR 220.160–164.

Some activities claimed by the applicant as ''self-employment'' may actually be employment for someone else (*e.g.,* training officer, consultant, salesman). 20 CFR 216.22(c) states, for example, that an applicant is considered an employee, and not self-employed, when acting as a corporate officer, since the corporation is the applicant's employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances in each case. The circumstances are prescribed in 20 CFR 216.21–216–23.

Certain types of work may actually indicate an annuitant's recovery from disability. Regulations related to an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220–20.

In addition, the RRB conducts continuing disability reviews (also known as a CDR), to determine whether the annuitant continues to meet the disability requirements of the law. Payment of disability benefits and/or a beneficiary's period of disability will end if medical evidence or other information shows that an annuitant is not disabled under the standards prescribed in Section 2 of the RRA. Continuing disability reviews are generally conducted if one or more of the following conditions are met: (1) The annuitant is scheduled for a routine periodic review, (2) the annuitant returns to work and successfully completes a trial work period, (3) substantial earnings are posted to the annuitant's wage record, or (4) information is received from the annuitant or a reliable source that the annuitant has recovered or returned to work. Provisions relating to when and how often the RRB conducts disability reviews are prescribed in 20 CFR 220.186.

To enhance program integrity activities, the RRB utilizes Form G–252, *Self-Employment/Corporate Officer Work and Earnings Monitoring.* Form G–252 obtains information from a disability annuitant who either claims to be self-employed or a corporate officer, or who the RRB determines to be self-employed or a corporate officer after a continuing disability review. The continuing disability review may be prompted by a report of work, return to railroad service, an allegation of a medical improvement or a routine disability review call-up. The information gathered is used to determine entitlement and/or continued entitlement to, and the amount of, the disability annuity, as prescribed in 20 CFR 220.176. Completion is required to retain benefits. One response is required of each respondent. The RRB proposes no changes to Form G–252.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| G–252 | 100 | 20 | 33 |
| Total | 100 | | 33 |

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

**Brian D. Foster,**

*Clearance Officer.*

[FR Doc. 2017–02272 Filed 2–2–17; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79898; File No. 4–698]**

## Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan Governing the Consolidated Audit Trail To Add MIAX PEARL, LLC as a Participant

January 30, 2017.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on January 12, 2017, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan Governing the Consolidated Audit Trail (''Plan'').[3] The Commission approved the application of MIAX PEARL to register as a national securities exchange on December 13, 2016.[4] One of the conditions of the Commission's approval was the requirement for MIAX PEARL to join the CAT NMS Plan.[5] The amendment adds MIAX PEARL as a Participant to the Plan.[6] The Commission is publishing this notice to solicit comments on the amendment from interested persons.

### I. Description and Purpose of the Amendment

The amendment to the CAT NMS Plan adds MIAX PEARL as a Participant.[7] The CAT NMS Plan

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] The Commission approved the CAT NMS Plan on November 15, 2016. *See* Securities Exchange Act Release No. 79318, 81 FR 84695 (Nov. 23, 2016).

[4] *See* Securities and Exchange Act Release No. 79543 (Dec. 13, 2016), 81 FR 92901 (Dec. 20, 2016) (File No. 10–227).

[5] *See id.* 81 FR at 92916.

[6] *See* Letter from Barbara J. Comly, Executive Vice President, General Counsel, and Corporate Secretary, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated January 11, 2017.

[7] *See* Section 1.1 of the CAT NMS Plan. The term ''Participant'' is defined in the CAT NMS Plan as any Person that becomes a Participant as permitted by this agreement, in such Person's capacity as a Participant in the Company (it being understood

provides that any Person [8] approved by the Commission as a national securities exchange or national securities association under the Exchange Act may become a Participant by submitting to the Company a completed application in the form provided by the Company.[9] As a condition to admission as a Participant, said Person shall: (i) Execute a counterpart of the CAT NMS Plan, at which time Exhibit A shall be amended to reflect the status of said Person as a Participant (including said Person's address for purposes of notices delivered pursuant to the CAT NMS Plan); and (ii) pay a fee to the Company as set forth in the Plan (the ''Participation Fee'').[10] The amendment to the Plan reflecting the admission of a new Participant shall be effective only when: (x) It is approved by the Commission in accordance with Rule 608 or otherwise becomes effective pursuant to Rule 608; and (y) the prospective Participant pays the Participation Fee.[11]

MIAX PEARL has executed a copy of the current CAT NMS Plan, amended to include MIAX PEARL in the List of Parties (including the address of MIAX PEARL), paid the applicable Participation Fee and provided each current Plan Participant with a copy of the executed and amended Plan.[12]

## II. Effectiveness of the CAT NMS Plan Amendment

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [13] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[14] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–698 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 4–698. 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 amendment 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 MIAX PEARL. 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 4–698 and should be submitted on or before February 24, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02267 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79901; File Nos. SR–NYSE–2016–90; SR–NYSEArca–2016–167; SR–NYSEMKT–2016–122]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Approving Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, in Connection With the Proposed Acquisition of National Stock Exchange, Inc. by the NYSE Group, Inc.

January 30, 2017.

## I. Introduction

On December 16, 2016, the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE MKT LLC (''NYSE MKT'') (collectively, the ''Exchanges'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes in connection with the acquisition of National Stock Exchange, Inc. (''NSX'') by the Exchanges' parent company, the NYSE Group, Inc. (''NYSE Group''). The proposed rule changes were published for comment in the **Federal Register** on December 28, 2016.[3] On January 23, 2017, the Exchanges each filed Amendment No. 1 to their respective proposed rule changes.[4] The Commission received no comment letters on the proposed rule changes. This order approves the proposed rule changes.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the

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that the Participants shall comprise the ''members'' of the Company (as the term ''member'' is defined in Section 18–101(11) of the Delaware Act)). As defined in the CAT NMS Plan, the name of the ''Company'' is CAT NMS, LLC.

[8] *See* Section 1.1 of the CAT NMS Plan. The term ''Person'' is defined as means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

[9] *See* Section 3.3 of the CAT NMS Plan. MIAX PEARL was approved as a national securities exchange on December 13, 2016. *See* Securities and Exchange Act Release No. 79543, 81 FR 92901 (Dec. 20, 2016) (File No. 10–227).

[10] *See* Section 3.3 of the CAT NMS Plan.

[11] *Id.*

[12] *See supra* note 6.

[13] 17 CFR 242.608(b)(3)(iii).

[14] 17 CFR 242.608(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 79671 (December 22, 2016), 81 FR 96128 (''NYSE Notice''); 79678 (December 22, 2016), 81 FR 96102 (May 16, 2016) (''NYSE Arca Notice''); and 79675 (December 22, 2016), 81 FR 96128 (May 16, 2016) (''NYSE MKT Notice'').

[4] In Amendment No. 1, the Exchanges updated an incorrect reference in the proposed amendment to the Sixth Amended and Restated Bylaws of the Intercontinental Exchange, Inc. Amendment No. 1 was technical in nature and therefore does not need to be published for comment. *See* letters from Martha Redding, Associate General Counsel, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated January 23, 2017.

Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule changes are consistent with Sections 6(b)(1) and (3) of the Act,[6] which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the 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. The Commission also finds that the proposals are consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

## II. Discussion

### *A. Background*

Currently, the Exchanges are wholly owned subsidiaries of NYSE Group. NYSE Group, in turn, is a wholly owned subsidiary of NYSE Holdings LLC (''NYSE Holdings''), which is wholly owned by Intercontinental Exchange Holdings, Inc. (''ICE Holdings'').[8] On December 14, 2016, ICE entered into an agreement with NSX, pursuant to which NYSE Group would acquire all of the outstanding capital stock of NSX (the ''Acquisition'').[9] As a result of the Acquisition, NSX will be renamed NYSE National, Inc. (''NYSE National'') and will be operated as a wholly-owned subsidiary of NYSE Group.[10]

In order to consummate the Acquisition and reflect NYSE Group's proposed ownership of NYSE National, the Exchanges propose to amend certain organizational documents of NYSE Group and its intermediary and ultimate parent entities. In particular, as described below, the Exchanges propose to amend the (1) Sixth Amended and Restated Bylaws of ICE (''ICE Bylaws''), (2) Seventh Amended and Restated Certificate of Incorporation of ICE Holdings (''ICE Holdings COI''), (3) Fourth Amended and Restated Bylaws of ICE Holdings (''ICE Holdings Bylaws''), (4) Independence Policy of the Board of Directors of ICE (''ICE Independence Policy''), (5) Seventh Amended and Restated Limited Liability Company Agreement of NYSE Holdings (''NYSE Holdings LLC Agreement''), (6) Fourth Amended and Restated Certificate of Incorporation of NYSE Group (''NYSE Group COI''), and (7) Second Amended and Restated Bylaws of NYSE Group (''NYSE Group Bylaws'').

The Exchanges represent that the current organizational documents of ICE and its wholly-owned subsidiaries, provide certain protections to the NYSE Exchanges that are designed to protect and facilitate their self-regulatory functions, including certain restrictions on the ability to vote and own shares of ICE.[11] The Exchanges also represent that the proposed amendments are designed to provide similar protections to NYSE National as are currently provided to the Exchanges under those organizational documents.[12] Moreover, the Exchanges represent that the proposed changes to the organizational documents consist of technical and conforming amendments to reflect the proposed new ownership of NYSE National by the NYSE Group, and, indirectly, ICE.[13]

### *B. ICE Bylaws*

The ICE Bylaws will be amended to reflect the Acquisition and incorporate NYSE National into the ICE Bylaws' existing (i) voting and ownership restrictions, (ii) provisions relating to the qualifications of directors and officers and their submission to jurisdiction, (iii) compliance with the federal securities laws, (iv) access to books and records, and (v) other matters related to ICE's control of its registered national securities exchanges. Specifically, the ICE Bylaws will be amended as follows:

- Update the heading to reflect that the bylaws will be the seventh amendment and restatement.
- Amend the definition of ''U.S. Regulated Subsidiaries'' in Article III (Directors), Section 3.15, which currently includes the NYSE, NYSE Market (DE), Inc. (''NYSE Market''), NYSE Regulation, Inc. (''NYSE Regulation''), NYSE Arca, LLC, NYSE Arca, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), and NYSE MKT, to include NYSE National, and to delete obsolete references to NYSE Market and NYSE Regulation.[14]
- Article VIII (Confidential Information), Section 8.1, provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, all confidential information that shall come into the possession of ICE pertaining to any of the U.S. Regulated Subsidiaries contained in the books and records of any of the U.S. Regulated Subsidiaries shall (x) not be made available to any persons (other than as provided in Sections 8.2 and 8.3 of the ICE Bylaws) other than to those officers, directors, employees and agents of ICE that have a reasonable need to know the contents thereof; (y) be retained in confidence by ICE and the officers, directors, employees and agents of ICE; and (z) not be used for any commercial purposes. Section 8.1 will be amended to include NYSE National and to delete the obsolete references to NYSE Market and NYSE Regulation.
- Article XI (Amendments to the Bylaws), Section 11.3, provides that, for so long as ICE controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Bylaws must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case, only to the extent that such entity continues to be controlled directly or indirectly by ICE. Section 11.3 will be amended to include NYSE National, and to delete the obsolete references to NYSE Market and NYSE Regulation.

The Exchanges also propose to add Article XII (Voting and Ownership Limitations) to the ICE Bylaws. Specifically, proposed Section 12.1(a) of Article XII will provide that, subject to

[5] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(1) and (b)(3).

[7] 15 U.S.C. 78f(b)(5).

[8] Intercontinental Exchange, Inc. (''ICE''), a public company listed on the NYSE, owns 100% of ICE Holdings. *See* NYSE Notice, *supra* note 3 at 96124; NYSE Arca Notice, supra note 3, at 96102; and NYSE MKT Notice, supra note 3, at 96129.

[9] *See id.*

[10] *See id.*

[11] *See id.*

[12] *See id.*

[13] *See* NYSE Notice, *supra* note 3 at 96124; NYSE Arca Notice, supra note 3, at 96102; and NYSE MKT Notice, supra note 3, at 96129.

[14] According to the Exchanges, NYSE Market and NYSE Regulation were previously parties to a Delegation Agreement whereby the NYSE delegated certain regulatory functions to NYSE Regulation and certain market functions to NYSE Market (DE). *See* NYSE Notice, *supra* note 3 at 96124, n.7; NYSE Arca Notice, supra note 3, at 96103, n.7; and NYSE MKT Notice, supra note 3, at 96129, n.7. The Delegation Agreement was terminated when the NYSE re-integrated its regulatory and market functions and the two entities ceased being regulated subsidiaries. *Id.* NYSE Regulation has since been merged out of existence. *Id.*

its fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls NYSE National (or its successor), the board of directors of ICE shall not adopt any resolution pursuant to clause (b) of Section A.2 of Article V of the certificate of incorporation of ICE,[15] unless the board of directors of ICE shall have determined that:

• In the case of a resolution to approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter, neither such Person [16] nor any of its Related Persons [17] is an ETP Holder (as defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National (any such Person that is a Related Person of an ETP Holder shall hereinafter also be deemed to be an ''ETP Holder'' for purposes of these bylaws, as the context may require);

• in the case of a resolution to approve entering into an agreement, plan or other arrangement under circumstances that would result in shares of stock of ICE that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, but for Article V of the certificate of incorporation of ICE, either alone or together with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of ICE that would exceed 20% of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of ICE that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), neither such Person nor any of its Related Persons is, with respect to NYSE National, an ETP Holder.

Proposed Section 12.1(b) will provide that, subject to its fiduciary obligations under applicable law, for so long as ICE directly or indirectly controls NYSE National (or its successor), the board of directors of ICE shall not adopt any resolution pursuant to clause (b) of Section B.2 of Article V of the ICE's certificate of incorporation,[18] unless the board of directors of ICE shall have determined that neither such Person nor any of its Related Persons is an ETP Holder.

Proposed Section 12.2 will provide that, for so long as ICE shall control, directly or indirectly, NYSE National (or its successor), the ICE board of directors shall not adopt any resolution to repeal or amend any provision of the certificate of incorporation of ICE unless such amendment or repeal shall either be (a) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) submitted to the board of directors of NYSE National (or the board of directors of its successor), and if such board of directors determines that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.

The Commission believes that the proposed changes to the ICE Bylaws are consistent with the requirements of Section 6(b) of the Exchange Act. The Commission also believes that the proposed provisions in the ICE Bylaws are reasonably designed to ensure that the Exchanges are able to carry out their self-regulatory obligations under the Exchange Act and thereby should 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 respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that it is appropriate to remove the obsolete references and add references to NYSE National in the ICE Bylaws so that the Bylaws will reflect the proposed ownership structure of NYSE National following the closing of the Acquisition.

*C. ICE Holdings COI*

The ICE Holdings COI will be amended as follows:

• Update the heading and paragraphs (2)–(5) to reflect that the certificate of incorporation will be the eighth amendment and restatement, including replacing an incorrect reference to ''Sixth'' before ''Amended'' in paragraph (3). The date of the ICE Holdings COI will also be updated in the preamble.

• Amend subsection A.3(c)(ii) of Article V (Limitations on Voting and Ownership) to define an ETP Holder of NYSE Arca Equities as an ''NYSE Arca Equities ETP Holder,'' to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National. The obsolete references to NYSE Market and NYSE Regulation will be deleted.

• Amend Subsection A.3(c) of Article V to add subsection (v), similar to those in place for the Exchanges, which will provide that, for so long as the ICE Holdings directly or indirectly controls NYSE National (or its successor), no person nor any of its related persons (as those terms are defined therein) is an ETP Holder (as defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National.

• Amend Subsection A.3(d) of Article V to add ''NYSE Arca'' before ''ETP Holder'' in one place to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.

• Amend Subsection A.3(d) of Article V to add subsection (v) similar to those in place for the Exchanges. Proposed subsection (v) will incorporate NYSE National into an existing restriction, such that the board of directors of ICE Holdings will not be able to adopt a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.

• Amend Subsection B.3(d) of Article V to add ''NYSE Arca'' before ''ETP Holder'' to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.

• Amend subsection B.3 of Article V to add subsection (g) similar to those in place for the Exchanges, incorporating NYSE National into the restriction on the ICE Holdings board of directors from adopting any resolution pursuant to clause (b) of Section B.2 of Article V of the ICE Holdings COI [19] unless the NYSE Holdings board of directors determines that, for so long as ICE Holdings controls NYSE National,

[15] Section A.2(b) of Article V (Limitations on Voting and Ownership) of the certificate of incorporation of ICE relates to ICE board of directors approval of voting of ICE capital stock by a person together with its related persons in excess of ''10%'' [sic] of the then outstanding votes entitled to be cast.

[16] For the purpose of new Section 12.1, ''Person'' has the meaning assigned in the certificate of incorporation of ICE, as it shall be in effect from time to time.

[17] For the purpose of new Section 12.1, ''Related Person'' has the meaning assigned by the certificate of incorporation of ICE, as it shall be in effect from time to time.

[18] Section B.2(b) of Article V (Limitations on Voting and Ownership) of the certificate of incorporation of ICE relates to ICE board of directors approval of ownership of ICE capital stock by a person together with its related persons in excess of 20% of the then outstanding votes entitled to be cast.

[19] Section B.2(b) of Article V (Limitations on Voting and Ownership) of the ICE Holdings COI relates to ICE Holdings board of directors approval of ownership of ICE Holdings capital stock by a person together with its related persons in excess of 20% of the then outstanding votes entitled to be cast.

neither such person nor any of its related persons is an NYSE National ETP Holder.

• Amend Article X (Amendments) which provides that, for so long as ICE Holdings shall control, directly or indirectly, any of the U.S. Regulated Subsidiaries, before any amendment or repeal of any provision of the ICE Holdings COI shall be effective, the amendment or repeal must be submitted to the boards of directors of NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT (or the boards of directors of their successors), to add the board of directors of NYSE National to the list of those exchanges that would receive any amendment or repeal of any provision of the ICE Holdings COI. The obsolete references to NYSE Market and NYSE Regulation will be deleted.

The Commission believes that the proposed changes to the ICE Holdings COI are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should 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 respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes it is appropriate to replace outdated or obsolete references in the ICE Holdings COI following the closing of the Acquisition.

*D. ICE Holdings Bylaws*

The cover page and heading on the first page of the ICE Holdings Bylaws will be amended to reflect that the bylaws will be the fifth amendment and restatement. The effective date on the cover page will also be updated. Additionally, similar to the ICE Bylaws discussed above, the ICE Holdings Bylaws will be amended to include ''NYSE National, Inc.'' in: (1) The definition of ''U.S. Regulated Subsidiaries'' in Article III (Directors), Section 3.15; [20] (2) Article VIII (Confidential Information), Section 8.1, which will be amended to extend the same protection to confidential information relating to the self-regulatory function of NYSE National or its successor; [21] and (3) Article XI (Amendment to the Bylaws), Section 11.3, which provides that, for so long as ICE Holdings controls any of the U.S. Regulated Subsidiaries, any amendment to or repeal of the ICE Holdings Bylaws must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the U.S. Regulated Subsidiaries or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by ICE Holdings.[22]

The Commission believes that these proposed changes are consistent with the Exchange Act in that they are intended to align the Exchanges' upstream ownership governance documents with the proposed ownership structure of NYSE National following the closing of the Acquisition.

*E. ICE Independence Policy*

The ICE Independence Policy will be amended to add NYSE National to the section describing ''Independence Qualifications.'' In particular, NYSE National will be added to categories 1.b. and c. that refer to ''members,'' as defined in Section 3(a)(3)(A)(i)–(iv) of the Exchange Act.[23] The clause ''and 'Person Associated with an ETP Holder' (as defined in Rule 1.5 of NYSE National, Inc.)'' will also be added to category 1.b. Additionally, NYSE National will be added to subsections 4. and 5. of the ''Independence Qualifications'' section. Obsolete references to NYSE Market and NYSE Regulation will be deleted.[24]

The Commission believes that these changes should reduce confusion caused by obsolete references and align the Exchanges' upstream ownership governance documents with the proposed ownership structure of NYSE National following the closing of the Acquisition.

*F. NYSE Holdings LLC Agreement*

The Exchanges propose to amend the NYSE Holdings LLC Agreement as follows:

• The heading and preamble will be amended to reflect that the LLC agreement will be the eighth amendment and restatement. The effective date will also be updated. In addition, a new clause will be added in the second full sentence that states the proposed amended NYSE Holdings LLC Agreement amends and restates the Seventh Amended and Restated Limited Liability Company Agreement, dated as of May 22, 2015.

• The current penultimate WHEREAS clause will be amended by adding ''in May 2015'' before ''the Company'' and the phrase ''now desires to amend and restate'' immediately following will be replaced with ''amended and restated.'' The words ''have'' and ''are'' will be changed to the past tense ''had'' and ''were'' in the final sentence.

• The following new WHEREAS clause will be added immediately above the current last WHEREAS clause: ''WHEREAS, the Company now desires to amend and restate the Seventh Amended and Restated Agreement to reflect the acquisition of NYSE National, Inc. by the Company's wholly-owned subsidiary NYSE Group, Inc.;''.

• The definition of ''ETP Holder'' in Article I (Interpretation), Section 1.1 will be deleted and new definitions of an ''NYSE Arca ETP Holder'' and ''NYSE National ETP Holder'' will be added to the definitions section. The Exchanges will also add a definition for ''NYSE National.'' The obsolete definition of NYSE Market will be deleted.

• Article IX (Voting and Ownership Limitations), Section 9.1(a)3.C will be amended to add ''NYSE Arca'' before ''ETP Holder'' and the defined term ''NYSE Arca ETP Holder'' to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National. An obsolete reference to NYSE Market will be deleted from Section 9.1(a)3.C.

• Clause (v) will be added to Section 9.1(a)3.C. similar to those in place for the Exchanges. Clause (v) will incorporate NYSE National into the existing restriction, such that the NYSE Holdings board of directors will not be able to adopt a resolution pursuant to clause (b) of Section 9.1(a)2 unless the NYSE Holdings board of directors determines that, for so long as NYSE Holdings directly or indirectly controls NYSE National (or its successor), neither such person nor any of its related persons is an ETP Holder (as defined in the bylaws of NYSE National, as such bylaws may be in effect from time to time) of NYSE National (''NYSE National ETP Holder''). The clause will also provide that any such person that is a related person of an ETP Holder shall hereinafter also be deemed to be an ''NYSE National ETP Holder'' for purposes of the NYSE Holdings LLC Agreement, as the context may require.

• Article IX (Voting and Ownership Limitations), Section 9.1(a)3.D will be amended to add ''NYSE Arca'' before

[20] Article VIII, Section 3.15 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

[21] Article VIII, Section 8.1 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

[22] Article XI, Section 11.3 will also be amended to delete obsolete references to NYSE Market and NYSE Regulation.

[23] *See* 15 U.S.C. 78c(a)(3)(a).

[24] The Exchanges also propose to update the Web site link in footnote 2 to the NYSE Listed Company Manual and commentary.

''ETP Holder'' in one place to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National. An outdated reference to NYSE Market will be deleted.

• Clause (v) will be added to Section 9.1(a)3.D to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, such that it will not be able to adopt a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter for so long as NYSE Holdings controls NYSE National. The clause will provide that ''for so long as the Corporation directly or indirectly controls NYSE National, neither such person nor any of its Related Persons is an NYSE National ETP Holder.''

• Article IX, Section 9.1(b)3 will be amended to add subpart G. to incorporate NYSE National into the existing restriction on the NYSE Holdings Board of Directors, so that it will provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Holdings directly or indirectly controls NYSE National (or its successor), the board of directors of NYSE Holdings shall not adopt any resolution pursuant to (b) of Section 9.1(b)(2) of the NYSE Holdings LLC Agreement, unless the board of directors of NYSE Holdings shall have determined that neither such person nor any of its related persons is an NYSE National ETP Holder.

The Commission believes that the proposed changes to the NYSE Holdings LLC Agreement are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges'ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should 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 respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that the replacement of outdated or obsolete references may reduce confusion that could result from having these references in the NYSE Holdings LLC Agreement following the closing of the Acquisition.

*G. NYSE Group COI*

The Exchanges propose to amend the NYSE Group COI as follows:

• The heading and recitations will be amended to reflect that the certificate of incorporation will be the fifth amendment and restatement.

• NYSE National will be added to the list of ''Regulated Subsidiaries'' in Article IV (Stock), Section 4(b)(1), and the obsolete references to NYSE Market and NYSE Regulation will be deleted.

• Section 4(b)(1)(y) of Article IV (Stock) will be amended to define an ETP Holder of NYSE Arca Equities as an ''NYSE Arca Equities ETP Holder,'' to distinguish between the ETP Holders of NYSE Arca Equities and those of NYSE National, An outdated reference to NYSE Market will be deleted.

• Section 4(b)(1)(y) will also be amended to add a provision similar to those in place for the Exchanges providing that, for so long as NYSE Group directly or indirectly controls NYSE National (or its successor), neither such person nor any of its related persons is an ETP Holder (as defined in the rules of NYSE National, as such rules may be in effect from time to time) of NYSE National (defined as an ''NYSE National ETP Holder'') and that any such person that is a related person of an NYSE National ETP Holder shall hereinafter also be deemed to be an ''NYSE National ETP Holder'' for purposes of the NYSE Group COI, as the context may require.

• Section 4(b)(1)(z) of Article IV will be amended to define an ETP Holder of NYSE Arca Equities as an ''NYSE Arca Equities ETP Holder'' and delete an outdated reference to NYSE Market. Section 4(b)(1)(z) will also be amended to incorporate NYSE National into the existing restriction on the NYSE Group Board of Directors, such that it will not be able to adopt a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.

• Section 4(b)(1)(z)(iv) of Article IV will be amended to add ''NYSE Arca'' before ''ETP Holder'' to distinguish between the NYSE Arca Equities ETP Holders and those of NYSE National.

• Subpart (vii) will be added to Section 4(b)(2)(C) of Article IV to incorporate NYSE National into the existing restriction on the NYSE Group Board of Directors, such that it will not be able to adopt a resolution to approve the exercise of voting rights that would exceed 20% of the then outstanding votes entitled to be cast on such matter, where neither such person nor any of its related persons is, with respect to NYSE National, an NYSE National ETP Holder.[25]

• Article X (Confidential Information) will be amended to extend the same protection to confidential information relating to the self-regulatory function of NYSE National or its successor and delete obsolete references to NYSE Market and NYSE Regulation.

Article XII (Amendments to Certificate of Incorporation) provides that, for so long as NYSE Group controls the Regulated Subsidiaries, before any amendment or repeal of any provision of the NYSE Group COI shall be effective, such amendment or repeal shall either (a) be filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder or (b) be submitted to the boards of directors of NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE MKT or the boards of directors of their successors. Article XII will be amended to add NYSE National to subsection (b) and delete obsolete references to NYSE Market and NYSE Regulation.

The Commission believes that the proposed changes to the NYSE Group COI are consistent with the Exchange Act in that they are reasonably designed to facilitate the Exchanges' ability to fulfill their self-regulatory obligations under the Exchange Act. Additionally, the Commission believes that the proposed changes should 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 respective regulatory oversight responsibilities under the Exchange Act. Furthermore, the Commission believes that the replacement of outdated or obsolete references will reduce confusion that might result from having these references in the NYSE Group COI following the closing of the Acquisition.

*H. NYSE Group Bylaws*

The heading of the NYSE Group Bylaws will be amended to reflect that the bylaws will be the third amendment and restatement. Additionally, Article VII (Miscellaneous), Section 7.9(A)(b) will be amended to (1) delete obsolete references to NYSE Market and NYSE Regulation, (2) replace the outdated reference to ''NYSE Alternext US LLC'' with ''NYSE MKT LLC,'' and (3) add NYSE National to the list of those exchanges that would receive any

[25] An obsolete reference to NYSE Market will be deleted from Article IV (Stock), Section 4(b)(2)(C)(v).

amendment or repeal of any provision of the NYSE Group Bylaws.[26]

The Commission believes that the proposed changes to the NYSE Group Bylaws are consistent with the Exchange Act in that they are intended to eliminate confusion that may result from having outdated or obsolete references and reflect the proposed new ownership of NYSE National by the NYSE Group.

**III. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act [27] that the proposed rule changes (SR–NYSE–2016–90; SR–NYSEArca–2016–167; and SR–NYSEMKT–2016–122), as modified by their respective Amendment No. 1, be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79895; File No. SR–NYSEMKT–2017–03]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 900.3NY, Rule 961NY, Make a Conforming Change to Rule 935NY, and Eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide

January 30, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 18, 2017, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 900.3NY to eliminate Price Improving Orders and Quotes, amend Rule 961NY to eliminate the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote, and make a conforming change to Rule 935NY, and (2) eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to (1) amend Rule 900.3NY to eliminate Price Improving Orders and Quotes, amend Rule 961NY to eliminate the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote, and make a conforming change to Rule 935NY, and (2) eliminate Section 910–AEMI of the AEMI Rules, and Sections 910 and 910–AEMI of the NYSE MKT Company Guide. The Exchange proposes to eliminate these order types in order to streamline its rules and reduce complexity among its order type offerings, and to delete obsolete and outdated rules.[4]

Elimination of Price Improving Orders and Quotes

The Exchange proposes to eliminate, and thus delete from its rules, Price Improving Orders and Quotes, as defined in Rule 900.3NY(r).

A Price Improving Order or Price Improving Quote is an order or quote to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders and Quotes may be entered in increments as small as one cent. Because the Exchange has not implemented this functionality, the Exchange believes it is appropriate to delete the functionality from its rules.[5]

To reflect this elimination, the Exchange proposes to delete all references to Price Improving Orders and Quotes in Rule 900.3NY(r), and to the electronic and open outcry bidding and offering requirements associated with a Price Improving Order or Quote in the second introductory paragraph of Rule 961NY and in Rules 961NY(a), 961NY(b) and 961NY(c), and to delete in the Commentary to Rule 935NY a reference to Rule 900.3NY(r),[6] as follows:

- Delete Rule 900.3NY(r), which defines Price Improving Orders and Quotes;
- delete the second introductory paragraph of Rule 961NY, which describes which options may be

[26] Article VII (Miscellaneous), Section 7.9(A)(b) currently provides that, for so long as NYSE Group controls, directly or indirectly, any of the Exchanges, before any amendment or repeal of any provision of the NYSE Group Bylaws shall be effective, such amendment or repeal must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities, and NYSE Alternext US LLC or the boards of directors of their successors, in each case only to the extent that such entity continues to be controlled directly or indirectly by NYSE Group.

[27] 15 U.S.C. 78f(b)(2).

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See e.g.,* Mary Jo White, Chair, Securities and Exchange Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference (June 5, 2014) (available at *www.sec.gov/News/Speech/Detail/Speech/1370542004312#.U5HI-fmwJiw)* (''I am asking the exchanges to conduct a comprehensive review of their order types and how they operate in practice. As part of this review, I expect that the exchanges will consider appropriate rule changes to help clarify the nature of their order types and how they interact with each other, and how they support fair, orderly, and efficient markets.'' *Id.*).

[5] Though originally adopted as a competitive response to another options market introducing price improving orders, the Exchange never implemented this functionality for a variety of reasons, including technology and because most options volume was concentrated in Penny Pilot issues where price improving orders would be of little or no value.

[6] *See* Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR–NYSEALTR–2008–14) (order granting accelerated approval of proposed rule change establishing rules for the trading of listed options including order exposure requirements in connection with Price Improving Orders and Quotes, designation of options eligible for Penny Price Improvement, the manner of bidding or offering in open outcry for Penny Pricing, and the required ''sweep'' of any Penny Pricing interest in the System).

designated for penny price improvement; [7]

• delete Rule 961NY(a), which describes the electronic submission process in connection with a Price Improving Order or Quote; [8]

• delete Rule 961NY(b), which describes the open outcry submission process in connection with a Price Improving Order or Quote; [9]

• delete Rule 961NY(c), which describes the requirement to electronically ''sweep'' any penny pricing interest in the Exchange's System; [10] and

• delete in the Commentary to Rule 935NY a reference to Rule 900.3NY(r).

Elimination of Obsolete and Out Dated Section 910–AEMI of the AEMI Rules and Sections 910 and 910–AEMI of the NYSE MKT Company Guide

The Exchange also proposes to eliminate, and thus delete one section from its rulebook and two sections from the Company Guide, governing the same topic, that are now obsolete and outdated:

• Delete Section 910–AEMI. Amex Company Guide RELATIONSHIP WITH SPECIALIST (§ 910–AEMI) PROCEDURES, RULES AND REGULATIONS, of the AEMI Rules;

• delete Section 910. PROCEDURES, RULES AND REGULATIONS, of the NYSE MKT Company Guide; and

• delete Section 910–AEMI. PROCEDURES, RULES AND REGULATIONS, of the NYSE MKT Company Guide.

The Exchange has identified these obsolete and outdated rules and proposes to delete both the section in the rulebook and the corresponding sections in the Company Guide. These rules relate to trading systems that have been decommissioned by the Exchange and rules governing Specialists' obligations, conduct, and activities, including dealings and communications, which were superseded by later-implemented rules governing the same conduct or circumstances. The Commission has previously approved the Exchange's new Equity Rules that superseded the AEMI rules.[11] Specifically, pursuant to Rule 0(b) and Rule 0—Equities, the Equities Rules govern all transactions conducted on the Exchange's Equities Trading Systems.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [12] of the Act, in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Specifically, the Exchange believes that eliminating Price Improving Orders and Quotes would remove impediments to and perfect a national market system by simplifying the functionality and complexity of its order types. The Exchange believes that eliminating these order types would be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the removal of complex functionality. The Exchange also believes that eliminating Price Improving Orders and Quotes would benefit investors and add transparency and clarity to the Exchange's rules because the functionality of those order types was not implemented and therefore is not available.

The Exchange further believes that deleting corresponding references in Exchange rules to deleted order types, and the associated bidding and offering process in connection with a deleted order type, also removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand the order types available for trading on the Exchange. Removing obsolete cross references also furthers the goal of transparency and adds clarity to the Exchange's rules.

The Exchange further believes that by deleting obsolete and outdated rules, it also promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, helps to protect investors and the public interest by providing transparency as to which rules are operable and reducing potential confusion that may result from having obsolete or outdated rules in the Exchange's rulebook. The Exchange further believes that the proposal removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate and understand the Exchange's rulebook.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but would rather remove complex functionality, references to functionality that is not available, and obsolete and outdated rules, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63) (order approving proposed rule change to establish new membership, member firm conduct, and equity trading rules following the acquisition of the Exchange).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [18] of the Act 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–NYSEMKT–2017–03 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–NYSEMKT–2017–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–03 and should be submitted on or before February 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02259 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79902; File No. SR–NSX–2016–16]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, in Connection With a Proposed Acquisition of the Exchange by NYSE Group, Inc.

January 30, 2017.

## I. Introduction

On December 22, 2016, National Stock Exchange, Inc. (''NSX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to make certain amendments to its corporate governance documents and rules, and the corporate governance documents of NYSE Group, Inc. (''NYSE Group''), NYSE Holdings LLC (''NYSE Holdings''), Intercontinental Exchange Holdings, Inc. (''ICE Holdings''), and Intercontinental Exchange, Inc. (''ICE'') in order to effectuate a proposed transaction (the ''Transaction'') in which the Exchange will become a wholly-owned subsidiary of NYSE Group. The proposed rule change was published for comment in the **Federal Register** on December 30, 2016.[4] On January 23, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Commission received no comments on the proposal. This order approves the proposal, as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 79684 (December 23, 2016), 81 FR 96552 (SR–NSX–2016–16) (''Notice'').

[5] In Amendment No. 1, the Exchange corrected a technical error in the proposed Seventh Amended and Restated Bylaws of ICE. Specifically, the Exchange replaced a reference in Section 12.1(a)(1) of Article XII of the ICE Bylaws to ''the Amended and Restated Certificate of Incorporation of the Corporation'' with a reference to ''these bylaws.'' Amendment No. 1 was technical in nature and therefore does not need to be published for comment.

## II. Description of the Proposal

On December 14, 2016, ICE entered into an agreement with the Exchange pursuant to which its wholly-owned subsidiary, NYSE Group, will acquire all of the outstanding capital stock of the Exchange (the ''Acquisition''). As a result of the Acquisition, the Exchange will be renamed NYSE National, Inc. (''NYSE National'') and will be operated as a wholly-owned subsidiary of NYSE Group. NYSE Group is a wholly-owned subsidiary of NYSE Holdings, which is in turn 100% owned by ICE Holdings. ICE is a public company listed on the New York Stock Exchange LLC (the ''NYSE''), and owns 100% of ICE Holdings.[6] Following the Acquisition, the Exchange will continue to be registered as a national securities exchange.[7] According to the Exchange, as it does today, the Exchange will continue to have separate rules, membership rosters, and listings that will be distinct from the rules, membership rosters, and listings of the three other registered national securities exchanges owned by NYSE Group, namely, the NYSE, NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca'') (together, the ''NYSE Exchanges'').[8]

In connection with the Acquisition, the Exchange proposes to amend its Certificate of Incorporation and Third Amended and Restated Bylaws. In addition, the Exchange proposes to amend certain corporate governance documents of NYSE Group, NYSE Holdings, ICE Holdings and ICE,[9] such that the conditions in those documents are equally applicable to the NYSE NSX.[10] According to the Exchange, the

[6] *See* Notice, *supra* note 4, at 96552.

[7] *See id.*

[8] *See id.*

[9] The NYSE Exchanges filed proposed rule changes, which propose similar amendments to their respective governance documents. *See* Securities Exchange Act Release Nos. 79671 (December 22, 2016), 81 FR 96128 (SR–NYSE–2016–90); 79678 (December 22, 2016), 81 FR 96102 (May 16, 2016) (SR–NYSEArca–2016–167); and 79675 (December 22, 2016), 81 FR 96128 (May 16, 2016) (SR–NYSEMKT–2016–122).

[10] *See* Securities Exchange Act Release No. 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (approving rule changes related to NYSE Euronext becoming a wholly owned subsidiary of ICE (then called IntercontinentalExchange Group, Inc.)).

amendments would reflect the Exchange's proposed new ownership and, in certain cases, align the Exchange's governance provisions to those of other NYSE Exchanges.[11]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and (3) of the Act,[14] which, among other things, require a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act, and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the 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. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[16]

According to the Exchange, the proposed rule change consists of (i) non-substantive changes that will conform terminology of the Exchange to that of the NYSE Exchanges, and (ii) substantive and/or procedural changes that are designed to conform the Exchange's rules and procedures to those of other NYSE Exchanges.[17] The Exchange has represented to the Commission that the proposed rule change presents no novel issues, as all of the substantive and/or procedural changes are derived from existing rules of other NYSE Exchanges. Furthermore, the Exchange has made the following representations:

- The proposed rule change would continue the requirement in the Exchange's Bylaws that an independent board committee oversees the adequacy and effectiveness of the performance of the Exchange's self-regulatory responsibilities;[18]
- The Regulatory Oversight Committee would be similar in composition and function to committees of other self-regulatory organizations, and would be similarly designed to (i) ensure the adequacy and effectiveness of the Exchange's regulatory and self-regulatory responsibilities; and (ii) to assist the Board and any other committees of the Board in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[19]
- The proposed rule change is not inconsistent with the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Order, entered by the Commission on May 19, 2005.[20]
- The changes to the corporate and governance structure will place the Exchange in a better position to improve its technology and engage in value-enhancing transactions that will enable the Exchange to more effectively participate and compete in the marketplace.[21]
- The Exchange's proposed changes to its corporate governance structure are designed to align its structure with that of the NYSE Exchanges to promote a consistent approach to corporate governance, and to simplify and create greater consistency with the organizational documents and governance practices of the NYSE Exchange.[22]

The Exchange has represented to the Commission that it believes that the benefits of aligning its corporate documents to those of other NYSE Exchanges outweigh the costs, if any, to leaving its rules as is and being the sole outlier among the NYSE Exchanges. The Commission also notes that it received no comments on the proposed rule change. Finally, the Commission believes that uniformity of terminology as well as corporate governance structure among the wholly owned subsidiaries of NYSE Group, including the NYSE Exchanges and the Exchange, to the extent possible, should allow for a more streamlined, consistent, and effective approach to both compliance and surveillance in furtherance of the rules of the Exchange and the federal securities laws.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[23] that the proposed rule change (SR–NSX–2016–16), as modified by Amendment No.1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02263 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[11] *See* note 9. The proposed changes to the governance documents, NSX Rules and fee schedule are set forth in greater detail in the Notice. *See* Notice, *supra* note 4, at 96553–63.

[12] 15 U.S.C. 78f.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(1) and (b)(3).

[15] 15 U.S.C. 78f(b)(5).

[16] The text of the proposed rule change is consistent with Sections 6(b)(1), (3) and (5) of the Act. However, the Commission notes that the Exchange must continue to comply with the provisions of the Commission's Cease and Desist Order. *See* Securities Exchange Act Release No. 51714 (May 19, 2005).

[17] *See* Notice, *supra* note 4, at 96563–64.

[18] *See id.* at 96563.

[19] *See id.*

[20] *See id.* at 96553. *See also* note 16.

[21] *See id.* at 96554.

[22] *See id.* at 96552–53.

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79894; File No. SR–Phlx–2017–04]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Permit the Listing and Trading of P.M.-Settled NASDAQ–100 Index® Options on a Pilot Basis

January 30, 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 January 18, 2017, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to permit the listing and trading of P.M.-settled NASDAQ–100 Index® options on a pilot basis.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

(i) New P.M.-Settled NASDAQ–100 Index Options

The purpose of this rule filing is to permit the listing and trading, on a pilot basis, of NASDAQ–100 Index® (''NASDAQ–100'') options with third-Friday-of-the-month (''Expiration Friday'') expiration dates, whose exercise settlement value will be based on the closing index value, symbol XQC, of the NASDAQ–100 on the expiration day (''P.M.- settled'') for an initial period of twelve months (the ''Pilot Program'') from the date of approval of this proposed rule change.

The NASDAQ–100, a modified market capitalization-weighted index, includes 100 of the largest non-financial companies listed on The Nasdaq Stock Market, based on market capitalization. It does not contain securities of financial companies including investment companies. Security types generally eligible for the NASDAQ–100 include common stocks, ordinary shares, American Depository Receipts, and tracking stocks. Security or company types not included in the NASDAQ–100 are closed-end funds, convertible debentures, exchange traded funds, limited liability companies, limited partnership interests, preferred stocks, rights, shares or units of beneficial interest, warrants, units and other derivative securities.[3]

The conditions for listing the proposed contract (''NDXPM'') on Phlx will be similar to those for Full Value Nasdaq 100 Options (''NDX''), which are already listed and trading on Phlx, except that NDXPM will be P.M.-settled.[4] The proposed contract would use a $100 multiplier, and the minimum trading increment would be $0.05 for options trading below $3.00 and $0.10 for all other series.[5] Strike price intervals would be set at no less than $5.00.[6] Consistent with existing rules for index options, the Exchange would allow up to nine near-term expiration months[7] as well as LEAPS.[8] The product would have European-style exercise, and because it is based on the NASDAQ–100, there would be no position limits.[9] The Exchange has the flexibility to open for trading additional series in response to customer demand.

As with NDX, in determining compliance with Rule 1001A, Position Limits, there will be no position limits for broad-based index option contracts in the NDXPM class.[10] Each member or member organization (other than Registered Options Traders) that maintains a position on the same side of the market in excess of 100,000 contracts for its own account, or for the account of a customer, in the aggregate of (i) Full Value Nasdaq 100 Options and (ii) NDXPM options, would be required to file a report with the Exchange that includes, but is not limited to, data related to the option positions, whether such positions are hedged and if applicable, a description of the hedge and information concerning collateral used to carry the positions.[11] As with NDX, there would be no exercise limits for NDXPM.[12]

As with NDX, whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged NDXPM option position, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position pursuant to its authority under Exchange Rules 1003(b) (for non-FLEX options) and 1079(d)(2) (for FLEX options). The trading hours for NDXPM will be from 9:30 a.m. ET to 4:00 p.m. ET.[13]

Regarding NDXPM FLEX Options, there would be no position limits (as with NDX FLEX Options). As with NDX FLEX Options, each member or member organization (other than a Specialist or Registered Options Trader) that maintains a position on the same side of the market in excess of 100,000 contracts for NDXPM FLEX Options, for its own account or for the account of a customer, would be required to report information on the FLEX equity option position, positions in any related instrument, the purpose or strategy for the position and the collateral used by the account. The report would be required to be in the form and manner prescribed by the Exchange. Like NDX FLEX Options, there would be no exercise limits for NDXPM FLEX Options (including reduced-value option contracts).[14]

In addition, whenever the Exchange determined that a higher margin requirement was necessary in light of the risks associated with a NDXPM FLEX Option position in excess of the standard limit for NDXPM non-FLEX options of the same class, the Exchange could consider imposing additional margin upon the account maintaining such under-hedged position. Additionally, the clearing firm carrying the account would be subject to capital charges under SEC rule 15c3–1 to the

[3] A description of the NASDAQ–100 is available on Nasdaq's Web site at *https://indexes.nasdaqomx.com/docs/methodology_NDX.pdf.*

[4] The Exchange currently lists an A.M. Reduced Value Nasdaq 100 Option, but does not at this time propose to list a reduced value P.M. settled option based on the NASDAQ–100.

[5] *See* Rule 1034.

[6] *See* Rule 1101A, Terms of Option Contracts, section (a).

[7] The Exchange wishes to give the same expiration month options for NDXPM as are given for NDX, since both options classes are derived from the NASDAQ–100.

[8] Exchange Rule 1101A(b)(i) provides that after a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange shall open for trading a minimum of one expiration month and series for each class of approved stock index options and may also open for trading series of options having not less than nine and up to 60 months to expiration (long-term options series) as provided in Rule 1101A(b)(iii). Rule 1101A(b)(iii) provides that The Exchange may list, with respect to any class of stock index options, series of options having not less than nine and up to 60 months to expiration, adding up to ten expiration months. Such series of options may be opened for trading simultaneously with series of options trading pursuant to Rule 1101A. Strike price interval, bid/ask differential and continuity rules shall not apply to such options series until the time to expiration is less than nine months.

[9] *See* proposed amendment to Rule 1001A(a)(ii).

[10] *See* proposed amendment to Rule 1079(d).

[11] See Rule 1001A(c) as proposed to be revised.

[12] *See* Rule 1002A which provides that exercise limits for index option contracts are equivalent to the position limits described in Rule 1001A.

[13] Note that the trading hours for NDX end at 4:15 p.m. ET rather than at 4:00 p.m. ET.

[14] *See* Rule 1079(d), as proposed to be revised.

extent of any margin deficiency resulting from the higher margin requirement.[15]

To explain the basic adoption of NDXPM, the Exchange proposes to add Commentary .05 to Rule 1101A, Terms of Options Contracts. This proposed new Commentary would provide that in addition to A.M.-settled Full Value Nasdaq 100 Options approved for trading on the Exchange pursuant to Rule 1101A Commentary .01, the Exchange may also list options on the NASDAQ–100 Index whose exercise settlement value is the closing value of the NASDAQ–100 Index on the expiration day.[16] NDXPM options would be listed for trading for an initial pilot period ending twelve months from the date of approval of the proposed rule change.

Precedent exists for P.M. settlement of broad-based index options. SPXPM (a P.M. settled index option contract based on the Standard & Poor's 500 index) is traded on the Chicago Board Options Exchange (''CBOE''). Further, OEX (an index option contract based on the Standard & Poor's 100 index) is also traded on CBOE and has been P.M.-settled since 1983. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settled NASDAQ–100 index options. The Exchange will monitor for any such disruptions or the development of any factors that could cause such disruptions.

The Exchange also notes that P.M.-settled options predominate in the OTC market, and Phlx is not aware of any adverse effects in the stock market attributable to the P.M.-settlement feature. Phlx is merely proposing to offer a P.M.-settled product in an exchange environment which offers the benefit of added transparency, price discovery, and stability. In response to any potential concerns that disruptive trading conduct could occur as a result of the concurrent listing and trading of two index option products based on the same index but for which different settlement methodologies exist (*i.e.,* one is A.M.-settled and one is P.M.-settled), the Exchange notes that CBOE lists and trades both the A.M.-settled S&P 500 index option called SPX and a P.M.-settled S&P 500 index option, SPXPM. Phlx is not aware of any market disruptions occurring as a result of CBOE offering both products.

The adoption of trading of P.M.-settled options on the NASDAQ–100 Index on the same exchange that lists A.M.-settled options on the NASDAQ–100 Index would provide greater spread opportunities. This manner of trading in different products allows a market participant to take advantage of the different expiration times, providing expanded trading opportunities. In the options market currently, market participants regularly trade similar or related products in conjunction with each other, which contributes to overall market liquidity.

The Exchange represents that it has sufficient capacity to handle additional traffic associated with this new listing, and that it has in place adequate surveillance procedures to monitor trading in these options thereby helping to ensure the maintenance of a fair and orderly market.

(ii) Pilot Program Reports

As proposed, the proposal would become effective on a Pilot Program basis for period of twelve months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a P.M.-settled series that expires beyond the conclusion of the pilot period could be established during the 12-month pilot. If the Pilot Program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.

The Exchange proposes to submit a Pilot Program report to Commission at least two months prior to the expiration date of the Pilot Program (the ''annual report''). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the NASDAQ–100 index. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange would provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. The annual report would be provided to the Commission on a confidential basis. The annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all trades;

(2) monthly volume aggregated by expiration date;

(3) monthly volume for each individual series;

(4) month-end open interest aggregated for all series;

(5) month-end open interest for all series aggregated by expiration date; and

(6) month-end open interest for each individual series.

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (6) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis. The annual report would also contain the information noted in Items (1) through (6) above for Expiration Friday, A.M.-settled NASDAQ–100 index options traded on Phlx.

In addition, the annual report would contain the following analysis of trading patterns in Expiration Friday, P.M.-settled NASDAQ–100 index option series in the pilot: (1) A time series analysis of open interest; and (2) an analysis of the distribution of trade sizes. Also, for series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays: A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. The Exchange would provide a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period. The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[15] *See* Rule 1079(d)(2).

[16] Note that the closing value of the NASDAQ–100 may change up until 17:15 ET due to corrections to prices of the underlying component securities.

the provisions of Section 6 of the Act,[17] in general, and with Section 6(b)(5) of the Act,[18] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purposes of the Act or the administration of the Exchange. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act [19] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the introduction of NDXPM options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedge tool to investors.

The Commission has previously stated that when cash-settled index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.,* P.M. settlement). The Commission stated it became concerned about the impact of P.M. settlement on cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays especially during the quarterly expirations of the third Friday of March, June, September and December when options, index futures, and options on index futures all expire simultaneously. The Commission expressed concerns that p.m.-settlement was believed to have contributed to above-average volume and added market volatility on those days, which sometimes led to sharp price movements during the last hour of trading, as a consequence of which the close of trading on the quarterly expiration Friday became known as the ''triple witching hour.'' The Commission observed that besides contributing to investor anxiety, heightened volatility during the expiration periods created the opportunity for manipulation and other abusive trading practices in anticipation of the liquidity constraints.[20]

However, the Exchange believes that the above concerns that have led to the transition to a.m. settlement for index derivatives have been largely mitigated. It believes that expiration pressure in the underlying cash markets at the close has been greatly reduced with the advent of multiple primary listing and unlisted trading privilege markets, and that trading is now widely dispersed among many market centers. Additionally, the Exchange notes that opening procedures in the 1990s were deemed acceptable to mitigate one-sided order flow driven by index option expiration and that Nasdaq uses an automated closing cross procedure and has a closing order type that facilitates orderly closings. The Nasdaq closing procedures are well-equipped to mitigate imbalance pressure at the close. In addition, after-hours trading now provides market participants with an alternative to help offset market-on-close imbalances.[21]

*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. NDXPM options would be available for trading to all market participants. The proposed rule change will facilitate the listing and trading of a novel option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of NDXPM will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to NASDAQ–100 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, the Exchange notes that it is possible for other exchanges to develop or license the use of a new or different index to compete with the NASDAQ–100 and seek Commission approval to list and trade options on such an index.

*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**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2017–04. 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

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(8).

[20] *See* Securities Exchange Act Release No. 65256 (September 2, 2011), 76 FR 55569 (September 9, 2011) (approving SR–C2–2011–008).

[21] C2 made similar arguments to justify Commission approval of listing of SPXPM. *See id.*

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–04 and should be submitted on or before February 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02258 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79806; File No. SR–NSX–2017–01]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 11.26 Regarding the Data Collection Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

January 17, 2017.

*Correction*

In notice document 2017–01461, appearing on pages 8249–8252, in the issue of Tuesday, January 24, 2017, make the following correction:

On page 8249, in the second column, the heading is corrected to read as set forth above.

[FR Doc. C1–2017–01461 Filed 2–2–17; 8:45 am]

**BILLING CODE 1301–00–D**

[22] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79897; File No. 4–443]**

## Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options To Add MIAX PEARL, LLC as a Plan Sponsor

January 30, 2017.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on January 17, 2017, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (''OLPP'').[3] The Commission approved the application of MIAX PEARL to register as a national securities exchange on December 13, 2016.[4] One of the conditions of the Commission's approval was the requirement for MIAX PEARL to join the OLLP. The amendment adds MIAX PEARL as a Sponsor [5] of the OLPP.[6] The Commission is publishing this notice to solicit comments on the amendment from interested persons.

### I. Description and Purpose of the Amendment

The OLPP establishes procedures designed to facilitate the listing and trading of standardized options contracts on the options exchanges. The amendment to the OLPP adds MIAX PEARL as a Sponsor. The other OLPP Sponsors are Amex, BATS, BOX, BX, CBOE, C2, EDGX, ISE, ISE Mercury, MIAX, Nasdaq, NYSE Arca, OCC, Phlx, and Topaz. MIAX PEARL has submitted an executed copy of the OLPP to the Commission in accordance with the procedures set forth in the OLPP regarding new Sponsors. Section 7 of the OLPP provides for the entry of new Sponsors to the OLPP. Specifically, Section 7 of the OLPP provides that an Eligible Exchange [7] may become a Sponsor of the OLPP by: (i) Executing a copy of the OLPP, as then in effect; (ii) providing each current Sponsor with a copy of such executed OLPP; and (iii) effecting an amendment to the OLPP, as specified in Section 7(ii) of the OLPP.

Section 7(ii) of the OLPP sets forth the process by which an Eligible Exchange may effect an amendment to the OLPP. Specifically, an Eligible Exchange must: (a) Execute a copy of the OLPP with the only change being the addition of the new Sponsor's name in Section 8 of the OLPP; [8] and (b) submit the executed OLPP to the Commission. The OLPP then provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 6, 2001, the Commission approved the OLPP, which was proposed by the American Stock Exchange LLC (''Amex''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange LLC (''ISE''), Options Clearing Corporation (''OCC''), Philadelphia Stock Exchange, Inc. (''Phlx''), and Pacific Exchange, Inc. (''PCX'') (n/k/a NYSE Arca). *See* Securities Exchange Act Release No. 44521, 66 FR 36809 (July 13, 2001). *See also* Securities Exchange Act Release Nos. 49199 (February 5, 2004), 69 FR 7030 (February 12, 2004) (adding Boston Stock Exchange, Inc. as a Sponsor to the OLPP); 57546 (March 21, 2008), 73 FR 16393 (March 27, 2008) (adding Nasdaq Stock Market, LLC (''Nasdaq'') as a Sponsor to the OLPP); 61528 (February 17, 2010), 75 FR 8415 (February 24, 2010) (adding BATS Exchange, Inc. (''BATS'') as a Sponsor to the OLPP); 63162 (October 22, 2010), 75 FR 66401 (October 28, 2010) (adding C2 Options Exchange Incorporated (''C2'') as a sponsor to the OLPP); 66952 (May 9, 2012), 77 FR 28641 (May 15, 2012) (adding BOX Options Exchange LLC (''BOX'') as a Sponsor to the OLPP); 67327 (June 29, 2012), 77 FR 40125 (July 6, 2012) (adding Nasdaq OMX BX, Inc. (''BX'') as a Sponsor to the OLPP); 70765 (October 28, 2013), 78 FR 65739 (November 1, 2013) (adding Topaz Exchange, LLC as a Sponsor to the OLPP (''Topaz''); 70764 (October 28, 2013), 78 FR 65733 (November 1, 2013) (adding Miami International Securities Exchange, LLC (''MIAX'') as a Sponsor to the OLPP); 76822 (January 1, 2016), 81 FR 1251 (January 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') as a Sponsor to the OLPP); 77323 (March 8, 2016), 81 FR 13433 (March 14, 2016) (adding ISE Mercury, LLC (''ISE Mercury'') as a Sponsor to the OLPP).

[4] *See* Securities and Exchange Act Release No. 79543 (Dec. 13, 2016), 81 FR 92901 (Dec. 20, 2016) (File No. 10–227).

[5] A ''Sponsor'' is an Eligible Exchange whose participation in the OLPP has become effective pursuant to Section 7 of the OLPP.

[6] *See* Letter from Barbara J. Comly, EVP, General Counsel and Corporate Secretary, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated January 13, 2017.

[7] The OLPP defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that (1) has effective rules for the trading of options contracts issued and cleared by the OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder and (2) is a party to the Plan for Reporting Consolidated Options Last Sale Reports and Quotation Information (the ''OPRA Plan''). MIAX PEARL has represented that it has met both the requirements for being considered an Eligible Exchange. *See supra* note 5.

[8] The Commission notes that the list of plan sponsors is set forth in Section 9 of the OLPP.

## II. Effectiveness of the OLPP Amendment

The foregoing OLPP amendment has become effective pursuant to Rule 608(b)(3)(iii) [9] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of the amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[10] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amendment 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 4–443 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 4–443. 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 plan that are filed with the Commission, and all written communications relating to the plan 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 MIAX PEARL's principal office. 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 4–443, and should be submitted on or before February 24, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02266 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 242.608(b)(3)(iii).

[10] 17 CFR 242.608(b)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79896; File No. 4–546]**

## Joint Industry Plan; Notice of Filing and Immediate Effectiveness of Amendment to the Options Order Protection and Locked/Crossed Market Plan To Add MIAX PEARL, LLC as a Participant

January 30, 2017.

Pursuant to Section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 608 thereunder,[2] notice is hereby given that on January 17, 2017, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') an amendment to the Options Order Protection and Locked/Crossed Market Plan (''Plan'').[3] The Commission approved the application of MIAX PEARL to register as a national securities exchange on December 13, 2016.[4] One of the conditions of the Commission's approval was the requirement for MIAX PEARL to join the Plan. The amendment adds MIAX PEARL as a Participant [5] to the Plan.[6] The Commission is publishing this notice to solicit comments on the amendment from interested persons.

## I. Description and Purpose of the Amendment

The Plan requires the options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The amendment to the Plan adds MIAX PEARL as a Participant. The other Plan Participants are BATS, BOX, BX, C2, CBOE, EDGX, ISE, ISE Gemini, ISE Mercury, MIAX, Nasdaq, Phlx, NYSE MKT, and NYSE Arca. MIAX PEARL has submitted an executed copy of the Plan to the Commission in accordance with the procedures set forth in the Plan regarding new Participants. Section 3(c) of the Plan provides for the entry of new Participants to the Plan. Specifically, Section 3(c) of the Plan provides that an Eligible Exchange [7] may become a Participant in the Plan by: (i) Executing a copy of the Plan, as then in effect; (ii) providing each current Participant with a copy of such executed Plan; and (iii) effecting an amendment to the Plan, as specified in Section 4(b) of the Plan.

Section 4(b) of the Plan sets forth the process by which an Eligible Exchange may effect an amendment to the Plan. Specifically, an Eligible Exchange must: (a) Execute a copy of the Plan with the only change being the addition of the new Participant's name in Section 3(a) of the Plan; and (b) submit the executed Plan to the Commission. The Plan then

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 242.608.

[3] On July 30, 2009, the Commission approved the Plan, which was proposed by Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX PHLX, Inc. (''Phlx''), NYSE Amex, LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''). *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009). *See also* Securities Exchange Act Release No. 61546 (February 19, 2010), 75 FR 8762 (February 25, 2010) (adding BATS Exchange, Inc. (''BATS'') as a Participant); 63119 (October 15, 2010), 75 FR 65536 (October 25, 2010) (adding C2 Options Exchange, Incorporated (''C2'') as a Participant); 66969 (May 11, 2015), 77 FR 29396 (May 17, 2012) (adding BOX Options Exchange LLC (''BOX Options'' as a Participant); 70763 (October 28, 2013), 78 FR 65734 (November 1, 2013) (adding Topaz Exchange, LLC (''Topaz'') as a Participant); 70762 (October 28, 2013), 78 FR 65740 (November 1, 2013) (adding MIAX International Securities Exchange, LLC (''MIAX'') as a Participant); 76823 (January 5, 2016), 81 FR 1260 (January 11, 2016) (adding EDGX Exchange, Inc. (''EDGX'') as a Participant); 77324 (March 8, 2016), 81 FR 13425 (March 14, 2016) (adding ISE MERCURY, LLC (''ISE Mercury'') as a Participant).

[4] *See* Securities and Exchange Act Release No. 79543 (Dec. 13, 2016), 81 FR 92901 (Dec. 20, 2016) (File No. 10–227).

[5] The term ''Participant'' is defined as an Eligible Exchange whose participation in the Plan has become effective pursuant to Section 3(c) of the Plan.

[6] *See* Letter from Barbara J. Comly, Executive Vice President, General Counsel, and Corporate Secretary, MIAX PEARL, to Brent J. Fields, Secretary, Commission, dated January 13, 2017.

[7] Section 2(6) of the Plan defines an ''Eligible Exchange'' as a national securities exchange registered with the Commission pursuant to Section 6(a) of the Act, 15 U.S.C. 78f(a), that: (a) Is a ''Participant Exchange'' in the Options Clearing Corporation (''OCC'') (as defined in OCC By-laws, Section VII); (b) is a party to the Options Price Reporting Authority (''OPRA'') Plan (as defined in the OPRA Plan, Section 1); and (c) if the national securities exchange chooses not to become part to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection. MIAX PEARL has represented that it has met the requirements for being considered an Eligible Exchange. *See supra* note 6.

provides that such an amendment will be effective when the amendment is approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 608 thereunder.

**II. Effectiveness of the Linkage Plan Amendment**

The foregoing Plan amendment has become effective pursuant to Rule 608(b)(3)(iii) [8] because it involves solely technical or ministerial matters. At any time within sixty days of the filing of this amendment, the Commission may summarily abrogate the amendment and require that it be refiled pursuant to paragraph (a)(1) of Rule 608,[9] if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amendment 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 4–546 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 4–546. 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 amendment 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 MIAX PEARL. 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 4–546 and should be submitted on or before February 24, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02265 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 17 CFR 242.608(b)(3)(iii).

[9] 17 CFR 242.608(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79900; File No. SR–BOX–2017–06]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7150 (The Price Improvement Period (''PIP''))

January 30, 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 January 18, 2017, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 7150 (The Price Improvement Period (''PIP'')). 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Rule 7150 (The Price Improvement Period (''PIP'')) to provide that if at the start of the auction the quoted NBBO spread is less than or equal to a $0.01, only PIP Orders for less than 50 contracts will be rejected.

The Exchange recently filed to amend the BOX Rules to make permanent the pilot programs that permit the Exchange to have no minimum size requirement for orders entered into the PIP (''PIP Pilot Program'') and COPIP (''COPIP Pilot Program''), collectively known as the (''Programs'').[3] As part of this filing, BOX also modified the requirements for the PIP to specify where the National Best Bid and Offer (''NBBO'') spread is less than equal to $0.01, the PIP Order and corresponding Primary Improvement Order will be rejected.

The Exchange now proposes to modify the requirements of the PIP to specify where the NBBO spread is less than or equal to $0.01; only PIP Orders for less than 50 contracts will be rejected. This is a competitive filing based on the price improvement auction proposed rules of the Miami International Securities Exchange, LLC (''MIAX'').[4] Specifically, under MIAX Rule 515A(a)(1)(iii), with respect to Agency Orders that have a size of less than 50 contracts, if at the receipt of the Agency Order, the NBBO has a bid/ask differential of $0.01, the System will reject the Agency Order. Further,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 79531 (December 12, 2016), 81 FR 91227 (December 16, 2016) (SR–BOX–2016–58).

[4] *See* Securities Exchange Act Release No. 79500 (December 7, 2016), 81 FR 90030 (December 13, 2016). *See also* MIAX Rule 515A.(a)(1)(iii).

Agency Orders with a size of under 50 contracts will be accepted and processed by the MIAX System when the NBBO bid/ask differential is greater than $0.01.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general protect investors and the public interest.

The proposed rule change will allow PIP auctions of 50 or more contracts to continue without restriction on NBBO spread. The Exchange believes this removes impediments to and better provides for a free and open market. As such, BOX believes the proposed rule change is in the public interest, and therefore, consistent with the Act. The Exchange also notes that the proposal would provide increased opportunities for increased price improvements for these types of orders which will benefit market participants engaging in the PIP auctions.

Additionally, as set forth above, the Exchange believes this proposed change is reasonable and appropriate as it is based on the rules of another exchange.[7]

*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. To the contrary, the proposal is pro-competitive because it will enable the Exchange to better compete with another options exchange that allows PIP Orders of more than 50 contracts to trade when the NBBO spread is $0.01 or less.[8]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *See supra* note 4.

[8] *Id.*

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange requests that the Commission waive the 30-day operative delay so that the changes can be implemented immediately. The Exchange states that waiver of the operative delay is consistent with the protection of investors and the public interest because it will promote fair competition among the exchanges by allowing the Exchange to adjust the PIP rules to provide that if at the start of the auction the quoted NBBO spread is less than or equal to a $0.01, only PIP Orders for less than 50 contracts will be rejected. The Exchange also states that the proposed rule change is substantially similar to the rules in place at another options exchange.[12] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See supra* note 4.

[13] 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).

**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–2017–06 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–2017–06. 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE., Washington, DC 20549. 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–2017–06 and should be submitted on or before February 24, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02261 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–79899; File No. SR–CBOE–2016–080]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; 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 CBOE Rule 6.53C

January 30, 2017.

### I. Introduction

On November 17, 2016, Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE Rule 6.53C, Interpretation and Policy .10, to provide for the electronic trading of complex orders consisting of series authorized for trading on the Hybrid 3.0 Platform and series authorized for trading on the Hybrid Trading System (''Hybrid'' or ''Hybrid Trading System''). The proposed rule change was published for comment in the **Federal Register** on December 2, 2016.[3] The Commission received no comment letters regarding the proposed rule change. On December 30, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On January 12, 2017, the Commission extended the time for Commission consideration of the proposal until March 2, 2017.[5] This order provides notice of filing of Amendment No. 1 and approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

### II. Description of the Proposed Rule Change

Currently, there are two trading platforms operating on CBOE's trade engine, CBOE Command: (i) Hybrid; and (ii) the Hybrid 3.0 Platform.[6] For each Hybrid 3.0 class, CBOE may determine to authorize a group of series of the class for trading on Hybrid.[7] CBOE may establish Hybrid trading parameters for such a group on a group basis to the extent that CBOE's rules otherwise allow CBOE to establish such trading parameters on a class basis.[8] Currently, options on the Standard & Poor's 500 Index (''S&P 500''), trading under the symbol SPX, are the only Hybrid 3.0 Platform class.[9] CBOE has authorized a group of series within the S&P 500 options class, trading under the symbol SPXW, to trade on Hybrid.[10] The SPX options series, which trade on the Hybrid 3.0 Platform, are a.m.-settled contracts with standard third Friday expirations.[11] The SPXW options series, which trade on Hybrid, are p.m.-settled contracts with non-standard expirations.[12]

Currently, when CBOE receives a complex order consisting of both SPX and SPXW options series (an ''SPX/SPXW order'') during regular trading hours, the order is routed to a PAR workstation pursuant to CBOE Rule 6.12(a)(1) to provide an opportunity for the order to trade in open outcry.[13] If CBOE receives an SPX/SPXW order during extended trading hours, the order is rejected back to the sender.[14] CBOE handles SPX/SPXW orders in this manner because its system currently cannot accept complex orders consisting of series that trade on different trading platforms.[15] CBOE is updating its system to accept SPX/SPXW orders so they will be able to trade with other SPX/SPXW orders electronically during regular trading hours and extended trading hours.[16] As described in more detail below, the proposal amends CBOE's rules to specify the manner in which SPX/SPXW orders, and any other complex orders consisting of series that trade on Hybrid and on the Hybrid 3.0 Platform, will be executed electronically.[17]

CBOE Rule 6.53C, Interpretation and Policy .10 provides rules governing the execution of complex orders in Hybrid 3.0 classes trading on the Hybrid 3.0 Platform. CBOE proposes to amend CBOE Rule 6.53C, Interpretation and Policy .10 to provide that if CBOE authorizes a group of series of a Hybrid 3.0 class for trading on Hybrid pursuant to CBOE Rule 8.14, Interpretation and Policy .01, CBOE Rule 6.53C, Interpretation and Policy .10 will apply to a complex order with at least one leg in a series from the group authorized for trading on the Hybrid 3.0 Platform, including if the order has another leg(s)

[14] 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. 79406 (November 28, 2016), 81 FR 87102 (''Notice'').

[4] As discussed more fully below, Amendment No. 1 revises the proposal to describe the treatment of an SPX/SPXW order resting on the complex order book (''COB'') that becomes marketable against orders residing in the EBook for the individual legs of the order; indicate when an incoming SPX/SPXW order will be subject to a complex order auction (''COA''); indicate that non-customer SPX/SPXW orders that are marketable upon receipt will not be COA-eligible; describe the treatment of SPX/SPXW orders during extended trading hours; and indicate that CBOE will announce the implementation date of the proposal via Regulatory Circular at least seven days prior to the implementation date. To promote transparency of its proposed amendment, when CBOE filed Amendment No. 1 with the Commission, it also submitted Amendment No. 1 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for CBOE–2016–080 (available at *https://www.sec.gov/comments/sr-cboe-2016-080/cboe2016080-1454634-130131.pdf).* CBOE also posted a copy of its Amendment No. 1 on its Web site (*http://www.cboe.com/framed/PDFframed.aspx?content=/publish/RuleFilingsSEC/SR-CBOE-2016-080.a1.pdf&section=SEC_ABOUT_CBOE_BOD&title=Proposal+Regarding+Complex+Orders+Consisting+of+SPX+Options+Series+and+SPXW+Options+Series*) when it filed Amendment No. 1 with the Commission.

[5] *See* Securities Exchange Act Release No. 79783 (January 12, 2017), 82 FR 6673 (January 19, 2017).

[6] *See* Notice, 81 FR at 87103. As described more fully in the Notice, CBOE introduced Hybrid, an electronic trading platform integrated with CBOE's floor-based open-outcry auction market, in 2003. *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (order approving File No. SR CBOE–2002–05). CBOE subsequently implemented an enhanced version of Hybrid, known as Hybrid 2.0, which allows remote quoting in option classes. *See* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (order approving File No. SR–CBOE–2004–24). CBOE later implemented the Hybrid 3.0 Platform, a trading platform on Hybrid that allows one or more quoters to submit electronic quotes that represent the aggregate Market Maker quotation interest in a series for the trading crowd. *See* Securities Exchange Act Release No. 55874 (June 7, 2007), 72 FR 32688 (June 13, 2007) (order approving File No. SR–CBOE–2006–101). In 2008, CBOE removed the distinction between Hybrid and Hybrid 2.0 classes and deleted references to the Hybrid 2.0 platform because CBOE migrated all option classes, other than classes traded on the Hybrid 3.0 Platform, from Hybrid to Hybrid 2.0. *See* Securities Exchange Act Release No. 58153 (July 14, 2008), 73 FR 41386 (July 18, 2008) (notice of filing and immediate effectiveness of File No. SR–CBOE–2008–067). Following the removal of the Hybrid 2.0 distinction, all options classes, other than those trading on the Hybrid 3.0 Platform, have been referred to as Hybrid classes trading on the Hybrid Trading System.

[7] *See* CBOE Rule 8.14, Interpretation and Policy .01.

[8] *See* CBOE Rule 8.14, Interpretation and Policy .01(c).

[9] *See* CBOE Rule 8.3(c)(iii).

[10] *See* Notice, 81 FR at 87103.

[11] *See id.* at 87103–87104.

[12] *See id.* at 87104.

[13] *See id.*

[14] *See id. See also* CBOE Rule 6.1A(b) and RG15–013.

[15] *See* Notice, 81 FR at 87104.

[16] *See id.*

[17] Although the proposal focuses on SPX/SPXW orders, the proposed rules will apply to all complex orders consisting of series that trade on Hybrid and series that trade on the Hybrid 3.0 Platform. *See* Notice, 81 FR at 87104. *See also* CBOE Rule 6.53C, Interpretation and Policy .10.

in a series from the group authorized for trading on Hybrid. In addition, CBOE proposes to amend CBOE Rule 6.53C, Interpretation and Policy .10(a) to indicate that a marketable complex order that consists solely of a group of series that is authorized for trading on the Hybrid 3.0 Platform will execute automatically against individual orders residing in the EBook, provided the complex order can be executed in full (or in a permissible ratio) by orders in the EBook and the orders in the EBook are priced equal to or better than the individual quotes residing in the EBook. A marketable complex order that consists of a group of series that is authorized for trading on the Hybrid 3.0 Platform and a group of series authorized for trading on Hybrid will not automatically execute against individual orders residing in the EBook.[18] CBOE states that SPX/SPXW complex orders (unlike SPX complex orders) will not automatically execute against individual orders residing in the EBook because of system limitations that would be prohibitively expensive to modify.[19] SPX/SPXW orders that are marketable against individual orders residing in the EBook instead will be routed to a PAR workstation during regular trading hours and rejected during extended trading hours, consistent with the existing treatment of SPX/SPXW orders.[20] Except for this difference, SPX/SPXW orders will be executed in accordance with CBOE Rule 6.53C, Interpretation and Policy .10 in the same manner as complex orders consisting solely of series that are authorized for trading on the Hybrid 3.0 Platform, *i.e.,* SPX complex orders.[21]

CBOE states that SPX/SPXW orders will trade using a price-time matching algorithm.[22] During regular trading hours, CBOE will handle SPX/SPXW orders in the following manner:

- SPX/SPXW orders with more than four legs will be routed for manual handling, consistent with the manner in which CBOE handles SPX complex orders.[23]
- SPX/SPXW orders for the accounts of non-customers [24] will not be allowed to rest in the Complex Order Book (''COB''), but will instead be routed for manual handling, consistent with the manner in which CBOE handles SPX complex orders.[25] SPX/SPXW orders from all other participants will be allowed to rest in the COB.[26]
- SPX/SPXW orders for the accounts of customers and non-customers will be permitted to participate in the COB opening process and trade against SPX/SPXW orders resting in the COB, consistent with the manner in which CBOE handles SPX complex orders.[27]
- As discussed above, marketable SPX/SPXW orders will not be eligible to automatically execute against individual orders residing in the EBook for the legs of the order.[28] CBOE notes that not allowing SPX/SPXW orders to automatically execute against individual orders residing in the EBook for the legs of the SPX/SPXW order effectively means that CBOE is not changing the manner in which CBOE treats these SPX/SPXW orders.[29]
- Marketable SPX/SPXW orders will be eligible to automatically execute against other SPX/SPXW orders resting in the COB, provided the execution is at a net price that has priority over the individual orders and quotes residing in the EBook, consistent with the manner in which CBOE handles SPX complex orders.[30]
- Marketable SPX/SPXW orders will not be eligible to automatically execute against individual Market-Maker quotes resting in the EBook for the legs, consistent with the manner in which CBOE handles SPX complex orders.[31]
- SPX/SPXW orders resting in the COB that become marketable against Market-Maker quotes in the individual legs will be subject to a complex order auction (''COA''),[32] consistent with the manner in which CBOE handles SPX complex orders.[33] Such an order (or the remaining portion of such an order) that is not executed but is still marketable will be routed for manual handling, consistent with the manner in which CBOE handles SPX complex orders.[34]
- Pursuant to CBOE Rule 6.53C, Interpretation and Policy .10(e), CBOE will submit incoming customer SPX/SPXW orders to a COA if they are COA-eligible.[35] Incoming non-customer SPX/SPXW orders that are marketable upon receipt will not be COA-eligible, and will instead route for manual handling.[36]

During extended trading hours, SPX/SPXW orders for the accounts of customers and non-customers will be allowed to rest in the COB.[37] Any customer or non-customer SPX/SPXW order resting in the COB during extended trading hours that becomes marketable will be subject to a COA, and any portion of the order that remains unexecuted at the conclusion of the COA will be returned to the order entry firm.[38] During extended trading hours, an incoming customer SPX/SPXW order that is marketable upon receipt will be subject to a COA, and an incoming non-customer SPX/SPXW order that is marketable upon receipt will be cancelled.[39]

As with all products that trade during both regular trading hours and extended trading hours, no SPX/SPXW order on the COB at the end of regular trading hours will interact with or be transferred to the COB for extended trading hours, nor will an SPX/SPXW order on the COB at the end of extended trading hours interact with or be transferred to the COB.[40]

CBOE will announce the implementation date of the proposal,

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[18] *See* CBOE Rule 6.53C, Interpretation and Policy .10(a).

[19] *See* Notice, 81 FR at 87104.

[20] *See id.*

[21] *See id.*

[22] *See id. See also* CBOE Rules 6.45B(a) (giving CBOE the ability to determine the matching algorithm) and Rule 8.14, Interpretation and Policy .01(c).

[23] *See* Notice, 81 FR at 87104. The current number of legs permitted for complex orders for electronic processing is four. *See* CBOE Rule 6.53C(a)(1) (providing that complex orders with no more than the applicable number of legs as determined by the Exchange are eligible for processing). Pursuant to CBOE Rule 6.12(a)(1), orders initially routed for electronic processing that are not eligible for automatic execution or book entry will by default route to PAR or back to the Trading Permit Holder.

[24] CBOE notes that, in this context, ''non-customers'' would include CBOE market makers, non-CBOE market makers, and proprietary firms. *See* Amendment No. 1.

[25] *See* Notice, 81 FR at 87104. *See also* CBOE Rule 6.53C(c)(i) (allowing CBOE to determine which classes and order origin types are eligible for entry into the COB) and RG15–195.

[26] *See id.*

[27] *See* Notice, 81 FR at 87104. *See also* CBOE Rule 6.53C.11 and RG15–195. CBOE notes that, as with SPX complex orders, customers and non-customers submitting SPX/SPXW orders during extended trading hours may use the contingency OPG to book orders that will participate in the regular trading hours opening. Any portion of an SPX/SPXW order marked OPG that is not executed during the opening will be cancelled. In addition, customers may use a non-OPG contingency to allow their SPX/SPXW orders to remain on the COB after the opening. *See* Amendment No. 1.

[28] *See* CBOE Rule 6.53C, Interpretation and Policy .10(a).

[29] *See* Notice, 81 FR at 87104.

[30] *See id. See also* CBOE Rule 6.53C, Interpretation and Policy .10(b).

[31] *See* CBOE Rule 6.53C.10 (providing that the Exchange may determine to not allow marketable complex orders entered into COB and/or COA to automatically execute against individual quotes residing in the EBook) and RG 12–025 (providing marketable SPX complex orders will not execute with individual quotes).

[32] *See* CBOE Rule 6.53C(d)(i)(1).

[33] *See* Notice, 81 FR at 87104. *See also* CBOE Rule 6.53C, Interpretation and Policy .10(d).

[34] *See* Notice, 81 FR at 87104–87105. *See also* CBOE Rule 6.53C, Interpretation and Policy .10(d).

[35] *See* Amendment No. 1.

[36] *See id.*

[37] *See* Notice, 81 FR at 87105. *See also* RG15–013.

[38] *See* Amendment No. 1.

[39] *See id.*

[40] *See id.*

which will be within 120 days of the Commission's approval of the filing, via Regulatory Circular at leave seven days prior to the implementation date.[41] The Regulatory Circular announcing the implementation date also will describe the changes made by the proposal.[42]

## III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[43] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[44] 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 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.

Currently, complex orders consisting of one or more series that trade on Hybrid and one or more series that trade on the Hybrid 3.0 Platform must be executed in open outcry because CBOE's system cannot accept complex orders consisting of series that trade on different trading platforms.[45] CBOE proposes to update its system to allow complex orders consisting of series that trade on Hybrid and series that trade on the Hybrid 3.0 Platform, including SPX/SPXW orders, to trade against other SPX/SPXW orders electronically during regular trading hours and extended trading hours, in addition to trading in open outcry. The Commission believes that providing for the electronic trading of complex orders consisting of series that trade on Hybrid and series that trade on the Hybrid 3.0 Platform could provide additional execution and price improvement opportunities for these complex orders. As discussed above, complex orders consisting of both Hybrid series and Hybrid 3.0 Platform series will be subject to the same trading rules as complex orders comprised solely of series that trade on the Hybrid 3.0 Platform (*i.e.,* complex orders consisting solely of SPX series), except that complex orders consisting of series that trade on Hybrid and series that trade on the Hybrid 3.0 Platform will not be able to execute electronically against orders on the EBook for the individual legs of the complex order.[46] Instead, a complex order that consists of series that trade on Hybrid and on the Hybrid 3.0 Platform that is marketable against orders on the EBook will be routed to a PAR workstation during regular trading hours or returned to the order entry firm during extended trading hours, consistent with the existing treatment of SPX/SPXW orders.[47] The Commission notes that CBOE will announce the implementation date of the proposal via Regulatory Circular at least seven days prior to the implementation date.[48]

## 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 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–080 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–080. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–080 and should be submitted on or before February 24, 2017.

## V. Accelerated Approval of the 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 notice of the amended proposal in the **Federal Register.** Amendment No. 1 modifies the proposal to provide additional details regarding the operation of the proposed rules. In particular, Amendment No. 1 identifies ''non-customers'' for purposes of the proposal; indicates that an SPX/SPXW order resting in the COB that become marketable will be subject to a COA, including, during extended trading hours, a non-customer SPX/SPXW order; notes that non-customer SPX/SPXW orders that are marketable on receipt will not be COA-eligible, but instead will be routed for manual handling during regular trading hours and cancelled during extended trading hours; states that both customers and non-customers may submit SPX/SPXW orders with the contingency OPG to participate in the regular trading hours opening, and that customers may use a non-OPG contingency to allow their SPX/SPXW orders to remain on the COB after the open; notes that no SPX/SPXW order on the COB at the end of regular trading hours will not interact with, or be transferred to, the COB for extended trading hours, nor will an SPX/SPXW order on the COB at the end of extended trading hours interact with, or be transferred to, the COB for regular trading hours; and states that CBOE will announce the implementation date of the proposal via Regulatory Circular at

[41] *See id.*

[42] *See id.*

[43] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78f(b)(5).

[45] *See* Notice, 81 FR at 87104. If CBOE receives an SPX/SPXW order during extended trading hours, it rejects the order back to the sender. *See id. See also* CBOE Rule 6.1A(b) and RG15–013.

[46] *See* CBOE Rule 6.53C, Interpretation and Policy .10 and .10(a).

[47] *See* Notice, 81 FR at 87105.

[48] *See* Amendment No. 1.

least seven days prior to the implementation date, and that the Regulatory Circular announcing the implementation date will describe the changes made by the proposal. The Commission believes that Amendment No. 1 will benefit investors and other market participants by providing them with additional information concerning the handling of complex orders consisting of Hybrid and Hybrid 3.0 Platform series, including SPX/SPXW orders. Among other things, Amendment No. 1 identifies ''non-customers'' in the context of the proposal as CBOE market makers, non-CBOE market makers, and proprietary trading firms, and clarifies the treatment of non-customer SPX/SPXW orders during extended trading hours. The changes in Amendment No. 1 provide additional detail to the proposal and do not introduce material, new, or novel concepts. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[49] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–CBOE–2016–080), as modified by Amendment No. 1, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[51]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02260 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[49] 15 U.S.C. 78s(b)(2).

[50] *See id.*

[51] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 32458; File No. 812–14629]**

## Destra Capital Advisors LLC, et al.; Notice of Application

January 30, 2017.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements''). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** Destra Investment Trust, Destra Investment Trust II, and Destra Exchange-Traded Fund Trust (each, a ''Trust''), Massachusetts business trusts registered under the Act as an open-end management investment company with multiple series,[1] and Destra Capital Advisors LLC (the ''Initial Adviser''), a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATES:** The application was filed on March 18, 2016, and amended on July 18, 2016.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 2017, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. *Applicants:* One North Wacker Drive, 48th Floor, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Jessica Shin, Attorney-Adviser, at (202) 551–5921, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Summary of the Application

1. The Adviser will serve as the investment adviser to each Subadvised Series pursuant to an investment advisory agreement with the applicable Trust (the ''Advisory Agreement'').[2] The Adviser will provide the Subadvised Series with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Subadvised Series' board of trustees (''Board''). The Advisory Agreement permits the Adviser, subject to the approval of the Board, to delegate to one or more sub-advisers (each, a ''Sub-Adviser'' and collectively, the ''Sub-Advisers'') the responsibility to provide the day-to-day portfolio investment management of each Subadvised Series, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Subadvised Series will remain vested in the Adviser. The Adviser will hire, evaluate, allocate assets to and oversee the Sub-Advisers, including determining whether a Sub-Adviser should be terminated, at all times subject to the authority of the Board.

2. Applicants request an exemption to permit the Adviser, subject to Board approval, to hire certain Sub-Advisers pursuant to Sub-Advisory Agreements and materially amend existing Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f-2 under the Act.[3] Applicants also seek an

[1] Prior to relying on the relief requested, Destra Exchange-Traded Fund will be registered under the Act as an open-end management investment company.

[2] Applicants request relief with respect to any existing and any future series of the Trust and any other registered open-end management company or series thereof that: (a) Is advised by the Initial Adviser or its successor or by a person controlling, controlled by, or under common control with the Initial Adviser or its successor (each, an ''Adviser''); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (each, a ''Subadvised Series''). For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Subadvised Series may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a ''Feeder Fund'') may invest substantially all of their assets in a Subadvised Series (a ''Master Fund'') pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund's sub-advisers.

[3] The requested relief will not extend to any sub-adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Subadvised Series or the Adviser, other than by reason of serving as a

exemption from the Disclosure Requirements to permit a Subadvised Series to disclose (as both a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Adviser and any Affiliated Sub-Adviser; (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure'').[4]

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Series' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Series' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Series. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Series.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–02264 Filed 2–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

sub-adviser to one or more of the Subadvised Series (''Affiliated Sub-Adviser'').

[4] For any Subadvised Series that is a Master Fund, the relief would also permit any Feeder Fund invested in that Master Fund to disclose Aggregate Fee Disclosure.

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36094]**

### Itawamba Mississippian Railroad, LLC—Lease and Operation Exemption—Itawamba County Railroad Authority

Itawamba Mississippian Railroad, LLC (IMR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the Itawamba County Railroad Authority (ICRA), a noncarrier and political subdivision of the State of Mississippi, and to operate, a 25-mile rail line, known as the Mississippian Railway, between milepost 0.0 in Amory, Miss., and milepost 25.0 in Fulton, Miss. (the Line).

This transaction is related to a concurrently filed verified notice of exemption in *Itawamba County Railroad Authority—Acquisition Exemption—Mississippian Railway,* Docket No. FD 36093, in which ICRA seeks Board approval under 49 CFR 1150.31 to acquire the Line from the Itawamba County Port Commission (ICPC). IMR and ICRA have entered into a five-year lease agreement under which IMR will lease and operate the Line.

IMR certifies that the projected annual revenues as a result of this transaction will not result in IMR's becoming a Class I or Class II rail carrier and will not exceed $5 million. IMR certifies also that the lease between IMA and ICRA does not involve any provision or agreement that would limit future interchange of traffic with a third-party connecting carrier.

The proposed transaction may be consummated on or after February 18, 2017, the effective date of this exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 10, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36094, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Rodney M. Love, Mississippi Department of Transportation, 401 North West Street, Suite 9500, Jackson, MS 39201.

According to IMR, this action is categorically excluded from environmental reporting under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2017–02293 Filed 2–2–17; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36093]**

### Itawamba County Railroad Authority—Acquisition Exemption—Mississippian Railway

Itawamba County Railroad Authority (ICRA), a noncarrier and political subdivision of the State of Mississippi, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Itawamba County Port Commission (ICPC) a 25-mile rail line, known as the Mississippian Railway, between milepost 0.0 in Amory, Miss., and milepost 25.0 in Fulton, Miss. (the Line).

This transaction is related to a concurrently filed verified notice of exemption in *Itawamba Mississippian Railroad, LLC—Lease and Operation Exemption—Itawamba County Railroad Authority,* Docket No. FD 36094, in which the Itawamba Mississippian Railroad, LLC (IMR) seeks Board approval under 49 CFR 1150.31 to lease from ICRA and operate the Line upon consummation of the transactions.

According to ICRA, an agreement has been reached to transfer ownership of the Line and related assets from ICPC to ICRA, and ICRA has reached an agreement with IMR to lease and operate the Line.

ICRA certifies that the projected annual revenues as a result of this transaction will not result in ICRA's becoming a Class I or Class II rail carrier and will not exceed $5 million. ICRA certifies also that the proposed transaction does not involve any provision or agreement between ICRA and ICPC that would limit future interchange of traffic with a third-party connecting carrier.

The proposed transaction may be consummated on or after February 18, 2017, the effective date of this exemption (30 days after the verified notice was filed). If the verified notice contains false or misleading

information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by February 10, 2017 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36093, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Rodney M. Love, Mississippi Department of Transportation, 401 North West Street, Suite 9500, Jackson, MS 39201.

According to ICRA, this action is categorically excluded from environmental reporting under 49 CFR 1105.6(c).

Board decisions and notices are available on our Web site at ''*WWW.STB.GOV.*''

Decided: January 30, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2017–02292 Filed 2–2–17; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36063]**

### Jersey Marine Rail, LLC—Petition for Declaratory Order

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of operation exemption.

**SUMMARY:** By decision served on January 31, 2017, the Board granted an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for Jersey Marine Rail, LLC (JMR) to operate as a Class III rail carrier over approximately 5,000 feet of track within the City of Linden, N.J. JMR states that it intends to rehabilitate and restore rail service over the tracks, which include a three-track holding yard and three former industrial spur tracks. JMR states that all six tracks were previously served by a common carrier and have been out of service for up to 30 years. According to JMR, it leases the existing tracks and land upon which it proposes to restore service and operate for a term, with extensions, totaling 50 years. This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c) because the operational changes would not exceed any of the thresholds established in 49 CFR 1105.7(e)(4) or (5).

**DATES:** The exemption will be effective on February 15, 2017; petitions to stay the exemption must be filed by February 7, 2017; and petitions for reconsideration of the exemption must be filed by February 9, 2017.

**ADDRESSES:** An original and ten copies of all pleadings, referring to Docket No. FD 36063, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be served on JMR's representative: John F. McHugh, Attorney at Law, 233 Broadway, Suite 2320, New York, NY 10279.

**FOR FURTHER INFORMATION CONTACT:** Jonathon P. Binet, (202) 245–0368. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339].

Copies of written filings will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: January 31, 2017.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Brendetta S. Jones,**

*Clearance Clerk.*

[FR Doc. 2017–02353 Filed 2–2–17; 8:45 am]

**BILLING CODE 4915–01–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket No. USTR–2016–0026]**

### 2017 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974; Request for Public Comment and Notice of Public Hearing; Correction

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments and notice of public hearing; correction.

**SUMMARY:** The Office of the United States Trade Representative (USTR) published a document in the **Federal Register** on December 28, 2016 (81 FR 95722), concerning a request for comments and notices of intent to appear at a public hearing on Section 182 of the Trade Act of 1974, commonly referred to as the ''Special 301'' provisions. The dates specified in the notice have changed. Additional information on the hearing is also provided.

**FOR FURTHER INFORMATION CONTACT:** Christine Peterson, Director for Innovation and Intellectual Property, Office of the United States Trade Representative, at *special301@ustr.eop.gov.* You can find information about the Special 301 Review at *www.ustr.gov.*

**Corrections**

''*Dates*'' *Caption*

In the **Federal Register** on December 28, 2016 (81 FR at 95722), correct the ''Dates'' caption to read as follows:

The corrected schedule and deadlines for the 2017 Special 301 public hearing are as follows:

*March 8, 2017:* The Special 301 Subcommittee will hold a public hearing at the Office of the United State Trade Representative, 1724 F Street NW., Rooms 1&2, Washington, DC 20508. If necessary, the hearing may continue on the next business day. Please consult the USTR Web site for confirmation of the date and location and the schedule of witnesses.

*March 14, 2017 at midnight EST:* Post-hearing written comments from persons who testified at the public hearing are due.

*On or about April 30, 2017:* USTR will publish the 2017 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

''*Public Hearing*'' *Caption*

In the **Federal Register** on December 28, 2016 (81 FR at 95723), correct the ''Public Hearing'' caption to read as follows:

**III. Public Hearing**

The Special 301 Subcommittee will hold a public hearing on March 8, 2017, at the Office of the United State Trade Representative, 1724 F Street NW., Rooms 1&2, Washington, DC 20508, at which interested persons, including representatives of foreign governments, may appear to provide oral testimony. If necessary, the hearing may continue on the next business day. The hearing will be open to the public. Because the hearing will take place in Federal facilities, security screening will be required. Attendees will need to show photo identification and be screened for security purposes. Please consult *www.ustr.gov* to confirm the date and location of the hearing and to obtain copies of the hearing schedule. USTR

also will post the transcript and recording of the hearing on the USTR Web site as soon after the hearing as possible.

Prepared oral testimony before the Special 301 Subcommittee must be delivered in person, in English, and will be limited to five minutes. Subcommittee member agencies may ask questions following the prepared statement. Persons, except representatives of foreign governments, wishing to testify at the hearing must submit a ''Notice of Intent to Testify'' and ''Hearing Statement'' by the February 9, 2017, deadline to *www.regulations.gov* following the procedures set forth in part IV below. The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. A Hearing Statement must accompany the Notice of Intent to Testify. There is no requirement regarding the length of the Hearing Statement; however, the content of the testimony must be relevant to the Special 301 Review.

All representatives of foreign governments that wish to testify at the hearing must submit a ''Notice of Intent to Testify'' by the February 23, 2017, deadline to *www.regulations.gov* following the procedures set forth in part IV below. The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and email address. Although not mandatory, government witnesses may submit a Hearing Statement when filing the Notice of Intent to Testify.

**Probir Mehta,**

*Assistant United States Trade Representative for Innovation and Intellectual Property, Office of the United States Trade Representative.*

[FR Doc. 2017–02251 Filed 2–2–17; 8:45 am]

**BILLING CODE 3290–F7–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Revision of an Approved Information Collection; Submission for OMB Review; Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of $50 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a revision to this information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Currently, the OCC is finalizing a revision to a regulatory reporting requirement for national banks and federal savings associations titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.'' The OCC also is giving notice that it has sent the collection to OMB for review.

**DATES:** Comments must be received by March 6, 2017.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0319, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0319, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th St. SW., Washington, DC 20219. In addition, copies of the templates referenced in this notice can be found on the OCC's Web site under News and Issuances (*http://www.occ.treas.gov/tools-forms/forms/bank-operations/stress-test-reporting.html*).

**SUPPLEMENTARY INFORMATION:** The OCC is requesting comment on the following revision to an approved information collection:

*Title:* Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

*OMB Control No.:* 1557–0319.

*Description:* Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including national banks and federal savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A national bank or federal savings association is a ''covered institution'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of

[1] Public Law 111–203, 124 Stat. 1376, July 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 12 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[6] This rule describes the reports and information collections required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment to the extent permitted by law (5 U.S.C. 552(b)(4)).

In 2012, the OCC first implemented the reporting templates referenced in the final rule. *See* 77 FR 49485 (August 16, 2012) and 77 FR 66663 (November 6, 2012). The OCC proposed revisions to these reporting templates on November 16, 2016.[7] The OCC is now finalizing these revisions as described below.

The OCC intends to use the data collected to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The OCC recognizes that many covered institutions with total consolidated assets of $50 billion or more are required to submit similar reports to the Board using reporting form FR Y–14A.[8] The OCC also recognizes the Board has modified the FR Y–14A and, to the extent practical, the OCC has kept its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[9]

The OCC also recognizes that the Board has proposed an amendment to its Capital Plan and Stress Testing rule and that the Board's proposed amendment includes modified reporting requirements for bank holding companies (BHCs) categorized by the Board as large and noncomplex firms.[10] One commenter urged the OCC to adopt similar modified reporting requirements for covered institutions, as well as additional reporting relief for covered institutions. In order to minimize regulatory burden, the OCC is applying similar changes for a subset of covered institutions. In particular, the OCC is not requiring covered institutions that are subsidiaries of large, non-complex firms, as defined by the Board, to complete the sub-schedules identified in the Board's revisions.

In addition to the changes that parallel the Board's changes to the FR Y–14A, the OCC is also implementing a new supplemental schedule to collect certain items not included in the Board's FR Y–14A. It is anticipated that this data will help the OCC better understand and monitor salient risks at covered institutions.

**Revisions to Reporting Templates for Institutions With $50 Billion or More in Assets**

The revisions to the DFAST–14A reporting templates consist of the following:

- Adding line items to the Regulatory Capital Instruments Schedule.
- Updating the Summary Schedule to collect items related to the supplementary leverage ratio.
- Removing sub-schedules of the Operational Risk Schedule for all covered institutions and adding sub-schedules to the Operational Risk Schedule for a subset of covered institutions.
- Creating a new supplemental schedule to collect certain items not included in the Board's FR Y–14A.
- Requiring a bank-specific scenario. Covered institutions would be required to submit bank-specific baseline and stress scenarios.
- Requiring the assumption of largest counterparty default. The largest trading covered institutions that also submit the Global Market Shock scenario would be required to assume the default of their largest counterparty in the supervisory severely adverse and adverse scenarios.

**Bank-Specific Scenarios**

Covered institutions will be required to submit bank-specific baseline and bank-specific stress scenarios and associated projections for the 2017 annual stress testing submission. While supervisory scenarios provide a homogeneous scenario and a consistent market-wide view of the condition of the banking sector, these prescribed scenarios may not fully capture all of the risks that may be associated with a particular institution. The revisions require covered institutions to provide bank-specific baseline and bank-specific stress scenarios.

The OCC recognizes that the Board requires BHCs to submit BHC-specific baseline and stress scenarios and projections. Where OCC covered institutions also submit BHC-specific scenarios, bank-specific scenarios must be consistent with the BHC-specific scenarios.

One commenter objected to the submission of bank-specific scenarios. The commenter argued that the submission of a bank-specific scenario would be duplicative with the submission of a BHC-specific scenario if a covered institution subsidiary constitutes nearly all of the BHC's assets. The commenter also argued that, if a covered institution represents a smaller fraction of a BHC's assets, then it is inappropriate for the bank-specific scenario to be consistent with the BHC-specific scenario. The commenter further asked whether the OCC and the Board would draw the same conclusions on the adequacy of the BHC-specific versus bank-specific scenarios.

While the bank-specific scenario results may be broadly similar to the BHC-specific scenario results, especially for holding companies where the covered institution includes an overwhelming majority of the holding company's total assets and exposures, the holding company's nonbank assets may contain risks that are materially different from the rest of the holding company's exposures. Applying the bank-specific scenario against the covered institution's exposures ensures that supervisory analysis is conducted on the covered institution's reported numbers, rather than OCC estimates interpolated from results at the holding-company level. Furthermore, the holding company and the subsidiary national bank or federal savings association may implement different capital actions which may result in different capital outcomes between the BHC and bank-specific scenarios. Therefore, the bank-specific scenario may potentially result in a different assessment from the BHC-specific scenario.

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 61238 (October 9, 2012) (codified at 12 CFR 46).

[7] 81 FR 70717.

[8] *http://www.federalreserve.gov/reportforms.*

[9] 81 FR 93917 (December 22, 2016).

[10] 81 FR 67239 (September 30, 2016) (''Under the proposal, large and noncomplex firms would no longer be required to complete several elements of the FR Y–14A Schedule A (Summary), including the Securities OTTI methodology sub-schedule, Securities Market Value source sub-schedule, Securities OTTI by security sub-schedule, the Retail repurchase sub-schedule, the Trading sub-schedule, Counterparty sub-schedule, and Advanced RWA sub-schedule.'').

**Largest Counterparty Default**

Covered institutions that complete the Global Market Shock are also required to complete the Largest Counterparty Default component. The completion of the Largest Counterparty Default component is currently required by the Board, and the OCC is adopting a similar requirement to enhance consistency and comparability of BHC and bank results.

**OCC Supplemental Schedule**

The revisions include a new supplemental schedule that collects additional information not included in the FR Y–14A. This schedule collects additional data on auto lending, commercial exposures, and non-U.S. exposures. The schedule also collects information relevant to the calculation of the Supplementary Leverage Ratio.[11]

One commenter indicated that covered institutions may have the data required for the Supplemental Schedule but that this data may not be segmented in the manner used by the Supplemental Schedule. Another commenter noted that covered institutions do not have systems in place to report the level of granularity required in the schedule, as much of the additional information would require substantial systems revisions and information technology changes. The OCC understands that existing data systems and processes may not be currently designed to align with the specific loan types, product types, and other classifications delineated on the OCC Supplemental Schedule. As indicated in the OCC's proposal, covered institutions should not develop new models or methodologies to provide the loss, balance, provision, and allowance numbers requested in the OCC Supplemental Schedule. Instead, institutions should use existing models and methodologies to furnish the requested information. The OCC expects covered institutions to use reasonable efforts to supply the data requested by the Supplemental Schedule. Also, most items in the OCC Supplemental Schedule include materiality thresholds to ensure that only sizeable portfolios and exposures, as measured in terms of total assets and as a percentage of tier 1 capital, are reported.

One commenter noted that the additional information to be collected in the OCC Supplemental Schedule is already received by the OCC from other sources. Certain line items requested in the OCC Supplemental Schedule are contained in the Call Report; however, the Call Report collects historical information, whereas the OCC Supplemental Schedule collects forward-looking projections. Existing sources of information do not contain the forward-looking projections which are essential to evaluating impact on capital adequacy in adverse and severely adverse macroeconomic conditions.

One commenter suggested that covered institutions will need clear instructions about what each line in the Supplemental Schedule requires. Another commenter requested that the Supplemental Schedule be dropped in its entirety from the final template. Another commenter provided detailed feedback on the proposed line items. This commenter recommended that (a) owner-occupied commercial real estate (CRE) loans be reclassified as commercial and industrial (C&I) loans, especially since the Board classifies these loans as C&I in the FR Y–14Q Schedule; (b) line items relating to portfolio vacancy rates and weighted-average loan to value (LTV) be removed from the schedule; (c) more guidance be provided on calculating counterparty funding value adjustment (FVA) losses; (d) institutions not be required to submit historical data for line items relating to C&I exposures; (e) the OCC provide analysis of the purported benefits of the additional information to be provided in the Supplemental Schedule; and (f) institutions whose internal modeling practices do not align to the regulatory definition with respect to the additional granularity in the OCC Supplemental Schedule be permitted to use a pro-rata allocation approach or to note ''N/A'' as applicable.

For certain line items, the OCC has provided North American Industry Classification System (NAICS) code industry mappings to indicate which obligor-types must be included. Additionally, in the final instructions, the OCC has provided additional clarity on which obligors must be included for non-U.S. exposures. Line items pertaining to leverage exposure for the Supplementary Leverage Ratio are defined in the same way as analogous line items contained in the DFAST–14A Regulatory Capital Transitions Schedule. In regards to (a), we have re-categorized these line items as C&I loans rather than CRE loans. For (b), we have removed line items for portfolio vacancy rates and weighted-average committed LTV throughout the schedule. For (c), only those institutions that fill out the trading worksheet are responsible for completing this line item. Institutions that do not consider counterparty FVA losses within their counterparty credit modeling should not complete this item. Institutions that are currently calculating counterparty FVA losses should use existing calculations to fill out this item and provide information on how this item was calculated in the bank's supporting documentation. For (d), as the Supplemental Schedule only collects information on the current quarter and projected quarters, historical balances and/or losses need not be submitted. For (e) and (f), the OCC considers those items included in the OCC Supplemental Schedule as material risks which are necessary for monitoring and assessing a covered institution's capital adequacy and capital planning process. Covered institutions that cannot use existing models and methodologies to furnish requested information on the OCC Supplemental Schedule may use allocations, expert judgment, or other methods for projections of balances, losses, and allowances if data is not available at the requested level of granularity. Covered institutions should supply appropriate documentation explaining their approach. Institutions should not supply ''N/A'' for any fields in the Supplemental Schedule. If the covered institution does not meet the materiality threshold for a given item, the institution should leave this item blank.

One commenter requested a delay of at least one year before requiring submission of the Supplemental Schedule. According to the commenter, submissions of this data would require changes in internal processes. Another commenter requested a delay of unspecified length for the same reasons. As mentioned, covered institutions are expected to use existing models and methodologies and to undertake reasonable effort to furnish requested information. It is not the OCC's intent to cause institutions to redesign existing processes to complete the Supplemental Schedule. The OCC considers those items included in the OCC

[11] For the OCC Supplemental Schedule, the OCC anticipates that covered institutions will use existing models and methodologies to furnish the requested information, which provides a more granular view on information provided elsewhere in the DFAST–14A. Covered institutions should not develop new models or methodologies just to provide the loss, balance, provision, and allowance numbers requested in the OCC Supplemental Schedule. If existing models and methodologies do not generate data at the requested level of granularity, covered institutions may use allocations, expert judgment, or other methods for projections of balances, losses, and allowances. Covered institutions should supply appropriate documentation explaining their approach. Institutions should not supply ''N/A'' for any fields in the supplemental schedule. If the covered institution does not meet the materiality threshold for a given item, the institution should leave this item blank.

Supplemental Schedule as material risks which are necessary for monitoring and assessing a covered institution's capital adequacy and capital planning process.

**Summary Schedule—Applicability**

Effective for DFAST 2017, covered institutions that are subsidiaries of large, non-complex firms, as defined by the Board, are not required to report the following sub-schedules of the Summary Schedule: Securities OTTI methodology sub-schedule, Securities Market Value source sub-schedule, Securities OTTI by security sub-schedule, Retail repurchase sub-schedule, Trading sub-schedule, Counterparty sub-schedule, and Advanced RWA sub-schedule.[12] This change increases consistency between the DFAST–14A and the FR Y–14A.

**Other Reporting Template and Instruction Changes**

The other revisions to the DFAST–14A consist of clarifying instructions, adding and removing schedules, adding, deleting, and modifying existing data items, and altering the as-of dates. These changes increase consistency between the DFAST–14A and the FR Y–14A and the Call Report.

*Summary Schedule, Standardized RWA Worksheet*

The revision includes multiple line item changes intended to promote consistency with the FR Y–14A and ensure the collection of accurate information.

*Summary Schedule, Capital Worksheet*

Covered institutions are required to estimate their Supplementary Leverage Ratio for the planning horizon beginning on January 1, 2018. The OCC is adding two items to the Summary Schedule: Supplementary Leverage Ratio Exposure (SLR Exposure) and Supplementary Leverage Ratio (the SLR). The SLR is a derived field.

In addition, to collect more precise information regarding deferred tax assets (DTAs), the OCC is modifying one existing item on the Capital—DFAST worksheet of the Summary Schedule. The OCC is changing existing item 112 on the Capital—DFAST worksheet of the Summary Schedule, ''Deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, net of deferred tax liabilities (DTLs), but before related valuation allowances,'' to ''Deferred tax assets arising from temporary differences, net of DTLs.'' A covered institution in a net DTL position must report this item as a negative number. This modification provides more specific information about the components of the ''DTAs arising from temporary differences that could not be realized through net operating loss carrybacks, net of related valuation allowances and net of DTLs'' subject to the common equity tier 1 capital deduction threshold.

The revisions also remove certain items that pertained to the capital regulations in place before the adoption of the Basel III final rule.

*Summary Schedule, Counterparty Worksheet*

The OCC is adding the item ''Other counterparty losses'' to the counterparty worksheet of the Summary Schedule.

*Summary Schedule, Retail ASC 310–30*

One commenter noted that the ASC 310–30 Schedule had been omitted from the templates but had not been discussed in the PRA notice. This sub-schedule has been removed, effective for the DFAST 2017 submission. This change had already been finalized in the OCC's 2016 Final PRA notice.

*Operational Risk Schedule*

The revisions remove and add sub-schedules to the Operational Risk Schedule to ensure the collection of accurate information. The OCC is adding two sub-schedules and modifying the supporting documentation requirements for this schedule. First, the new Material Risk Identification sub-schedule collects information on a covered institution's material operational risks included in loss projections based on their risk management framework. Second, the new Operational Risk Scenarios sub-schedule collects a covered institution's operational risk scenarios included in the BHC Baseline and BHC Stress projections, a fundamental element of the framework.

One commenter argued that the OCC should remove the operational risk component from the stress testing reporting forms. However, operational risk is a key element of the stress testing framework. Operational risk losses can significantly influence a covered institution's capital and earnings projections and thus comprises an integral part of stress testing.

The adverse and severely adverse scenarios do not prescribe specific operational risk events that covered institutions must consider. Rather, institutions are instructed to identify their own idiosyncratic operational risk exposures as part of the material risk identification and scenario design process.

The OCC proposed to eliminate the Operational Risk Historical Capital subsection and is adopting this proposal as final. In addition, in order to align with the Board's Y–14A reporting requirements, the OCC will only require the Material Risk Identification and Operational Risk Scenarios worksheets for a subset of covered institutions.

One commenter recommended that the OCC revise its instructions to exclude operational losses from idiosyncratic or low-probability events. However, each covered institution is responsible for assessing the reasonableness of its operational risk loss projections. The decision of which operational risk events to include or omit is a key part of each covered institution's risk identification and scenario design process, and institutions use a combination of quantitative and qualitative approaches, as appropriate, to determine an estimate of operational risk losses. Prohibiting covered institutions from overlaying certain operational risk losses would represent a constraint to the covered institution's risk identification and would prevent the institution from considering its full range of potential operational risk outcomes.

One commenter recommended that the OCC remove the Material Risk Identification worksheet and the Operational Risk Scenarios worksheet from the Operational Risk Schedule. In response to this comment and in order to align with the Board's Y–14A reporting requirements, the OCC will only require the Material Risk Identification and Operational Risk Scenarios worksheet for a subset of covered institutions. Specifically, institutions that are subsidiaries of large, non-complex firms, as defined by the Board, are not required to provide the Material Risk Identification and Operational Risk Scenarios sub-schedules.

Although operational risk is evaluated as part of the OCC ongoing supervision, forecasted operational risk losses can significantly influence a covered institution's capital and earnings projections. Operational risk event types and loss projections may vary considerably from firm to firm, but results will provide significant insights on a covered institution's operational risk exposures and potential effect on capital and earnings estimates. Moreover, within each institution, year-over-year comparisons of operational risk estimates may indicate changes in

[12] All firms will be required to report line item 138 of the income statement, as that line item is currently derived from the Retail repurchase sub-schedule.

a covered institution's operational risk exposures due to factors such as changes in relationships with third-party vendors, overhaul of compliance management system, or potential new litigation exposures.

**Response to Comments on Timing of Schedule Changes**

One commenter requested (a) a minimum of six months between the publication of final changes to the reporting templates and the effective date of the changes; (b) the effective date for changes be aligned with the release of the technical instructions related to the changes; (c) clarifying questions be addressed before the effective date of a change; and (d) the technical instructions accompanying any proposed changes in the reporting templates be subject to public notice and comment. The OCC recognizes the challenges with implementing changes in a timely and controlled manner, especially when the changes are finalized close to the effective date. The OCC continues to balance the need to collect additional information with the objective of providing as much time as is feasible in advance of implementation.

In regards to the proposed changes contained in this notice, the OCC notes that the changes related to collecting components of the Supplementary Leverage Ratio on the Capital worksheet of the Summary Schedule allow for the incorporation of key measures of regulatory capital adequacy into the stress test. In the Operational Risk Schedule, the Material Risk Identification and Operational Risk Scenarios sub-schedules, which are not required for firms deemed ''Large and Non-Complex,'' are often provided as part of the DFAST review in response to follow-up supervisory requests, so filling out these worksheets would simply formalize an existing process. Other changes are clarifying in nature: Streamlining the instructions, removing information, or aligning with the Board's FR Y–14A data collection. The OCC will continue to publish technical instructions as early as feasible.

*Type of Review:* Revision.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 25.

*Estimated Total Annual Burden:* 13,412.5.

The OCC believes that the systems covered institutions use to prepare the FR Y–14 reporting templates to submit to the Board will also be used to prepare the reporting templates described in this notice. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC'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 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.

Dated: January 30, 2017.

**Stuart Feldstein,**

*Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

[FR Doc. 2017–02255 Filed 2–2–17; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Treasury Inspector General for Tax Administration; Privacy Act of 1974, as Amended: Computer Matching Program

**AGENCY:** Treasury Inspector General for Tax Administration, Treasury.

**ACTION:** Notice.

**SUMMARY:** Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, notice is hereby given of the agreement between the Treasury Inspector General for Tax Administration (TIGTA) and the Internal Revenue Service (IRS) concerning the conduct of TIGTA's computer matching program.

**DATES:** *Effective Date:* March 10, 2017.

**ADDRESSES:** Comments or inquires may be mailed to the Treasury Inspector General for Tax Administration, Attn: Office of Chief Counsel, 1401 H St. NW., Suite 469, Washington, DC 20005, or via electronic mail to *Counsel.Office@tigta.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Office of Chief Counsel, Treasury Inspector General for Tax Administration, (202) 622–4068.

**SUPPLEMENTARY INFORMATION:** TIGTA's computer matching program assists in the detection and deterrence of fraud, waste, and abuse in the programs and operations of the IRS and related entities as well as protects against attempts to corrupt or interfere with tax administration. TIGTA's computer matching program is also designed to proactively detect and to deter criminal and administrative misconduct by IRS employees. Computer matching is the most feasible method of performing comprehensive analysis of data.

*Name of Source Agency:* Internal Revenue Service.

*Name of Recipient Agency:* Treasury Inspector General for Tax Administration.

*Beginning and Completion Dates:* This program of computer matches is expected to commence on March 10, 2017, but not earlier than the fortieth day after copies of the Computer Matching Agreement are provided to the Congress and OMB unless comments dictate otherwise. The program of computer matches is expected to conclude on September 9, 2018.

*Purpose:* This program is designed to deter and detect fraud, waste, and abuse in Internal Revenue Service programs and operations, to investigate criminal and administrative misconduct by IRS employees, and to protect against attempts to corrupt or threaten the IRS and/or its employees.

*Authority:* The Inspector General Act of 1978, 5 U.S.C. App. 3, and Treasury Order 115–01.

*Categories of Individuals Covered:* Current and former employees of the Internal Revenue Service as well as individuals and entities about whom information is maintained in the systems of records listed below.

*Categories of Records Covered:* Included in this program of computer matches are records from the following Treasury or Internal Revenue Service systems.

a. Treasury Payroll and Personnel System [Treasury/DO.001]
b. Treasury Child Care Tuition Assistance Records [Treasury/DO.003]
c. Public Transportation Incentive Program Records [Treasury/DO.005]
d. Treasury Financial Management Systems [Treasury/DO.009]
e. Correspondence Files and Correspondence Control Files [Treasury/IRS 00.001]
f. Correspondence Files: Inquiries About Enforcement Activities [Treasury/IRS 00.002]
g. Taxpayer Advocate Service and Customer Feedback and Survey Records System [Treasury/IRS 00.003]
h. Employee Complaint and Allegation Referral Records [Treasury/IRS 00.007]
i. Third Party Contact Records [Treasury/IRS 00.333]

j. Stakeholder Relationship Management and Subject Files, Chief, Communications and Liaison [Treasury/IRS 10.004]
k. Volunteer Records [Treasury/IRS 10.555]
l. Annual Listing of Undelivered Refund Checks [Treasury/IRS 22.003]
m. File of Erroneous Refunds [Treasury/IRS 22.011]
n. Health Coverage Tax Credit (HCTC) Program Records [Treasury/IRS 22.012]
o. Foreign Information System (FIS) [Treasury/IRS 22.027]
p. Individual Microfilm Retention Register [Treasury/IRS 22.032]
q. Subsidiary Accounting Files [Treasury/IRS 22.054]
r. Automated Non-Master File (ANMF) [Treasury/IRS 22.060]
s. Information Return Master File (IRMF) [Treasury/IRS 22.061]
t. Electronic Filing Records [Treasury/IRS 22.062]
u. Customer Account Data Engine (CADE) Individual Master File (IMF) [Treasury/IRS 24.030]
v. CADE Business Master File (BMF) [Treasury/IRS 24.046]
w. Audit Underreported Case File [Treasury/IRS 24.047]
x. Acquired Property Records [Treasury/IRS 26.001]
y. Lien Files [Treasury/IRS 26.009]
z. Offer in Compromise (OIC) File [Treasury/IRS 26.012]
aa. Trust Fund Recovery Cases/One Hundred Percent Penalty Cases [Treasury/IRS 26.013]
bb. Record 21, Record of Seizure and Sale of Real Property [Treasury/IRS 26.014]
cc. Taxpayer Delinquent Account (TDA) Files [Treasury/IRS 26.019]
dd. Taxpayer Delinquency Investigation (TDI) Files [Treasury/IRS 26.020]
ee. Identification Media Files System for Employees and Others Issued IRS Identification [Treasury/IRS 34.013]
ff. Security Clearance Files [Treasury/IRS 34.016]
gg. Personnel Security Investigations, National Background Investigations Center [Treasury/IRS 34.021]
hh. National Background Investigations Center Management Information System [Treasury/IRS 34.022]
ii. IRS Audit Trail and Security Records System [Treasury/IRS 34.037]
jj. General Personnel and Payroll Records [Treasury/IRS 36.003]
kk. Practitioner Disciplinary Records [Treasury/IRS 37.007]
ll. Enrolled Agent and Enrolled Retirement Plan Agent Records [Treasury/IRS 37.009]
mm. Preparer Tax Identification Number Records [Treasury/IRS 37.111]
nn. Examination Administrative File [Treasury/IRS 42.001]
oo. Audit Information Management System (AIMS) [Treasury/IRS 42.008]
pp. Compliance Programs and Projects Files [Treasury/IRS 42.021]
qq. Anti-Money laundering/Bank Secrecy Act (BSA) and Form 8300 Records [Treasury/IRS 42.031]
rr. Appeals Centralized Data System [Treasury/IRS 44.003]
ss. Criminal Investigation Management Information System [Treasury/IRS 46.002]
tt. Automated Information Analysis System [Treasury/IRS 46.050]
uu. Tax Exempt/Government Entities (TE/GE) Case management Records [Treasury/IRS 50.222]
vv. Employee Protection System Records [Treasury/IRS 60.000]
ww. Chief Counsel Management Information System Records [Treasury/IRS 90.001]

**Ryan Law,**

*Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.*

[FR Doc. 2017–02271 Filed 2–2–17; 8:45 am]

**BILLING CODE 4810–04–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee February 15, 2017, Public Meeting

**ACTION:** Notice

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for February 15, 2017.

*Date:* February 15, 2017.

*Time:* 1:00 p.m. to 2:00 p.m. EST.

*Location:* This meeting will occur *via teleconference*. Interested members of the public may dial in to listen to the meeting at (866) 564–9287/Access Code: 62956028.

*Subject:* Consideration of themes for the 2019 America the Beautiful Quarters program and the Office of Strategic Services Congressional Gold Medal.

*Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.*

In accordance with 31 U.S.C. 5135, the CCAC:

Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** Betty Birdsong, Acting United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 27, 2017.

**David Motl,**

*Acting Principal Deputy Director, United States Mint.*

[FR Doc. 2017–02305 Filed 2–2–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0111]**

### Agency Information Collection Activity: (Statement of Purchaser or Owner Assuming Seller's Loan)

**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 March 6, 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. 2900–0111'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, *cynthia.harvey-pryor@va.gov,* (202) 461–5870 or FAX (202) 632–8925. Please refer to ''OMB Control No. 2900–0111.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Purchaser or Owner Assuming Seller's Loan.

*OMB Control Number:* 2900–0111.

*Type of Review:* Extension.

*Abstract:* Under Title 38, U.S.C., section 3702, authorizes collection of this information to help determine the release of liability and substitution of entitlement. 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 on November 29, 2016, at page 86072.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 250 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 1,000.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Agency Clearance Officer, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2017–02277 Filed 2–2–17; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the National Research Advisory Council will hold a meeting on Wednesday, March 8, 2017, in Conference Room 730, 810 Vermont Avenue NW., Washington, DC. The meeting will convene at 9:00 a.m. and end at 3:00 p.m. This meeting is open to the public.

The agenda will include introduction to the new Chief of Research & Development Officer, annual Ethics training, new initiatives, Research priorities and Service updates.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public wanting to attend may contact Ms. Melissa Cooper, Designated Federal Officer, ORD (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, at (202) 461–6044, or by email at *Melissa.Cooper@va.gov* no later than close of business on February 28, 2017. Because the meeting is being held in a Government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Due to security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Any member of the public seeking additional information should contact Ms. Cooper at the phone number or email address noted above.

Dated: January 31, 2017.

**LaTonya L. Small,**

*Advisory Committee Management Officer.*

[FR Doc. 2017–02310 Filed 2–2–17; 8:45 am]

**BILLING CODE P**


# FEDERAL REGISTER

Vol. 82 Friday,
No. 22 February 3, 2017

Part II

## Federal Communications Commission

47 CFR Chapter I
Possible Revision or Elimination of Rules; Proposed Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

**[OCBO: CB Docket No. BO 16–251; DA 16–792]**

### Possible Revision or Elimination of Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Review of regulations; comments requested.

**SUMMARY:** This document invites members of the public to comment on the Federal Communication Commission's (FCC's or Commission's) rules to be reviewed pursuant to section 610 of the Regulatory Flexibility Act of 1980, as amended (RFA). The purpose of the review is to determine whether Commission rules whose ten-year anniversary dates are in the years 2011–2014, as contained in the Appendix, should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. Upon receipt of comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s).

**DATES:** Comments may be filed on or before May 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** Chana S. Wilkerson, Attorney-Advisor, Office of Communications Business Opportunities (OCBO), Federal Communications Commission, (202) 418–0990. People with disabilities may contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** Each year the Commission will publish a list of ten-year old rules for review and comment by interested parties pursuant to the requirements of section 610 of the RFA.

### FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. Section 610

[CB Docket No. BO 16–251]

*Comment Period Closes:* May 4, 2017.

1. Pursuant to the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 610, the FCC hereby publishes a plan for the review of rules adopted by the agency in calendar years 2001–2004 which have, or might have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objective of section 610 of the RFA, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. This document lists the FCC regulations to be reviewed during the next twelve months. The Commission will issue separately plans for the review of rules adopted in succeeding years.

3. In reviewing each rule in a manner consistent with the requirements of section 610 the FCC will consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other federal rules and, to the extent feasible, with state and local governmental rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule, including a *Brief Description* of the rule and the need for, and *Legal Basis* of, the rule. The public is invited to comment on the rules chosen for review by the FCC according to the requirements of section 610 of the RFA. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding.

Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket (proceeding) and ''DA'' number.

Parties may also submit an electronic comment by Internet email. To obtain filing instructions for email comments, commenters should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and one copy of each filing. Again, please include the docket (proceeding) and ''DA'' number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. Again, please include the docket (proceeding) and ''DA'' number.

The filing hours at this location are 8:00 a.m. to 7:00 p.m.

All hand deliveries must be held together with rubber bands or fasteners.

- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street SW., Washington, DC 20554.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Comments in this proceeding will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300 or 800–378–3160, facsimile 202–488–5563, or via email at *fcc@bcniweb.com.* 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 & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[1] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation

[1] 47 CFR 1.1200 *et seq.*

within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For information on the requirements of the RFA, the public may contact Chana S. Wilkerson, Attorney-Advisor, Office of Communications Business Opportunities, 202–418–0990 or visit *www.fcc.gov/ocbo.*

Federal Communications Commission.

**Lisa Fowlkes,**

*Acting Director, Office of Communications Business Opportunities.*

## Appendix

List of rules for review pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. Section 610, for the ten-year period beginning in the year 2001 and ending in the year 2004. All listed rules are in Title 47 of the Code of Federal Regulations.

### PART 1—PRACTICE AND PROCEDURE

#### Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

*Brief Description:* Section 1.767 sets forth the application filing requirements for submarine cable landing licenses. Section 1.768 sets forth the notification and prior approval requirements for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

*Need:* The rules are needed to implement the Commission's policies that facilitate the expansion of capacity and facilities-based competition in the submarine cable market. These measures are designed to enable international carriers to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both the industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

*Section Numbers and Titles:*

1.767(a), (a)(5), (a)(7)–(11), (g)–(m) Cable landing licenses.

1.768 Notification by and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier.

#### Subpart F—Wireless Radio Services Applications and Proceedings

*Brief Description:* Part 1 rules state the general rules of practice and procedure before the Federal Communications Commission. Subpart F sets forth the requirements and conditions under which entities may be licensed in the Wireless Radio Services as described in parts 1, 13, 20, 22, 24, 26, 27, 74, 80, 87, 90, 95, 97 and 101.

*Need:* These rules are needed to implement the Commission's policies with regard to the processing of applications, like applications to provide public safety services, for licenses under the Communications Act of 1934, as amended, and to update the rules to comply with Federal Registration Number (''FRN'') requirements.

*Legal Basis:* 15 U.S.C 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r) and 309.

*Section Numbers and Titles:*

1.913(g) Application and notification forms; electronic and manual filing.

1.934(d)(2) through (4) Defective applications and dismissal.

#### Subpart V—Implementation of Section 706 of the Telecommunications Act of 1996; Commission Collection of Advanced Telecommunications Capability Data

*Brief Description:* Subpart V sets out the terms by which certain entities shall complete FCC Form 477 to report data to the Commission concerning the deployment of advanced telecommunications capability, defined pursuant to 47 U.S.C. 157 as ''high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology,'' and the deployment of services that are competitive with advanced telecommunications capability.

*Need:* Subpart V implements the Commission's data collection authority pursuant to section 706 of the Telecommunications Act of 1996.

*Legal Basis:* 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, and 303(r).

*Section Number and Title:*

1.7001 Scope and content of filed reports.

#### Subpart W—FCC Registration Number

*Brief Description:* Anyone doing business with the Commission is required to first obtain a unique identifying number called an FCC Registration Number, or ''FRN,'' which must be referenced when submitting or filing applications and remitting payments to the Commission. These rules describe the use of FRNs, identify the individuals and entities required to obtain FRNs and how they can be obtained, and set forth penalties for noncompliance.

*Need:* To ensure compliance with the Debt Collection Improvement Act of 1996 (''DCIA''), these rules establish individual identification numbers (FRNs) used by individuals and entities when doing business with the FCC. FRNs are utilized by all Commission systems that handle financial, authorization of service, and enforcement activities, and enable our customers to be more easily identified as the filers of applications, reports, remittance payments and other documents with the FCC, thereby improving the Commission's ability to effectively forecast, assess and collect regulatory fees; track enforcement of fines and forfeiture actions; monitor and collect penalties; and manage the grant of waivers and exemptions.

*Legal Basis:* 31 U.S.C. 3512(b) (mandating the establishment and maintenance of systems of accounting and internal controls); 31 CFR 901.1 (requiring agencies to aggressively collect all debts arising out of the agency's activities).

*Section Numbers and Titles:*

1.8001 FCC Registration Number (FRN).

1.8002 Obtaining an FRN.

1.8003 Providing the FRN in Commission filings.

1.8004 Penalty for Failure to Provide the FRN.

#### Subpart X—Spectrum Leasing

*Brief Description:* This subpart covers the rules regarding spectrum leasing. These rules specify which services are subject to the general policies and procedures imposed by this subpart. In addition to providing the policies and requirements that govern the spectrum leasing process, these rules also make special provisions which apply to educational broadband, the Public Safety Radio Service, and the ancillary terrestrial component of Mobile Satellite Services.

*Need:* By providing thorough guidance to any licensee seeking to lease its spectrum, these rules regulate and stimulate a robust secondary market.

*Legal Basis:* 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, 1455.

*Section Numbers and Titles:*

1.9001 Purpose and scope.

1.9003 Definitions.

1.9005 Included services.

1.9010 De facto control standard for spectrum leasing arrangements.

1.9020 Spectrum manager leasing arrangements.
1.9030 Long-term de facto transfer leasing arrangements.
1.9035 Short-term de facto transfer leasing arrangements.
1.9040 Contractual requirements applicable to spectrum leasing arrangements.
1.9045 Requirements for spectrum leasing arrangements entered into by licensees participating in the installment payment program.
1.9046 Special provisions related to spectrum manager leasing in the Citizens Broadband Radio Service.
1.9047 Special provisions relating to leases of educational broadband service spectrum.
1.9048 Special provisions relating to spectrum leasing arrangements involving licensees in the Public Safety Radio Services.
1.9049 Special provisions relating to spectrum leasing arrangements involving the ancillary terrestrial component of Mobile Satellite Services.
1.9050 Who may sign spectrum leasing notifications and applications.
1.9055 Assignment of file numbers to spectrum leasing notifications and applications.
1.9060 Amendments, waivers, and dismissals affecting spectrum leasing notifications and applications.
1.9080 Private commons.

### Subpart Y—International Bureau Filing System

*Brief Description:* Subpart Y describes the procedures for electronic filing of international and satellite services applications using the International Bureau Filing System (IBFS).

*Need:* Subpart Y is necessary as it codifies the use of the International Bureau Filing System (IBFS) as an official method of filing applications related to satellite and international telecommunications services with the Commission. Electronic filing improves the speed and efficiency of application processing and also expedites the availability of application information for public use and inspection.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

*Section Numbers and Titles:* (originally codified at 1.9000–9018)

1.10000 What is the purpose of these rules?
1.10001 Definitions.
1.10002 What happens if the rules conflict?
1.10003 When can I start operating?
1.10004 What am I allowed to do if I am approved?
1.10005 What is IBFS?
1.10006 Is electronic filing mandatory?
1.10007, (b) What applications can I file electronically?
1.10008 What are IBFS file numbers?
1.10009 What are the steps for electronic filing?
1.10010 Do I need to send paper copies with my electronic applications?
1.10011 Who may sign applications?
1.10012 When can I file on IBFS?
1.10013 How do I check the status of my application after I file it?
1.10014 What happens after officially filing my application?
1.10015 Are there exceptions for emergency filings?
1.10016 How do I apply for special temporary authority?
1.10017 How can I submit additional information?
1.10018 May I amend my application?

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

### Subpart C—Emissions

*Brief Description:* These rules specify the frequency bandwidth limits and a given class of emission. The emissions are useful for the functioning of the receiving equipment.

*Need:* The rules provide the frequency bandwidths limits and the given class of emission.

*Legal Basis:* 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

*Section Number and Title:*

2.202 Bandwidths.

### Subpart D—Call Signs and Other Forms of Identifying Radio Transmissions

*Brief Description:* These rules require stations using radio frequencies that identify transmissions according to the procedures prescribed by the rules governing the class of station to which it belongs.

*Need:* Call signs are required for each station to identify transmission governing the class of each station.

*Section Numbers and Titles:*

2.301 Station identification requirement.
2.302 Call signs.
2.303 Other forms of identification of stations.

### Subpart K—Importation of Causing Harmful Interference

*Brief Description:* These rules update current rules to better accomplish interference prevention from radiofrequency devices and facilitate the filing of FCC Form 740 (Importation) information.

*Need:* These rules are promulgated to control criteria thereby reducing filing and handling burden on both importers and the government and facilitates conversion to a method of electronic filing of importation information in cooperation with the U.S. Customs Service.

*Legal Basis:* 47 U.S.C. 154(i), 302, 303(r).

*Section Numbers and Titles:*

2.1203 General requirement for entry into the U.S.A.
2.1207 Examination of imported equipment.

## PART 11—EMERGENCY ALERT SYSTEM (EAS)

### Subpart B—Equipment Requirements

*Brief Description:* These rules ensure that EAS decoders, encoders and combined units are compliant with the certification requirements and are capable of implementing the new EAS codes specified in section 11.31 and the logging features in section 11.34(a)(4).

*Need:* Ensuring that EAS decoders, encoders, and combined are properly certified and capable of meeting specific EAS requirements

*Legal Basis:* 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g), 606.

*Section Number and Title:*

11.34(f) and (g) Acceptability of equipment.

## PART 13—COMMERCIAL RADIO OPERATORS

*Brief Description:* Part 13 rules set forth the manner and conditions under which commercial radio operators are licensed by the Commission pursuant to the Communications Act of 1934, as amended.

*Need:* These rules are needed to define the application process for licensing commercial radio operators and to ensure the telegraphy requirements for commercial radio operator licenses remain unchanged.

*Legal Basis:* 47 U.S.C. 154 and 303.

*Section Numbers and Titles:*

13.9(d)(2) Eligibility and application for new license or endorsement.
13.13(d)(2) Application for a renewed or modified license.

## PART 15—RADIO FREQUENCY DEVICES

### Subpart A—General

*Brief Description:* These rules sets out the regulations under which an intentional, unintentional, or incidental radiator may be operated without an individual license. These rules contain the technical specifications, administrative requirements and other conditions relating to the marketing of part 15 devices.

*Need:* These rules are necessary to promote the efficient use of the radio spectrum by preventing harmful interference to licensed radio services that share the same spectrum or nearby spectrum as unlicensed devices.

*Legal Basis:* 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

*Section Numbers and Titles:*

### Subpart B—Unintentional Radiators

15.107 Conducted limits.
15.121 Scanning receivers and frequency converters used with scanning receivers.

### Subpart C—Intentional Radiators

15.207 Conducted limits.
15.213 Cable locating equipment.
15.214 Cordless telephones.

### Subpart F—Ultra-Wideband Operation

15.509 Technical requirements for ground penetrating radars and wall imaging systems.
15.510 Technical requirements for through D-wall imaging systems.
15.511 Technical requirements for surveillance systems.
15.517 Technical requirements for indoor UWB systems.
15.519 Technical requirements for hand held UWB systems.

## PART 20—COMMERCIAL MOBILE SERVICES

*Brief Description:* Part 20 rules set forth the Commission's requirements and conditions for commercial mobile radio service providers under the Communications Act of 1934, as amended.

*Need:* The amended rules are needed to update subsections which referred to services by previous names and subpart designations and it defines which mobile services will be treated as common carriage services pursuant to section 332 of the Communications Act.

*Legal Basis:* 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316 and 332. Section 20.12 is also issued under 47 U.S.C. 1302.

*Section Number and Title:*

20.9(a)(6) through (9) Commercial mobile radio service.

*Brief Description:* Section 20.15(c) provides that providers of commercial radio services (CMRS) shall not file tariffs for international and interstate service to their customers, interstate access service, or international operator services. The section further provides that sections 1.771 through 1.773 of part 61 of the rules do not apply to international and interstate services provided by commercial mobile radio service. Finally, the section further provides that providers of commercial mobile radio services must cancel their tariffs for international and interstate service to their customers, interstate access service, and international operator service. Section 20.15(d) provides that, except as provided in paragraphs (d)(1) and (d)(2), nothing in section 20.15(d) shall be construed to modify the Commission's rules and policies on the provision of international service under part 63 of the rules. Paragraph (d)(1) provides that, notwithstanding the provisions of section 63.21(c) of the rules (requiring carriers regulated dominant for a particular service on a particular route to file tariffs), a provider of commercial mobile radio service is not required to comply with section 42.10 of the rules. Section 20.15(d)(2) provides that a provider of commercial mobile radio service that is classified as dominant under section 63.10 of the rules because it is affiliated with a foreign carrier must comply with section 42.11 of the rules if its affiliated foreign carrier collects settlement payments from U.S. carriers for terminating U.S.-originated international switched traffic at the foreign end of the route. Such a CMRS carrier is not required to comply with section 42.11 of the rules if it provides services on affiliated routes solely through the resale of an unaffiliated facilities-based provider's international switched traffic. Section 20.15(d)(3) provides that, for purposes of paragraphs (d)(1) and (d)(2) of section 20.15, the terms ''affiliated'' and ''foreign carrier'' are defined in section 63.09 of the rules.

*Need:* Section 20.15 is necessary to provide that providers of CMRS are not required under section 203 of the Communications Act, 47 U.S.C. 203, to file a tariff for the international and interstate CMRS they provide to their customers or for interstate access service they provide to other carriers or their offer of international operator service. The rule is also needed to ensure that providers of CMRS do not voluntarily file tariffs for such services, as the Commission has concluded that competition among CMRS providers is the best way to ensure that rates, terms and conditions for CMRS are just and reasonable. Paragraphs (d)(1) and (d)(2) of section 20.15 are necessary to ensure that the Commission's decision to require the detariffing of CMRS is not frustrated by tariffing requirements in other services.

*Legal Basis:* 47 U.S.C. 154, 160, 201, 251–254, 303, 316 and 332.

*Section Number and Title:*

20.15 Requirements under Title II of the Communications Act.

*Brief Description:* The note to rule 20.18(c) provided that operators of digital wireless systems must begin complying with the provisions of the rule paragraph on or before June 30, 2002. The rules in sections 20.18(g)(1), (2) and (i) make adjustments to the deployment schedule for wireless carriers that choose to implement enhanced 911 Phase II service using a handset-based technology. The rules defer the date for initial distribution of Automatic Location Identification (ALI)-capable handsets by seven months, adjust the timetable for carriers to meet certain interim benchmarks for activating new ALI-capable handsets, defer the date by which a carrier must achieve full penetration of ALI-capable handsets until December 31, 2005, modify the manner in which the Commission defines full penetration by adopting a requirement that carriers achieve 95 percent penetration of ALI-capable handsets by the December 31, 2005 date, eliminate the separate handset phase-in schedule triggered by a request from a Public Safety Answering Point, and extend the deadline for carriers to file Phase II enhanced 911 implementation reports.

*Need:* The Commission established December 31, 2001, as the deadline for carriers operating digital wireless systems to have obtained all software upgrades and equipment necessary to make their systems capable of transmitting 911 calls from TTY devices, but allowed wireless carriers an additional six-month period (until June 30, 2002) to integrate, test, and deploy the technology in their systems in conjunction with the public safety community. The rules in sections 20.18(g)(1), (2) and (i) are needed to establish a practical, understandable, and workable schedule for implementation of handset-based ALI solutions for enhanced 911 Phase II service.

*Legal Basis:* 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

*Section Numbers and Titles:*

20.18(c) 911 Service.

20.18(g)(1), (2), and (i) Phase-in for handset-based location technologies.

*Brief Description:* Section 20.19 requires providers of covered mobile services and the manufacturers of handsets used with these services to offer a selection of hearing aid-compatible handsets. Providers and manufacturers must ensure that a certain minimum percentage or number of the handsets that they offer meet a specified rating for compatibility with hearing aids in acoustic coupling mode (coupling via the hearing aid microphone) and inductive coupling mode (coupling via a telecoil), as measured under Commission-approved technical standards.

*Need:* Section 20.19 implements, for wireless handsets, the statutory requirement under 47 U.S.C. 610(b) that telephones and devices used for advanced communications services provide internal means for effective use with compatible hearing aids. The rule is also necessary to ensure reasonable access to commercial mobile services by persons with impaired hearing, as required under 47 U.S.C. 610(a).

*Legal Basis:* 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 308, 309(j), 310, and 610.

*Section Number and Title:*

20.19 Hearing aid-compatible mobile handsets.

## PART 24—PERSONAL COMMUNICATIONS SERVICES

### Subpart D—Narrowband PCS

*Brief Description:* Part 24 sets forth rules relating to Personal Communications Services (PCS), specifically, the rules establishing the requirements and conditions under which radio stations may be licensed and used in those services. Subpart D sets forth the rules governing the licensing and operation of narrowband PCS systems authorized in the 901–902, 930–931, and 940–941 MHz bands (900 MHz band).

*Need:* These rules are needed to set forth which frequencies are available for narrowband PCS and to revise an erroneous reference to another rule section.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 309 and 332.

*Section Numbers and Titles:*

24.129 Frequencies.

24.133(a) Emission limits.

### Subpart E—Broadband PCS

*Brief Description:* This subpart covers the technical requirements for broadband Personal Communications Services operations in the 1850–1910 and 1930–1990 MHz bands. These rules require licensees to make a substantial service showing in their license area within ten years of the date of the initial grant or license renewal in order to avoid forfeiture of the license, and specify that the 1910–1915 MHz frequency block is to be used for mobile station transmissions while the 1990–1995 MHz block shall be used for base station transmissions.

*Need:* By imposing a substantial service standard on the Personal Communications Services construction requirement and designating the types of transmissions authorized on the paired frequency blocks 1910–1915 and 1990–1995 MHz, these rules incentivize the active use of spectrum.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 309, 332.

*Section Numbers and Titles:*

24.203(d) Construction requirements.

24.229(c) Frequencies.

## PART 25—SATELLITE COMMUNICATIONS

### Subpart A—General

*Brief Description:* Part 25 contains the Commission's rules governing the licensing and operation of space stations and earth stations. It includes application requirements, technical requirements, operational requirements, and coordination requirements for various satellite services. The rules also define the Commission's processing of applications.

*Need:* The part 25 rules are needed to ensure that satellite services may be provided

without harmful interference and consistent with the public interest.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, 721.

*Section Numbers and Titles:*

25.103 Definitions.

**Subpart B—Applications and Licenses**

25.110 Filing of applications, fees, and number of copies.
25.111(b), (c) Additional information, ITU filings, and ITU cost recovery.
25.112(a)(3), (b) introductory text Dismissal and return of applications.
25.113(b) [formerly partially in 25.136, 25.143(i), (j), (k)], (g), (h) Station construction, deployment approval, and operation of spare satellites.
25.114 Applications for space station authorizations.
25.115(a), (c)(2), (e), (f) Applications for earth station authorizations.
25.116(b)(5), (c) introductory text, (d), (e) Amendments to applications.
25.117(a), (c), (d)(1), (2), (3), (f) Modification of station license.
25.118(a), (b), (e) Modifications not requiring prior authorization.
25.119(a), (c), (d), (g) Assignment or transfer of control of station authorization.
25.120(b) Application for special temporary authorization.
25.121 License term and renewals.
25.129 Equipment authorization for portable earth-station transceivers.
25.130(a) Filing requirements for transmitting earth stations.
25.131(a), (b), (h), (i), (j) Filing requirements and registration for receive-only earth stations.
25.132(a) Verification of earth station antenna performance.
25.135(c), (d) Licensing provisions for earth station networks in the non-voice, non-geostationary Mobile-Satellite Service.
25.287 [formerly partially in 25.136] Requirements pertaining to operation of mobile stations in the NVNG, 1.5/1.6 GHz, 1.6/2.4 GHz, and 2 GHz Mobile-Satellite Service bands.
25.137 Requests for U.S. market access through non-U.S.-licensed space stations.
25.138(a) introductory text, (a)(6), (f) Licensing requirements for GSO FSS earth stations in the conventional Ka-band.
25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.
25.140(a) [formerly generally in 25.140(b)] Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.
25.142(a)(1) Licensing provisions for the non-voice, non-geostationary Mobile-Satellite Service.
25.144(b) Licensing provisions for the 2.3 GHz satellite digital audio radio service.
25.145 Licensing provisions for the FSS in the 18.3–20.2 GHz and 28.35–30.0 GHz bands.
25.146 Licensing and operating rules for the NGSO FSS in the 10.7–14.5 GHz bands.
25.148 Licensing provisions for the Direct Broadcast Satellite Service.
25.149 Application requirements for ancillary terrestrial components in Mobile-Satellite Service networks operating in the 1.5/1.6 GHz and 1.6/2.4 GHz Mobile-Satellite Service.
25.154(a)(3), (c), (d) Opposition to applications and other pleadings.
25.155 Mutually exclusive applications.
25.156(d) Consideration of applications.
25.157 Consideration of applications for NGSO-like satellite operation.
25.158 Consideration of applications for GSO-like satellite operation.
25.159 Limits on pending applications and unbuilt satellite systems.
25.161(a) Automatic termination of station authorization.
25.164 Milestones.
25.165 Surety bonds.

**Subpart C—Technical Standards**

25.202(a) Frequencies, frequency tolerance, and emission limits.
25.208(c), (d), (l), (m), (o), (p)–(t) Power flux density limits.
25.209(h)(1) Antenna performance standards.
25.210(c) [formerly in 25.215], (f), (j) Technical requirements for space stations.
25.216 Limits on emissions from mobile earth stations for protection of aeronautical radionavigation-satellite service.
25.217 Default service rules.
25.253 Special requirements for ancillary terrestrial components operating in the 1626.5–1660.5 MHz/1525–1559 MHz bands.
25.254 Special requirements for ancillary terrestrial components operating in the 1610–1626.5 MHz/2483.5–2500 MHz bands.
25.255 Procedures for resolving harmful interference related to operation of ancillary terrestrial components operating in the 1.5/1.6 GHz and 1.6/2.4 GHz bands.
25.258 Sharing between NGSO MSS feeder-link stations and GSO FSS services in the 29.25–29.5 GHz band.
25.261 Procedures for avoidance of in-line interference events for Non Geostationary Satellite Orbit (NGSO) Satellite Network Operations in the Fixed-Satellite Service (FSS) Bands.

**Subpart D—Technical Operations**

25.271(e) Control of transmitting stations.
25.280 Inclined orbit operations.
25.282 Orbit raising maneuvers.
25.283 End-of-life disposal.
25.284 Emergency Call Center Service.
25.285 [formerly generally in 25.143(i), (j), (k)] Operation of MSS and ATC transmitters or transceivers on board civil aircraft.

**Subpart F—Competitive Bidding Procedures for DARS**

25.401 Satellite DARS applications subject to competitive bidding.
25.404 Submission of down payment and filing of long-form applications.
25.601 Equal employment opportunities.
25.701 Other DBS Public interest obligations.

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

**Subpart B—Applications and Licenses**

*Brief Description:* Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart B establishes application and licensing requirements applicable to a number of spectrum bands, including AWS–1 (Advance Wireless Services) stations operating in the 1710–1755/2110–2155 MHz band.

*Need:* The revised rules specify channel blocks for AWS–1 (27.11(i)) and establish the term for licenses to operate in these frequencies (27.13(g)). The need for these rules is ongoing.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

*Section Numbers and Titles:*

27.11(i) Initial authorization.
27.13(g) License period.

**Subpart C—Technical Standards**

*Brief Description:* This subpart contains the rules for the miscellaneous wireless communications services. These rules specify power and antenna height requirements for stations transmitting in the 1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2110–2155 MHz, 2155–2180 MHz, and 2180–2200 MHz bands; additionally, under these rules, all operation in the above bands is subject to international agreements with Mexico and Canada. These rules also impose separate power limit restrictions on stations operating in the Broadband Radio Service and Educational Broadband Service, in addition to specifying the attenuation requirement relating to out-of-band emissions for stations operating in the 600 MHz band and the 698–746 MHz band.

*Need:* In providing protection for adjacent operators, these rules protect television stations from interference and ensure that consumers continue to benefit from television broadcasts.

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, 1452.

*Section Numbers and Titles:*

27.50(d), (h) Power limits and duty cycle.
27.53(g), (l) Emission limits.
27.55(a)(4) Power strength limits.
27.57(c) International coordination.

**Subpart L—1695–1710 MHz, 1710–1755 MHz, 1755–1780 MHz, 2110–2155 MHz, 2155–2180 MHz, 2180–2200 MHz Bands**

*Brief Description:* Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart L contains specific rules applicable to AWS–1 (Advanced Wireless Service) stations operating in the 1710–1755/2110–2155 MHz band, and rules applicable to AWS–3 stations operating in the 1695–1710 and 1755–1780/2155–2180 MHz bands and to AWS–4 stations operating in the 2000–2020/2180–2200 MHz bands.

*Need:* The revised rules establish licensing and competitive bidding rules for the AWS–1, AWS–3 and AWS–4 bands, as well as rules

regarding protection and relocation of incumbent operations in these frequency bands. The need for these rules is ongoing.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

*Section Numbers and Titles:*

27.1101 1710–1755 MHz and 2110–2155 MHz bands subject to competitive bidding.
27.1102 Designated Entities in the 1710–1755 MHz and 2110–2155 MHz bands.
27.1111 Relocation of fixed microwave service licensees in the 2110–2150 and 2160–2200 MHz bands.
27.1131 Protection of part 101 operations.
27.1132 Protection of incumbent operations in the 2150–2160/62 MHz band.
27.1133 Protection of part 74 and part 78 operations.
27.1134 Protection of Federal Government operations.
27.1135 Protection of non-Federal Government Meteorological-Satellite operations.

**Subpart M—Broadband Radio Service and Educational Broadband Service**

*Brief Description:* Part 27 contains service and licensing rules for Miscellaneous Wireless Communications Services. Subpart M contains specific rules applicable to the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) that operate in the 2500–2690 MHz band.

*Need:* The rules establish service, licensing, competitive bidding and technical rules for BRS and EBS. The rules also establish policies governing transition of 2500–2690 MHz band to use by BRS and EBS. Prior to January 10, 2005 these frequencies had been assigned to the Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS) and the Instructional Television Fixed Service (ITFS). The need for these rules is ongoing.

*Legal Basis:* 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, 337, 1403, 1404 and 1451.

*Section Numbers and Titles:*

27.1200 Change to BRS and EBS.
27.1201 EBS eligibility.
27.1202 Cable/BRS cross-ownership.
27.1203 EBS programming requirements.
27.1206 Geographic Service Area.
27.1207 BTA license authorization.
27.1208 BTA service areas.
27.1209 Conversion of incumbent EBS and BRS stations to geographic area licensing.
27.1210 Remote control operation.
27.1211 Unattended operation.
27.1212 License term.
27.1213 Designated entity provisions for BRS in Commission auctions commencing prior to January 1, 2004.
27.1214 EBS spectrum leasing arrangements and grandfathered leases.
27.1215 BRS grandfathered leases.
27.1216 Grandfathered E and F group EBS licenses.
27.1217 Competitive bidding procedures for the Broadband Radio Service.
27.1218 Designated entities.
27.1220 Transmission standards.
27.1221 Interference protection.
27.1222 Operations in the 2568–2572 and 2614–2618 bands.
27.1230 Conversion of the 2500–2690 MHz band.
27.1231 Initiating the transition.
27.1232 Planning the transition.
27.1233 Reimbursement costs of transitioning.
27.1234 Terminating existing operations in transitioned markets.
27.1235 Post-transition notification.

**PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES**

*Brief Description:* Part 32 implements section 220 of the Communications Act of 1934, as amended, which requires the Commission to ''prescribe a uniform system of accounts for use by telephone companies.'' The part 32 rules contain the current Uniform System of Accounts that apply to regulated telephone companies, which were amended in 1986 to respond to the introduction of competition and new products and services in the telecommunications market. Part 32 specifies the asset, revenue and expense accounts that must be maintained.

*Need:* The Commission initiated a rulemaking on August 18, 2014 to determine whether part 32 rules could be streamlined to reduce regulatory burdens while maintaining access to the data the Commission needs to fulfill its statutory and regulatory obligations. *Comprehensive Review of the Part 32 Uniform System of Accounts, 29 FCC Rcd 10638 (2014).*

*Legal Basis:* 47 U.S.C. 154(i) and (j), and 220.

*Section Numbers and Titles:*

**Subpart B—General Instructions**

32.16(a) Changes in accounting standards.
32.17 Interpretation of accounts.
32.19 Address for reports and correspondence.
32.24(b) Compensated absences.
32.27(a) Transactions with affiliates.

**Subpart C—Instructions for Balance Sheet Accounts**

32.101 Structure of the balance sheet accounts.
32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained.
32.1120 Cash and equivalents.
32.1170 Receivables.
32.1171 Allowance for doubtful accounts.
32.1220(g), (h) Inventories.
32.1280 Prepayments.
32.1350 Other current assets.
32.1410 Other noncurrent assets.
32.1438(a) Deferred maintenance and retirements.
32.2000(a)(2), (4), (b)(2)(i), (iii), (iv), (c)(2)(x), (xiii), (d)(2)(i), (4), (5), (f)(3)(i), (g)(3), (5), (h)(3), (j) Instructions for telecommunications plant accounts.
32.2003(c) Telecommunications plant under construction.
32.2005(b) Telecommunications plant adjustment.
32.2007(a) Goodwill.
32.2111(f), (g) Land.
32.2210 Central office—switching.
32.2211(a) Non-digital switching.
32.2212(b), (c), (d) Digital electronic switching.
32.2231 Radio systems.
32.2232(b), (c), (d) Circuit equipment.
32.2311(f) Station apparatus.
32.2424(a) Submarine & deep sea cable.
32.2682(c) Leasehold improvements.
32.2690 Intangibles.
32.3000(a)(2), (b) Instructions for balance sheet accounts—Depreciation and amortization.
32.3100(b), (d) Accumulated depreciation.
32.3200(b) Accumulated depreciation—held for future telecommunications use.
32.3300(b), (c) Accumulated depreciation—nonoperating.
32.3410(b), (c) Accumulated amortization—capitalized leases.
32.3999 Instructions for balance sheet accounts—liabilities and stockholders' equity.
32.4000 Current accounts and notes payable.
32.4040(b) Customers' deposits.
32.4070 Income taxes—accrued.
32.4080 Other taxes—accrued.
32.4110(c), (f) Net current deferred nonoperating income taxes.
32.4130 Other current liabilities.
32.4200 Long term debt and funded debt.
32.4300 Other long-term liabilities and deferred credits.
32.4330 Unamortized nonoperating investment tax credits—net.
32.4341(a), (b)(2) Net deferred tax liability adjustments.
32.4350(b), (e) Net noncurrent deferred nonoperating income taxes.
32.4361 Deferred tax regulatory adjustments—net.
32.4540 Other capital.

**Subpart D—Instructions for Revenue Accounts**

32.5000 Basic local service revenue.
32.5001 Basic area revenue.
32.5060 Other basic area revenue.
32.5081 End user revenue.
32.5082 Switched access revenue.
32.5083 Special access revenue.
32.5100 Long distance message revenue.
32.5200 Miscellaneous revenue.
32.5230 Directory revenue.
32.5280(c) Nonregulated operating revenue.
32.5300 Uncollectible revenue.

**Subpart E—Instructions for Expense Accounts**

32.5999(b)(4), (c), (g) General.
32.6110 Network support expenses.
32.6112(b) Motor vehicle expense.
32.6113(b) Aircraft expense.
32.6114(b) Tools and other work equipment expense.
32.6120 General support expenses.
32.6124 General purpose computers expense.
32.6210 Central office switching expenses.
32.6211 Non-digital switching expense.
32.6212 Digital electronic switching expense.
32.6230 Central office transmission expense.
32.6232 Circuit equipment expense.
32.6310 Information origination/termination expenses.

32.6410 Cable and wire facilities expenses.
32.6424 Submarine and deep sea cable expense.
32.6510 Other property, plant and equipment expenses.
32.6512 Provisioning expense.
32.6530 Network operations expense.
32.6560 Depreciation and amortization expenses.
32.6561 Depreciation expense—telecommunications plant in service.
32.6563 Amortization expense—tangible.
32.6564 Amortization expense—intangible.
32.6565 Amortization expense—other.
32.6610 Marketing.
32.6611 Product management and sales.
32.6620 Services.
32.6621 Call completion services.
32.6623 Customer services.
32.6720 General and administrative.
32.6790 Provision for uncollectible notes receivable.

**Subpart F—Instructions for Other Income Accounts**

32.6999 General.
32.7100 Other operating income and expenses.
32.7200 Operating taxes.
32.7210(b) Operating investment tax credits—net.
32.7240(d), (e), (g) Operating other taxes.
32.7300 Nonoperating income and expense.
32.7400 Nonoperating taxes.
32.7500 Interest and related items.
32.7600 Extraordinary items.

**PART 42—PRESERVATION OF RECORDS OF COMMUNICATIONS COMMON CARRIERS**

*Brief Description:* Section 42.10 provides that non-dominant interexchange carriers (IXCs), which category includes providers of commercial mobile radio services (CMRS), must make available to the public, in an easily understood format, and during regular business hours, information on the rates, terms and conditions for all of its international, interstate, domestic, interexchange services.

*Need:* Section 42.10 is needed to ensure that the information that was formerly contained in the carriers' tariffs and publicly available will continue to be available to users once the carriers have detariffed their services.

*Legal Basis:* 47 U.S.C. 154(i), 219 and 220.

*Section Number and Title:*

42.10 Public availability of information concerning interexchange services.

*Brief Description:* Section 42.11(a) requires non-dominant interexchange carriers (IXCs) to retain price and service information for all their domestic and international interexchange services, and to make such information available to the Commission and state regulators upon request. The section, however, clarifies that one class of IXC, providers of commercial mobile radio services (CMRS) need retain such price and service information only for their international common carrier service operations and only on routes on which they have been classified as dominant under section 63.10 of the rules due to affiliation with a foreign telecommunications carrier that collects settlement payments from U.S. carriers for terminating U.S. international switched traffic at the foreign end of the route. The rule also makes clear that CMRS providers are not required to retain price and service information on affiliated routes (*i.e.,* routed on which they are affiliated with a foreign carrier at the foreign end) if they provide service on that route solely through the resale of international switched telecommunications services that they purchase from an unaffiliated facilities-based provider. Finally the rule states that the price and service information the rule requires subject carriers to retain includes documents supporting the rates terms and conditions of covered services and requires carriers to retain the records in such a way that they can produce such records within 10 days of a request.

*Need:* Section 42.11 is needed to ensure that a CMRS carrier that is dominant on a particular route because is affiliated with a foreign carrier that collects settlement payments from U.S. carriers for terminating switched international services at the foreign end of the call does not abuse its affiliated position by unfairly routing return traffic to the United States through the affiliated CMRS carrier and thereby to reduce the amount of return traffic and settlement payments other U.S. carriers receive.

*Legal Basis:* 47 U.S.C. 154(i), 219 and 220.

*Section Number and Title:*

42.11 Retention of information concerning detariffed interexchange services.

**PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES**

*Brief Description:* Part 43 includes requirements that have been promulgated under authority of sections 211 and 219 of the Communications Act of 1934, as amended, with respect to the filing by communication common carriers and certain of their affiliates of periodic reports and certain other data, but do not include certain requirements relating to the filing of information with respect to specific services, accounting systems, and other matters incorporated in other parts of Chapter 47.

*Need:* Section 43.11(a) sets out the terms by which providers of local exchange telephone service, commercial mobile radio service, and Interconnected Voice over IP service shall complete FCC Form 477 to report data to the Commission concerning those services.

*Legal Basis:* 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

*Section Number and Title:*

43.11 Reports of local exchange competition data.

*Brief Description:* Section 43.51 imposes on U.S. telecommunications carriers identified in section 43.51(b) a general obligation to file with the Commission, within 30 days of execution thereof, a copy of all contracts, agreements, concessions, licenses, authorizations, operating agreements, or other arrangements (including amendments) to which it is a party with respect to exchange of services, the interchange or routing of traffic, and matters concerning rates, accounting rates, divisions of tolls, or the basis of settlement of traffic balances. Section 43.51(b)(1) provides that the general filing rule applies to domestic dominant carriers. Section 43.51(b)(2) provides that the filing rule applies to U.S. international carriers that have been classified as dominant on any route included in the contract (other than those so classified because of a foreign-carrier affiliation under section 63.10.) Section 43.51(c) provides that contracts for domestic-only service do not need to be filed with the Commission but need to be made available upon reasonable request. Section 43.51(d) states that any U.S. carrier, other than a provider of commercial radio services, that is engaged in foreign communications, and enters into an agreement with a foreign carrier, is subject to the Commission's authority to require the U.S. carrier providing service on any U.S.-international routes to file, on an as-needed basis, a copy of each agreement to which it is a party.

*Need:* The general rule in section 43.51 that carriers must file copies of their contracts and operating agreements is needed to require domestic dominant carriers to file their contracts and to address issues on the U.S.-Cuba route and more generally allow the Commission to obtain contracts for routes on which there is, or has been an allegation of, anticompetitive conduct. *ISP Reform Order,* 19 FCC Rcd 5709, 5736 (2009).

*Legal Basis:* 47 U.S.C. 154, 211, 219 and 220.

*Section Number and Title:*

43.51 Contracts and concessions.

**PART 51—INTERCONNECTION**

**Subpart D—Additional Obligations of Incumbent Local Exchange Carriers (LECs)**

*Brief Description:* This subsection generally implements section 251(c) of the Communications Act of 1934, as amended. Section 51.323 establishes rules addressing how an incumbent LEC may assign and configure physical collocation space, as well as standards for providing virtual collocation. Paragraph (f)(7) of this section requires incumbent LECs to assign collocation space to requesting carriers in a just, reasonable, and nondiscriminatory manner, to allow each requesting carrier to submit space preferences prior to assigning physical collocation space to that carrier, and to ensure that their space assignment policies and practices meet certain minimum principles. Paragraphs (i)(4)(i) through (v), (5), and (6)(i) establish parameters for certain types of reasonable security measures that the incumbent LEC may adopt as part of its collocation policies to protect its equipment and ensure network reliability. These paragraphs include conditions the incumbent LEC must meet if it restricts physical collocation to space separated from that space housing its own equipment, requires the employees and contractors of collocating carriers to use a central or separate entrance to the incumbent's building, and constructs or requires construction of a separate entrance to access physical collocation space.

*Need:* These rules are necessary to foster a competitive market in the telecommunications industry, and to promote the deployment of broadband infrastructure and other network investment. These rules also ensure a proper balance of the congressional goal of promoting competition against the need to protect an incumbent LEC's property interests against unwarranted intrusion.

*Legal Basis:* 47 U.S.C. 151,152, 202, 251(a) and 251(c)(2).

*Section Number and Title:*

51.323(f)(7), (i)(4)(i) through (v), (i)(5), and (i)(6)(i) Standards for physical collocation and virtual collocation.

**Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic**

*Brief Description:* The part 51 rules are designed to implement the provisions of sections 251 and 252 of the Communications Act of 1934, as amended. Part 51, subpart H, sets forth the rules regarding reciprocal compensation for the transport and termination of telecommunications traffic between local exchange carriers (LECs) and other carriers. Section 51.711 provides two exceptions to the general rule that the rates for reciprocal compensation must be symmetrical.

The exception in section 51.711(c) provides that a state commission, pending further proceedings before the Commission, must establish the rates that certain licensees may assess upon other carriers for the transport and termination of telecommunications traffic.

*Need:* Section 51.711(c) was adopted to set forth an exception to the general rule that the rates for reciprocal compensation must be symmetrical.

*Legal Basis:* 47 U.S.C. 251 and 252.

*Section Number and Title:*

51.711(c) Symmetrical reciprocal compensation.

*Brief Description:* The part 51 rules are designed to implement the provisions of sections 251 and 252 of the Communications Act of 1934, as amended. Part 51, subpart H, sets forth the rules regarding reciprocal compensation for the transport and termination of telecommunications traffic between local exchange carriers (LECs) and other carriers. Section 51.715 provides that, upon request from a carrier without an existing interconnection agreement with an incumbent LEC, the incumbent LEC must provide transport and termination of telecommunication traffic immediately under an interim arrangement pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission. Section 51.715 specifies that an interim arrangement will cease to be in effect when certain situations outlined in the section occur with respect to rates for transport and termination of telecommunications traffic subject to the interim arrangement.

*Need:* Section 51.715(c) was adopted to clarify interim transport and termination pricing under a variety of scenarios.

*Legal Basis:* 47 U.S.C. 251 and 252.

*Section Number and Title:*

51.715 Interim transport and termination pricing.

**PART 52—NUMBERING**

**Subpart B—Administration**

*Brief Description:* These rules implement the requirements of section 251(e) of the Communications Act of 1934, as amended, which gives the Commission exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Section 52.15 provides the rules governing management and administration of U.S. Central Office code numbering resources. Paragraph (g)(4) of this section establishes procedures to address carrier noncompliance with these rules. Paragraph (g)(5) of this section establishes procedures for state regulatory commissions to obtain access to service providers' applications for numbering resources. Paragraph (h) establishes a national utilization threshold for growth numbering resources, and paragraph (k) sets forth rules for numbering audits to verify carrier compliance with Commission regulations and applicable industry guidelines relating to numbering administration.

*Need:* These rules provide a framework for ensuring fair and impartial access to numbering resources, which is a critical component of encouraging a competitive telecommunications market in the United States.

*Legal Basis:* 47 U.S.C. 151, 152 and 251(e).

*Section Number and Title:*

52.15(g)(4)–(5), (h), and (k) Central office code administration.

**Subpart C—Number Portability**

*Brief Description:* These rules implement the requirements of section 251(b)(2) of the Communications Act of 1934, as amended, which requires all LECs ''to provide, to the extent technically feasible, number portability in accordance with the requirements prescribed by the Commission.'' Section 52.21 provides the definitions governing the number portability rules. Paragraph (a) sets forth the definition of the term *100 largest MSAs,* as used in this subpart.

*Need:* This subpart provides rules that are designed to ensure that users of telecommunications services can retain, at the same location, their existing telephone numbers when they switch from one local exchange telecommunications carrier to another. In implementing statutory requirements for number portability, these rules provide necessary information regarding terms that may have different definitions outside the number portability context.

*Legal Basis:* 47 U.S.C. 151, 152, 251(e).

*Section Number and Title:*

52.21(a) Definitions 100 largest MSAs.

*Brief Description:* Section 52.33 permits incumbent local exchange carriers (LECs) to file tariffs with the Commission establishing a monthly number-portability charge, a number-portability query-service charge, and a number-portability query/administration charge, to recover carrier specific costs directly related to providing long-term number portability. Section 52.33(a)(3) specifies that incumbent local exchange carriers serving an area outside the 100 largest MSAs that do not yet provide local number portability (LNP) functionality but provide Extended Area Service (EAS) may recover their query and LNP Administration costs through end-user charges, and that the carrier can assess such charges for a maximum of five years. The subsection also allows all interconnected VoIP providers and telecommunications carriers that are not incumbent LECs to recover such costs in any manner consistent with state and federal law and regulation.

*Need:* In implementing the statutory requirements for number portability and the promotion of local exchange competition, this rule permits telecommunications carriers to recover the costs of providing long-term number portability in a competitively neutral manner, as required by section 251(e) of the Communications Act of 1934, as amended.

*Legal Basis:* 47 U.S.C. 153,154, 201–205, 207–209, 218, 225–227, 251–252, 271, and 332.

*Section Number and Title:*

52.33(a)(3) Recovery of carrier-specific costs directly related to providing long-term number portability.

**PART 54—UNIVERSAL SERVICE**

**Subpart A—General Information**

*Brief Description:* These rules provide general information regarding the Universal Service Fund, including various terms and definitions that are referenced throughout part 54 of the Commission's rules.

*Need:* In implementing statutory requirements for the Universal Service Fund, these rules provide necessary information regarding terms that may have different definitions outside the universal service context.

*Legal Basis:* 47 U.S.C. 254.

*Section Number and Title:*

54.5 Terms and definitions.

*Brief Description:* Part 54 implements section 254 of the Communications Act of 1934, as amended, which provides financial support to four different universal service programs. Section 54.8 provides rules for denying support to entities that have been convicted of fraud or other criminal activities related to the four universal service programs.

*Need:* Denying bad actors support from the four universal service programs should deter waste, fraud, and abuse, thus helping to protect the integrity of the programs and to help ensure that support is used only in furtherance of the purposes of the four programs.

*Legal Basis:* 47 U.S.C. 151–154, 201–205, 214, 254, and 403.

*Section Number and Title:*

54.8 Prohibition on participation: suspension and debarment. [Originally adopted as 54.521—in 2003, addressing only violations of the E-rate program. In 2007 it was expanded to cover all 4 universal service programs and moved to 54.8.]

**Subpart D—Universal Service Support for High Cost Areas**

*Brief Description:* These rules specify the requirements for the High Cost support mechanism. These rules provide requirements for how High Cost support will be calculated and distributed to eligible telecommunications providers, as well as reporting and certification requirements about the use of such support and the application process to receive such support in certain instances.

*Need:* In implementing statutory requirements for the High Cost Program of the Universal Service support mechanism, these rules ensure that rates in rural, insular and high cost areas, are ''reasonably comparable'' to rates charged for similar services in urban areas.

*Legal Basis:* 47 U.S.C. 254(b).

*Section Numbers and Titles:*

54.305 Sale or transfer of exchanges.
54.307 Support to a competitive eligible telecommunications carrier.
54.313 Annual reporting requirements for high-cost recipients.
54.314 Certification of support for eligible telecommunications carriers.
54.315 Application process for phase II support distributed through competitive bidding.

**Subpart F—Universal Service Support for Schools and Libraries**

*Brief Description:* Part 54 implements section 254 of the Communications Act of 1934, as amended, which provides financial support to four different universal service programs. Subpart F of the rules implementing section 254, creates and regulates the E-rate program, known more formally as the schools and libraries universal service support mechanism. It provides discounts to schools and libraries for access to broadband and related services. The annual Eligible Services List and section 54.506(a) specifies what types of service are eligible for E-rate support, which include telecommunications services, telecommunications, Internet access, internal connections, basic maintenance and managed internal broadband services internal connections. Section 54.506(b) clarified what basic maintenance services were eligible for E-rate support: those that were basic and needed to maintain the internal connections in working order. Section 54.502(c), formerly 54.506(c), limits the frequency that an applicant may receive funding for internal connections (category two services) to no more than twice in a five-year period (the ''2 in 5'' rule). Although it has not been rescinded, the E-rate program established five-year budgets starting in 2015 (based on student count and library size) for applicants requesting E-rate funding for internal connections and, thus, the ''2 in 5'' rule is not applicable to those applicants purchasing internal connections (category two services) until after applicants' five-year budget cycles area completed, absent further action from the Commission.

*Need:* The Commission wanted to provide guidance on what services were eligible for E-rate support, but not to fund any extras, given the limited size of the universal service fund. The Commission also seeks to prevent applicants from wastefully replacing internal connections more frequently than needed. The current five-year budget cap (54.502(b)(1)) currently replaces the ''2 in 5'' rule, but the ''2 in 5'' rule will return absent Commission action starting in funding year 2019.

*Legal Basis:* 47 U.S.C. 151–154, 201–205, 214, 254, and 403.

*Section Numbers and Titles:*

54.500 Terms and Definitions.
54.502(a)–(c) Eligible Services.

The annual E-rate Eligible Services List (ESL) [formerly 54.506(a)–(b)].

*Brief Description:* Part 54 implements section 254 of the Communications Act of 1934, as amended, which provides financial support to four different universal service programs. Subpart F of the rules implementing section 254, creates and regulates the E-rate program, known more formally as the schools and libraries universal service support mechanism. It provides discounts to schools and libraries for access to broadband and related services. Section 54.514 requires service providers to give applicants the choice each funding year to pay either: (1) The discounted price; or (2) the full price and then receive reimbursement through the Billed Entity Applicant Reimbursement (BEAR) process. It also directed service providers to pass any such reimbursements back to applicants within 20 days of receiving them.

*Need:* The Commission found that providing applicants, rather than service providers, with the right to choose which payment method to use would help to ensure that all schools and libraries have affordable access to telecommunications and Internet access services because some applicants appeared unable to afford to pay the full undiscounted price up front, and then wait for a reimbursement.

*Legal Basis:* 47 U.S.C. 151–154, 201–205, 214, 254, and 403.

*Section Number and Title:*

54.514 Payment for discounted services.

*Brief Description:* Part 54 implements section 254 of the Communications Act of 1934, as amended, which provides financial support to four different universal service programs. Subpart F of the rules implementing section 254, creates and regulates the E-rate program, known more formally as the schools and libraries universal service support mechanism. It provides discounts to schools and libraries for access to broadband and related services. Section 54.516 concerns program auditing and requirements that applicants and service providers retain all records relevant to E-rate supported purchases for 10 years and be available for audits and compliance inspections.

*Need:* In its July 2014 E-Rate Modernization Order, the Commission reiterated its commitment to protecting the universal service fund against waste, fraud, and abuse, and extended the time period over which applicants and service providers must retain records associated with E-rate supported purchases from 5 years to 10 years. The Order explained that the 5-year requirement was not adequate for purposes of litigation under the False Claims Act.

*Legal Basis:* 47 U.S.C. 151–154, 201–205, 214, 254, and 403.

*Section Number and Title:*

54.516 Auditing and inspections.

*Brief Description:* This rule implements the requirements for the Children's Internet Protection Act (CIPA) for participation in the E-rate program, known more formally as the schools and libraries universal service support mechanism. Specifically, schools and libraries with computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible for certain E-rate services.

*Need:* Implements CIPA in a manner consistent with Congress's intent to ensure that schools and libraries receive discounts for eligible E-rate services and is crafted in the most practical and efficacious way possible to provide schools and libraries with maximum flexibility in determining the best approach to be compliant.

*Legal Basis:* 47 U.S.C. 254(h)(1)(B).

*Section Number and Title:*

54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

**Subpart H—Administration**

*Brief Description:* These rules specify the requirements regarding the Universal Service Administrative Company, as the permanent Administrator for the Universal Service support mechanism. These rules establish the Administrator's functions and responsibilities, as well as the composition of the Administrator's Board of Directors and Committees. These rules also establish requirements regarding contributions and contributor reporting requirements.

*Need:* In implementing statutory requirements for the Universal Service support mechanism, these rules provide the framework and requirements for the administration of the program.

*Legal Basis:* 47 U.S.C. 254.

*Section Numbers and Titles:*

54.701 Administrator of universal service support mechanisms.
54.702 Administrator's functions and responsibilities.
54.705 Committees of the Administrator's Board of Directors.
54.709 Computations of required contributions to universal service support mechanisms.
54.711 Contributor reporting requirements.
54.715 Administrative expenses of the Administrator.

**PART 61—TARIFFS**

**Subpart A—General**

*Brief Description:* The Part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and

accompanying support materials for tariffs. Section 61.1 sets out the framework that governs tariff publications and their revisions.

*Need:* Section 61.1(b) sets out provisions for tariff publication conformance, including the payment of statutory charges and the use of FCC registration numbers.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

*Section Number and Title:*

61.1(b) Purpose and application.

*Brief Description:* Section 61.3(z) defines ''non-dominant carrier'' as a carrier that the Commission has not affirmatively found to be dominant. A dominant carrier is one that the Commission has found to have market power—the ability to distort a market for a particular common carrier service. The rule also makes clear that the nondominant status of a carrier for the purposes of Subpart A is not affected by a carrier's classification as dominant under section 63.10 of the rules.

*Need:* The definition in the rule is used to determine which carriers need not file tariffs for their international and interexchange services.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

*Section Number and Title:*

61.3 Definitions.

**Subpart C—General Rules for Nondominant Carriers**

*Brief Description:* Section 61.19 provides that nondominant providers of international and interstate, domestic interexchange services are generally not permitted to file tariffs for such services. Paragraphs (b) through (e) of section 61.19 identify particular classes of nondominant carriers that may continue to file tariffs for their services. Section 61.19(b) provides that carriers that are nondomiunant in the provisi0on of international carriers may file tariffs for their international 1+ dialaround. Section 61.19(c) provides that carriers that are nondominant in the provision of international and domestic, interexchange service may file a tariff for services applicable to customers who contact the local exchange carrier to designate an interexchange carrier or to change a carrier and provide service to such customers for up to 45 days while the nondominant carrier and the customers conclude a written agreement covering the service. Section 61.19(d) provides that carriers that are nondominant in the provision of international telephone calls to the United States may file a tariff for such services. Section 61.19(e) provides that carriers that are nondominant in the provision of ''on demand'' mobile satellite services may file a tariff for customers who have not entered into preexisting service contracts designating a specific provider for such services.

*Need:* The rule is necessary to implement the Commission's policy to rely upon competition among carriers, providing telecommunications services through individual contracts, to assure just and reasonable rates for such services, rather than upon a regulated tariff. The use of such contracts gives the carriers greater flexibility to meet specific customer needs, while open competition ensures that carriers do not unjustly favor one customer over another. The exceptions to the general rule listed in paragraphs (b) through (e) of section 61.19 are needed to deal with specific, largely short-term situations where reliance upon a contract could delay the initiation of service to a particular user.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

*Section Number and Title:*

61.19 Detariffing of international and interstate, domestic interexchange services.

**Subpart D—General Tariff Rules for International Dominant Carriers**

*Brief Description:* The part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Section 61.28 provides general tariff rules for carriers classified as dominant for the provision of particular international communication services on a particular route for any reason other than a foreign carrier affiliation. The section specifies that the provisions under which these carriers must file tariffs for these services.

*Need:* Section 61.28 was adopted to provide the appropriate tariff regulations for carriers classified as dominant for the provision of particular international communication services on a particular route for any reason other than a foreign carrier affiliation

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

*Section Number and Title:*

61.28 International dominant carrier tariff filing requirements.

**Subpart E—General Rules for Dominant Carriers**

*Brief Description:* The part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that carriers' rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Section 61.41(e) modifies the all-or-nothing rule applicable to incumbent local exchange carriers to permit a limited exception when a rate-of-return carrier acquires lines from a price cap carrier and elects to bring the acquired lines into rate-of-return regulation. The rule, as amended, will permit the acquiring carrier to convert the price cap lines back to rate-of-return regulation.

*Need:* Section 61.41(e) was adopted to address the situation when a rate-of-return carrier seeks to return acquired price cap lines to rate-of-return regulation, the problems that the all-or-nothing rule sought to prevent do not exist, or can be addressed in a less burdensome way. Because the carrier wishes to have all of its lines be subject to rate-of-return regulation, there can be no danger of cost shifting between price cap and non-price cap affiliates. Similarly, a rate-of-return carrier in this position is not necessarily seeking to game the system by moving back and forth between different regulatory regimes. However, because of the possibility that the acquiring rate-of-return carrier could later seek to return to price cap regulation, thereby potentially gaming the system, the rule provides that once a rate-of-return carrier brings acquired price cap lines into rate-of-return regulation, it may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation, without first obtaining a waiver. This restriction addresses concerns underlying the adoption of the all-or-nothing rule, while not requiring that the election be unnecessarily irreversible.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403.

*Section Number and Title:*

61.41(e) Price cap requirements generally.

**Subpart G—Specific Rules for Tariff Publications of Dominant and Nondominant Carriers**

*Brief Description:* The part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Section 61.74 provides for two exceptions to the general rule that tariff publications filed with the Commission are not permitted to reference other tariffs or documents. The exception in section 61.74(d) permits tariffs to ''reference other FCC tariffs . . . for purposes of determining mileage, or specifying the operating centers at which a specific service is available.'' The exception in section 61.74(e) permits tariffs to reference technical publications that describe engineering or other technical aspects of a service under certain conditions.

*Need:* Sections 61.74(d) and (e) were adopted to assist carriers by detailing the limited instances when a tariff filing entity may make reference to any other tariff document or instrument in a tariff publication.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403.

*Section Number and Title:*

61.74(d) and (e) References to other instruments.

**PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS EXTENSIONS AND SUPPLEMENTS**

*Brief Description:* The part 63 rules establish streamlining procedures for processing domestic common carrier applications to transfer control of lines or authorization to operate.

*Need:* Section 63.03 informs licensees of the process for requesting streamlined

processing for applications for domestic common carriers to transfer control of lines or authorization to operate.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 218, 403, and 571.

*Section Number and Title:*

63.03 Streamlining procedures for domestic transfer of control applications.

*Brief Description:* The part 63 rules establish content requirements for domestic common carrier applications to transfer control of lines or authorization to operate.

*Need:* Establishes procedures for submitting the correct information necessary to process domestic common carrier applications to transfer control of lines or authorization to operate.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 218, 403, and 571.

*Section Number and Title:*

63.04 Filing procedures for domestic transfer of control applications.

*Brief Description:* The part 63 rules below set forth definitions, requirements, and conditions applicable to international section 214 applications and authorizations to provide global facilities-based and global resale services, as well as provisions regarding requests for designation as a recognized private operating agency. The rules pertain to the regulatory classification of U.S. international carriers; notification and prior approval requirements for U.S. international carriers that are or propose to become affiliated with a foreign carrier; procedures for processing international section 214 applications; special provisions for U.S. international common carriers; contents of applications for international common carriers; special procedures for discontinuances of international services; special provisions relating to temporary or emergency service by international carriers; and related issues. The rules also require carriers to file all notifications and other filings electronically through the International Bureau Filing System (IBFS).

*Need:* These rules are needed to provide the framework applicable to international section 214 authorizations and establish the general applications, procedures, conditions and restrictions to ensure that carriers and affiliates providing services on international routes meet statutory requirements for designated global facilities-based and global resale telecommunication services.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

*Section Numbers and Titles:*

63.09, Note 2 Definitions applicable to international Section 214 authorizations.
63.10(d), (e) Regulatory classification of U.S. international carriers.
63.11(d), (g)–(j) Notification by and prior approval for U.S. international arriers that are or propose to become affiliated with a foreign carrier.
63.12(c)(3) Processing of international Section 214 applications.
63.14(c) Prohibition on agreeing to accept special concessions.
63.17(b) introductory text, (b)(1)–(2), (b)(4) Special provisions for U.S. international common carriers.
63.18 introductory text, (e)(3), (g), Note to paragraph (h) Contents of applications for international common carriers.
63.19 Special procedures for discontinuances of international services.
63.20(a) Electronic filing, copies required; fees; and filing periods for international service providers.
63.21(h)–(i) Conditions applicable to all international Section 214 authorizations.
63.22(a)–(c), (e)–(f) Facilities-based international common carriers.
63.23(a)–(b), (d) Resale-based international common carriers.
63.24 Assignments and transfers of control.
63.25(b), (d)(2) Special provisions relating to temporary or emergency service by international carriers.
63.51 Additional information.
63.53(a)(1)–(2), (b)–(c) Form.
63.60(d) (currently (g)) Definitions.
63.701 introductory text Contents of application.

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

### Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

*Brief Description:* Under Title IV of the Americans with Disabilities Act of 1990, codified as section 225 of the Communications Act of 1934, as amended, Congress requires that the Commission ensure that Telecommunications Relay Service (TRS) is available, to the extent possible and in the most efficient manner, to individuals with hearing and speech disabilities in the United States. Section 225 defines TRS to be a telephone transmission service that provides the ability for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to someone without such a disability. To fulfill this mandate, the Commission first issued rules in 1991. TRS has been available on a uniform, nationwide basis since July 26, 1993. In 1997, the Commission adopted use of the 711 dialing code for nationwide access to TRS that uses the public switched telephone network, so as to facilitate greater and universal access to TRS for individuals with hearing and speech disabilities. In 2000, the Commission added ''711'' to the definitions set forth in its TRS rules, found at 47 CFR 64.601 et. seq.

*Need:* Section 64.601 enables individuals with hearing and speech disabilities greater access to telecommunications service by allowing TRS users to dial 711 anywhere in the United States without the need to dial a dedicated TRS access number for each state TRS program.

*Legal Basis:* 47 U.S.C. 151, 154, 201–205, 218, 225, 251(e)(1) and 303(r).

*Section Number and Title:*

64.601(a)(1) Definitions and provisions of general applicability.

### Subpart I—Allocation of Costs

*Brief Description:* The part 64, subpart I rules describe obligations of carriers to allocate their regulated and unregulated costs and of certain incumbent local exchange carriers (LECs) to file cost allocation manuals and perform audits. Section 64.905 requires mid-size LECs to file annually a certification with the Commission stating that they are complying with the allocation of cost requirements in section 64.901 of the Commission's rules.

*Need:* Section 64.905 eliminates the requirement that the mid-sized LECs incur the expense of an attest audit every two years for their cost allocation manuals. Instead, the mid-sized LECs are required to file an annual certification of compliance.

*Legal Basis:* 47 U.S.C. 154, 254(k), 403(b)(2)(B) and (c).

*Section Number and Title:*

64.905 Annual certification.

### Subpart K—Changes in Preferred Telecommunications Service Providers

*Brief Description:* These rules implement section 258 of the Communications Act of 1934 (Act), as amended, which prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service (''slamming''). Section 64.1100 defines terms as used in this subpart, and paragraph (h) specifically defines the term ''subscriber'' as the party identified in the account records as responsible for payment of the bill; any adult person authorized by such party to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such party.

*Need:* Slamming enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules in subpart K improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams.

*Legal Basis:* 47 U.S.C. 151, 152 and 258.

*Section Number and Title:*

64.1100 Definitions.

*Brief Description:* This rule governs the unauthorized switching of subscribers' preferred telecommunications carriers, commonly known as ''slamming.'' Section 64.1110 sets forth the procedures a state must use to notify the Commission of the state's intention to administer the Commission's slamming rules.

*Need:* This rule seeks to protect consumers and authorized carriers from the confusion, inconvenience, and lost revenue associated with a slam, and to ensure that unauthorized carriers do not profit from slamming activities.

*Legal Basis:* 47 U.S.C. 151, 154, 201–205, 258 and 303(r).

*Section Number and Title:*

64.1110 State notification of election to administer FCC rules.

*Brief Description:* These rules govern the unauthorized switching of subscribers' preferred telecommunications carriers, an activity more commonly known as ''slamming.'' These rules are designed to take the profit out of slamming, and to protect consumers and authorized carriers from unauthorized carrier changes by ensuring

that consumers have verified their intent to switch providers when authorizing a carrier change. The rules require all interexchange carriers to institute verification procedures before submitting a carrier change request on behalf of a customer. Section 64.1120 sets forth procedures for verifying orders for telecommunication service. Section 64.1130, originally promulgated as 64.1160, details the use of letters of agency as a form of authorizing and/or verifying a subscriber's request to change his or her preferred carrier selection. Section 64.1140 sets forth carrier and subscriber liability for charges resulting from slamming. Section 64.1150 sets forth procedures for resolving unauthorized changes in a preferred carrier. Section 64.1160 sets forth absolution procedures where the subscriber has not paid charges to the unauthorized carrier. Section 64.1170 sets forth procedures for reimbursing subscribers who have already paid charges to an unauthorized carrier. The Commission removed Section 64.1180. Section 64.1195 requires carriers that provide interstate telecommunications service to file certain business information, including business names, addresses, contact persons, and the states in which the carrier provides service, with the Commission in accordance with the procedures described in this section and the instructions to FCC Form 499–A.

*Need:* These rules are intended to deter and ultimately eliminate unauthorized changes in subscribers telecommunications carriers. The rules absolve subscribers of liability for slamming charges in order to ensure that carriers do not profit from slamming activities, and seek to protect consumers from the confusion and inconvenience they would experience as a result of being slammed. Maintaining the registration information required in this section facilitates enforcement of the slamming rules.

*Legal Basis:* 47 U.S.C. 151, 152, 154, 201–205, 218, 258 and 303(r).

*Section Numbers and Titles:*

64.1120 Verification of orders for telecommunication service.
64.1130 Letter of agency form and content.
64.1140 Carrier liability for slamming.
64.1150 Procedures for resolution of unauthorized changes in preferred carriers.
64.1160 Absolution procedures where the subscriber has not paid charges.
64.1170 Reimbursement procedures where the subscriber has paid charges.
64.1195 Registration requirement.

**Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising**

*Brief Description:* The Telephone Consumer Protection Act (TCPA) was enacted to address certain telemarketing practices, including calls to wireless telephone numbers, which Congress found to be an invasion of consumer privacy and even a risk to public safety. In the TCPA, Congress created a balance between individual privacy rights and legitimate telemarketing practices. The Commission crafted rules in 1992 to achieve this balance. Subsequently, the Commission has revised and amended the rules that it adopted in 1992 pursuant to the TCPA, including the establishment of a national do-not-call list to carry out Congress' TCPA directives.

*Need:* These rules are consistent with the requirements under the TCPA and provide consumers with additional options for avoiding unwanted telephone solicitations. These additional options include, among other things, prohibiting telephone calls to a telephone number registered on the national do-not-call registry of persons who do not wish to receive telephone solicitations. These rules strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers.

*Legal Basis:* 47 U.S.C. 151–154, 222, 227, and 303(r).

*Section Numbers and Titles:*

64.1200 Delivery restrictions.
64.1201 Restrictions on billing name and address disclosure.

**Subpart M—Provision of Payphone Service**

*Brief Description:* The part 64, subpart M rules describe payphone compensation obligations between carriers and payphone service providers in the provision of payphone services.

Section 64.1300(a) defines a ''Completing Carrier'' for purposes of determining payphone service compensation requirements and methodology under subpart M rules.

*Need:* The section 64.1300(a) definition of ''Completing Carrier'' was adopted to help ensure that payphone service providers are fairly compensated for payphone-originated calls that are completed, as required under section 276 of the Communications Act.

*Legal Basis:* 47 U.S.C. 276.

*Section Number and Title:*

64.1300(a) Payphone compensation obligation.

*Brief Description:* The part 64, subpart M rules describe payphone compensation obligations between carriers and payphone service providers in the provision of payphone services. Section 64.1301 establishes a default compensation amount per payphone per month for access code and subscriber toll-free calls, allocates this monthly amount among the designated payors of per-payphone compensation, sets forth certain compensation offset issues, and provides for the valuation of payphone assets transferred by local exchange carriers to a separate affiliate or division.

*Need:* Section 64.1301 was adopted to help ensure that payphone service providers are fairly compensated for payphone-originated calls that are completed, as required under section 276 of the Communications Act of 1934, as amended.

*Legal Basis:* 47 U.S.C. 154, 254(k), 403(b)(2)(B) and (c).

*Section Number and Title:*

64.1301 Per-payphone compensation.

**Subpart P—Calling Party Telephone Number; Privacy**

*Brief Description:* This rule requires telemarketers to transmit caller identification information and prohibits telemarketers from blocking the transmission of caller identification information. Under this rule, caller identification information must include either Automated Number Identification (ANI) or Calling Party Number (CPN) and, when available by the telemarketer's carrier, the name of the telemarketer.

*Need:* This rule requiring telemarketers to transmit caller identification information permits consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again. Additionally, knowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up and ''dead air'' calls. Caller identification information also should increase accountability and provide an important resource for use in pursuing enforcement actions.

*Legal Basis:* 47 U.S.C. 151–154, 227, and 303(r).

*Section Number and Title:*

64.1601(e) Delivery requirements and privacy restrictions.

**Subpart U—Customer Proprietary Network Information**

*Brief Description:* Subpart U implements the provisions of section 222 of the Act concerning customer proprietary network information (CPNI). Section 64.2008 establishes the notification procedures and requirements carriers must adhere to in providing notice of customers' rights to restrict the use of, disclosure of, and access to that customer's CPNI.

*Need:* The CPNI regulations in section 222 are largely consumer protection provisions that establish restrictions on carrier use and disclosure of personal customer information. The statutory design expressly recognizes the duty of all carriers to protect customer information and embodies the principle that customers must be able to control information they view as sensitive and personal from use, disclosure, and access by carriers. These rules further Congress' goals of fostering competition in telecommunications markets and ensuring the privacy of customer information.

*Legal Basis:* 47 U.S.C. 222.

*Section Number and Title:*

64.2008 Notice required for use of customer proprietary network information.

*Brief Description:* Subpart U implements the provisions of section 222 of the Act concerning customer proprietary network information (CPNI). Section 64.2009 generally establishes safeguards carriers must implement to protect their customers from the carriers' use of customer CPNI. Paragraph (f) sets forth the notification procedures carriers must follow to notify the Commission in any instance where the carrier's CPNI opt-out approval mechanism for customers does not work properly.

*Need:* The CPNI regulations in section 222 are largely consumer protection provisions that establish restrictions on carrier use and disclosure of personal customer information. The statutory design expressly recognizes the duty of all carriers to protect customer information and embodies the principle that customers must be able to control information they view as sensitive and personal from use, disclosure, and access by

carriers. These rules further Congress' goals of fostering competition in telecommunications markets and ensuring the privacy of customer information.

*Legal Basis:* 47 U.S.C. 222.

*Section Number and Title:*

64.2009(f) Safeguards required for use of customer proprietary network information.

### Subpart Y—Truth-in-Billing Requirements for Common Carriers; Billing for Unauthorized Charges

*Brief Description:* These rules govern the billing practices of telecommunications service providers. The rules provide that consumer telephone bills must be clearly organized, clearly identify the service provider, and highlight any new providers. In addition, the rules require that bills contain full and non-misleading descriptions of charges that appear therein. Where a bill contains charges for basic local service in addition to other charges, the rules require that the bill distinguish between charges for which non-payment will result in disconnection of basic, local service, and charges for which non-payment will not result in such disconnection. Bills must also contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill, including a toll-free number by which subscribers may inquire or dispute any charges on the bill.

*Need:* These rules are intended to reduce slamming and other telecommunications fraud by setting standards for bills for telecommunications service. They are designed to ensure that consumers are provided with the basic information they need to understand their telecommunications bills. They are also intended to provide consumers with the tools they need to make informed choices in a competitive telecommunications marketplace.

*Legal Basis:* 47 U.S.C. 151, 154(i) and (j), 201–209, 254, 258 and 403.

*Section Number and Title:*

64.2400(b) Purpose and scope.

*Brief Description:* In 1999, the Commission adopted rules to govern the billing practices of telecommunications service providers. In 2000, the Commission amended and renumbered certain of those rules, and in so doing created a new section 64.2401(e) from text previously existing in those rules. Among other requirements, the rules provide that bills must contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest, charges on the bill, and section 64.2401(e) defines ''clear and conspicuous'' as ''notice that would be apparent to the reasonable consumer.''

*Need:* These rules are intended to reduce ''slamming'' and other telecommunications fraud by setting standards for bills for telecommunications service. They are designed to ensure that consumers are provided with the basic information they need to understand their telecommunications bills. They are also intended to provide consumers with the tools they need to make informed choices in a competitive telecommunications marketplace.

*Legal Basis:* 47 U.S.C. 151, 154(i) and (j), 201–209, 254, 258 and 403.

*Section Number and Title:*

64.2401(e) Truth-in-Billing Requirements.

### Subpart Z—Prohibition on Exclusive Telecommunications Contracts

*Brief Description:* Subpart Z is intended to further competition in local communications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). Section 64.2500 prohibits carriers from entering into contracts that would in any way restrict the right of any commercial or residential multiunit premises owner to permit any other common carrier to access and serve commercial tenants on that premises.

*Need:* These rules reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs, as well as address particular potentially anticompetitive actions by premises owners and other third parties.

*Legal Basis:* 47 U.S.C. 151, 152 and 202.

*Section Number and Title:*

64.2500 Prohibited agreements.

*Brief Description:* Subpart Z is intended to further competition in local communications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). Section 64.2501 defines the terms ''multiunit premises'' and sets forth the distinction between commercial and residential multiunit premises for the purposes of this subpart.

*Need:* These rules reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs, as well as address particular potentially anticompetitive actions by premises owners and other third parties.

*Legal Basis:* 47 U.S.C. 151, 152 and 202.

*Section Number and Title:*

64.2501 Scope of limitation.

*Brief Description:* Subpart Z is intended to further competition in local communications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). Section 64.2502 clarifies that the rules in subpart Z do not preempt state regulations that require a governmental entity to enter into a contract with a carrier which would restrict the governmental entity's right to obtain telecommunications service from another carrier.

*Need:* These rules reduce the likelihood that incumbent LECs can obstruct their competitors' access to MTEs, as well as address particular potentially anticompetitive actions by premises owners and other third parties.

*Legal Basis:* 47 U.S.C. 151, 152, 202 and 218.

*Section Number and Title:*

64.2502 Effect of state law or regulation.

### Subpart BB—Restrictions on Unwanted Mobile Service Commercial Messages

*Brief Description:* These rules implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the CAN–SPAM Act. The rules protect wireless subscribers from receiving unwanted commercial electronic mail messages. Specifically, the rules prohibit the transmission of commercial messages to any address referencing an Internet domain name associated with a wireless subscriber messaging service, unless the individual addressee has given the sender express prior authorization. To assist the senders of such messages in identifying wireless subscribers, the rules also require that Commercial Mobile Radio Service (CMRS) providers file with the Commission the names of all electronic domain names used for wireless service.

*Need:* These rules are consistent with the requirements of the CAN–SPAM Act. In promulgating these rules, the Commission determined that the establishment of a list of domain names was the most effective method to allow wireless subscribers to avoid unwanted electronic messages. The rules impose minimal burdens on CMRS providers, and provide a variety of ways to obtain authorizations from those wireless subscribers who want to receive messages from specific senders.

*Legal Basis:* 47 U.S.C. 151–154, 222, 227, and 303(r); and the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. 108–187, 117 Stat. 2699; 15 U.S.C. Sections 7701–7712.

*Section Number and Title:*

64.3100 Restrictions on mobile service commercial messages.

## PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

### Subpart A—General

*Brief Description:* Part 68 sets forth rules concerning the connection of terminal equipment and associated premises wiring to the public telephone network. Subpart A identifies the purpose and scope of part 68 and defines key terms. Section 68.2, in particular, establishes that part 68 rules apply to the direct connection of all terminal equipment to the public switched telephone network for use in conjunction with all services other than party line services, but allows exemptions to part 68 rules in the interest of national defense and security, provided certain conditions are met. Section 68.7 requires that terminal equipment shall not cause harm, as defined in section 68.3, to the public switched telephone network. Section 68.7 also establishes that technical criteria published by the Administrative Council for Terminal Attachments (ACTA), a private industry organization, are presumptively valid for protecting the public switched telephone network from harms caused by the connection of terminal equipment, subject to the appeal procedures identified in part 68 subpart G.

*Need:* The rules in subpart A provide the foundation for uniform standards, set forth generally in part 68 and industry standards published by ACTA, to protect the public switched telephone network from harms caused by connection of terminal equipment and the associated wiring thereto. These standards enable terminal equipment and

premises wiring to be provided competitively.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r).

*Section Numbers and Titles:*

68.2 Scope.
68.3 Definitions.
68.7 Technical criteria for terminal equipment.

**Subpart B—Conditions on Use of Terminal Equipment**

*Brief Description:* Section 68.100 establishes that terminal equipment may be directly connected to the public switched telephone network, including private line services that are provided over wireline facilities that are owned by providers of wireline telecommunications, in accordance with the rules and regulations in part 68. Section 68.102 sets forth a requirement for terminal equipment approval in accordance with regulations in part 68 subpart C; otherwise, terminal equipment must be connected through protective circuitry that is approved. Section 68.106 requires customers who connect terminal equipment or protective circuitry to the public switched telephone network to provide certain information to the wireline service provider, upon request; this is information ACTA requires to be placed on the equipment under section 68.354. Section 68.110 obligates wireline telecommunications service providers to make available, upon request, technical interface requirements that are not published by ACTA if compliance with these requirements is needed for terminal equipment to operate compatibly with the communications facilities of the service provider. Subpart B section 68.105 sets forth rules regarding the demarcation point, including a requirement for carrier-provided facilities at the demarcation point to consist of a wire or jack conforming to ACTA requirements. Section 68.105 also sets forth specific requirements for the location of demarcation point(s) in single and multiunit installations. In the case of multiunit installations where wiring is being installed, section 68.105 establishes the right of the premises owner to determine whether there will be a single demarcation point location for all customers, or separate locations for each customer. In the case of existing multi-unit installations where the demarcation point is not already at the minimum point of entry, section 68.105 requires the service provider to negotiate terms in good faith and complete negotiations for moving the demarcation point to the minimum point of entry within 45 days after receiving a request from the premises owner. Section 68.105 also requires wireline communications providers to make information available about the location(s) of demarcation points to premises owners and establishes the right of premises owners to file complaints with the Commission to resolve allegations of bad faith bargaining by the provider of wireline telecommunications.

*Need:* These rules establish uniform conditions under which terminal equipment may be directly connected to the public switched telephone network, regardless of the supplier of the terminal equipment, thus protecting the network from harms caused by connection of terminal equipment while enabling terminal equipment to be provided competitively. These rules also establish the rights and obligations of both customers who connect terminal equipment to the network and wireline service providers whose network may be harmed by attached terminal equipment. Similarly, the demarcation point requirements in this subpart enable premises (or ''inside'') wiring to be provided and maintained competitively, while establishing the rights and obligations of both premises owners and wireline service providers.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r).

*Section Numbers and Titles:*

68.100 General.
68.102 Terminal equipment approval requirement.
68.105 Minimum point of entry (MPOE) and demarcation point.
68.106 Notification to provider of wireline telecommunications.
68.110 Compatibility of the public switched telephone network and terminal.

**Subpart C—Terminal Equipment Approval Procedures**

*Brief Description:* Section 68.201 designates two methods by which responsible parties may obtain approval (or ''authorization'') for terminal equipment to connect to the public switched telephone network: (1) Obtaining certification from a Telecommunications Certification Body (TCB) and (2) following all the procedures set forth in part 68 subpart D for a Supplier's Declaration of Conformity. Section 68.211 permits the Commission to revoke the interconnection authorization of terminal equipment for causes identified in this section, regardless of the method (TCB certification or SDoC) that was used to obtain the authorization. Section 68.211 also establishes procedures for reauthorization of terminal equipment after its approval has been revoked, and for reconsideration or appeal in the case where authorization has been revoked or a forfeiture established. Section 68.218 establishes the responsibilities of parties that obtain terminal equipment approvals.

*Need:* These rules largely privatize the terminal equipment approval process, except for enforcement. By adopting two effective methods of terminal equipment approval, these rules allow suppliers to bring to market products incorporating new features and technology with reduced delays and lower costs, while still providing sufficient assurance that the terminal equipment complies with technical criteria for preventing harms to the public switched telephone network.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r)

*Section Numbers and Titles:*

68.201 Connection to the public switched telephone network.
68.211 Terminal equipment approval revocation procedures.
68.218 Responsibility of the party acquiring equipment authorization.

**Subpart D—Conditions for Terminal Equipment Approval**

*Brief Description:* These rule sections generally define and establish the process under which responsible parties, as defined in subpart A, section 68.3, acquire terminal equipment approval using a supplier's declaration of conformity (SDoC); and set forth the obligations of responsible parties for SDoCs.

*Need:* Labeling of terminal equipment enables consumers and others to recognize compliant equipment, which promotes its use, and to identify the responsible party when necessary, which assists in the Commission's enforcement of part 68 rules.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r).

*Section Numbers and Title:*

68.300 Labeling requirements.

*Brief Description:* These rules require any fax broadcaster that uses a computer or other electronic device to send any message via a telephone facsimile machine and demonstrates a high degree of involvement in the transmission of such facsimile message to be identified on the facsimile, along with the identification of the sender and the telephone number of the sending machine or of the business, other entity or individual. Under these rules, senders of fax advertisements are required to use the name under which they are officially registered to conduct business.

*Need:* These rules are consistent with the requirements of the Telephone Consumer Protection Act (TCPA), and permit consumers to hold fax broadcasters accountable for unlawful fax advertisements when there is a high degree of involvement on the part of the fax broadcaster.

*Legal Basis:* 47 U.S.C. Sections 151–154, 227, and 303(r).

*Section Number and Title:*

68.318(d) Additional limitations.

*Brief Description:* These rule sections generally define and establish the process under which responsible parties, as defined in subpart A, section 68.3, acquire terminal equipment approval using a supplier's declaration of conformity (SDoC); and set forth the obligations of responsible parties for SDoCs. Among these are obligations to ensure compliance of terminal equipment, which are subject to an SDoC, with appropriate standards; to make no changes to terminal equipment that would materially change the information provided on the SDoC; to retain certain records of terminal equipment compliance testing; to compile and retain a description of the testing facilities; and to file the SDoC and other required information with Administrative Council for Terminal Attachments (ACTA). These rules specify that in those cases where the responsible party licenses a second party to manufacture terminal equipment that is subject to an SDoC, the responsible party remains responsible for terminal equipment compliance; however, in the event of a change in ownership or control of the responsible party, the successor entity becomes the responsible party. These rules also set forth conditions, in addition to those specified in subpart C, under which the Commission may revoke an SDoC. Subpart D

also establishes rules concerning the numbering and labeling of terminal equipment, and in particular, requires numbering and labeling of all approved terminal equipment in accordance with labeling requirements developed and published by ACTA.

*Need:* These rules permit suppliers to select SDoC as an alternative to Telecommunication Certification Body (TCB) certification of terminal equipment. The SDoC procedure reduces the complexity, cost and delays associated with premarket approval for some suppliers, while still providing sufficient assurance that the terminal equipment complies with technical criteria for preventing harms to the public switched telephone network.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r).

*Section Numbers and Titles:*

68.320 Supplier's Declaration of Conformity.
68.322 Changes in name, address, ownership or control of responsible party.
68.324 Supplier's Declaration of Conformity requirements.
68.326 Retention of records.
68.346 Description of testing facilities.
68.348 Changes in equipment and circuitry subject to a Supplier's Declaration of Conformity.
68.350 Revocation of Supplier's Declaration of Conformity.
68.354 Numbering and labeling requirements for terminal equipment.

### Subpart G—Administrative Council for Terminal Attachments

*Brief Description:* These rule sections establish the Administrative Council for Terminal Attachments (ACTA) under the joint sponsorship of the Telecommunications Industry Association (TIA) and the Alliance for Telecommunications Industry Solutions (ATIS) with responsibilities to (1) administer the industry review and publication of technical criteria for protecting the public switched telephone network from harms caused by terminal equipment; (2) maintain and operate a publicly available database of all approved terminal equipment; and (3) establish labeling requirements for approved terminal equipment. These rule sections also authorize ANSI- accredited standards development organizations (SDOs) to develop and maintain terminal equipment technical criteria, and to submit them to ACTA for publication, provided they use an open process, similar to a Commission rulemaking proceeding. Technical criteria submitted to ACTA for review must be limited to protecting the public switched telephone network from harms, as described in section 68.3, and must not conflict with terminal equipment technical criteria that are already published or under review. These rules permit several methods of opposing proposed terminal equipment technical criteria, including direct appeal to the Commission for *de novo* review.

*Need:* These rules largely privatize the development of terminal equipment technical criteria, except for certain appeals. Industry, rather than Commission, development of technical criteria decreases the time to availability of published criteria and allows suppliers to bring innovative and compliant consumer products, especially for the provision of advanced services, to the market on an expedited basis. The availability of a uniform, nationwide database of approved terminal equipment permits the Commission, providers of telecommunications and consumers to identify responsible parties for terminal equipment and to verify compliance of terminal equipment against the database.

*Legal Basis:* 47 U.S.C. 151–154, 201–205 and 303(r).

*Section Numbers and Titles:*

68.602 Sponsor of the Administrative Council for Terminal Attachments.
68.604 Requirements for submitting technical criteria.
68.608 Publication of technical criteria.
68.610 Database of terminal equipment.
68.612 Labels on terminal equipment.
68.614 Oppositions and appeals.

## PART 69—ACCESS CHARGES

### Subpart A—General

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers. These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.2 sets out definitions for terms used in this part. Specifically, section 69.2(ww) defines ''Interstate common line support'' (ICLS) as the ''funds that are provided pursuant to section 54.901 of this chapter.''

*Need:* Section 69.2(ww) was adopted to define ICLS for purposes of the rules regarding the calculation of access charges.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.2(ww) Definitions.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable and not unjustly or unreasonably discriminatory. Section 69.4 sets forth the charges to be included in the carrier's tariffs for access services that are filed by incumbent LECs. In particular, section 69.4(b) provides that, with some exceptions, those charges must include charges for enumerated rate elements. Section 69.4(b)(2) specifies that one of these rate elements is ''Carrier common line, provided that after June 30, 2003, non-price cap local exchange carriers may not assess a carrier common line charge.'' Section 69.4(d) provides for the recovery of contributions to the universal service support mechanisms. Section 69.4(g) specifies that local exchange carriers may establish appropriate rate elements for a new service. Section 69.4(j) provides that a non-price cap LEC may include charges for enumerated rate elements in its charges for access service filed with the Commission.

*Need:* Section 69.4 lists charges for access services that are to be included in tariffs filed by incumbent LECs necessary to foster competition, move access charges over time to economically efficient levels and rate structures, preserve universal service, and lower rates.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.4 (b)(2), (d), (g), (j) Charges to be filed.

### Subpart B—Computation of Charges

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.104(a), (c)–(f), and (n)–(r) provide for the computation of end user common line charges by non-price cap incumbent LECs.

*Need:* Section 69.104(a), (c)–(f), and (n)–(r) were adopted to provide the methodology for the computation of end user common line charges by non-price cap incumbent LECs under the Commission's access charge regime.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.104(a), (c) through (f), (n) through (r) End user common line for non-price cap incumbent local exchange carriers.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.105(a) and (d) provide for the computation of carrier common line charges by non-price cap incumbent LECs through June 30, 2003, when they were eliminated.

*Need:* Section 69.105(a) and (d) were adopted to provide the methodology until June 30, 2003 for the computation of carrier common line charges by non-price cap incumbent LECs under the Commission's access charge regime.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.105(a), (d) Carrier common line for non-price cap local exchange carriers.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.106 sets forth requirements that non-price cap LECs must follow in setting

their per-minute access charges for local switching. In particular, subsection 106(g) provides that a LEC may recover signaling costs associated with call setup through a per-minute charge imposed on all interexchange carriers. Section 69.106(h) specifies rate elements that non-price cap LECs may establish, with certain exceptions.

*Need:* Section 69.106(g) and (h) were adopted to permit incumbent LECs to assess a call setup charge and allow non-price cap incumbent LECs to establish trunk port charges at the local switch, respectively.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.106(g) through (h) Local switching.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable and not unjustly or unreasonably discriminatory. Section 69.111 sets forth provisions governing tandem-switched transport and tandem charges. In particular, section 69.111(m) specifies the means by which non-price cap LECs may establish separate charges for multiplexers and dedicated trunk ports used in conjunction with the tandem switch.

*Need:* Section 69.111(m) permits non-price cap LECs to establish separate multiplexing and port charges at the tandem switch to facilitate cost-based recovery.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.111(m) Tandem-switched transport and tandem charge.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.124 provides for the computation of interconnection charges by non-price cap incumbent LECs.

*Need:* Section 69.124(a) was adopted to provide the methodology until December 31, 2001 for the computation of interconnection charges by non-price cap incumbent LECs under the Commission's access charge regime.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Titles:*

69.124(a) Interconnection charge.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.130 allows non-price cap incumbent LECs to recover those line port costs for a service that exceeds the costs of a line port used for basic, analog service through a separate monthly end user charge.

*Need:* Section 69.130 was adopted to provide for the recovery of certain line port costs by non-price cap incumbent LECs of certain higher line port costs from services benefiting from the higher line port costs.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.130 Line port costs in excess of basic analog service.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.131 provides the means by which non-price cap LECs may recover universal service contribution costs from customers.

*Need:* Section 69.131 was adopted to promote the Commission's universal service goals by providing a non-price cap LEC a means to recover its universal service contribution from end user customers other than Lifeline customers.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.131 Universal service end user charges.

**Subpart C—Computation of Charges for Price Cap Local Exchange Carriers**

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.153(f) provides that payphone lines are not subject to the Presubscribed Interexchange Carrier Charge (PICC).

*Need:* The elimination of the PICC for payphone lines in section 69.153(f) was adopted to comply with the anti-subsidization and anti-discrimination provisions of section 276 of the Act, specifically the determination that payphone line rates should be set according to the cost-based new services test.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254, and 403.

*Section Number and Title:*

69.153(f) Presubscribed interexchange carrier charge (PICC).

**Subpart D—Apportionment of Net Investment**

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.302(a) provides the methods to be used for purposes of apportioning investment in telecommunications plant in service, inventories, and telephone bank stock among the various access categories.

*Need:* Section 69.302(a) was adopted as a result of the Commission's efforts to reduce regulatory burdens on incumbent LECs.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254, and 403.

*Section Number and Title:*

69.302(a) Net investment.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.306 provides the methods to be used for purposes of apportioning investment in central office equipment (COE) among the various access categories. Section 69.306(d) was revised to reallocate line port costs to the common line category.

*Need:* Section 69.306(d) was adopted to implement the decision that non-price cap LECs should recover line port costs through common line charges.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.306(d) Central office equipment (COE).

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.307(c) and (e) apportion general purpose computer investment and other general support facilities investments of non-price cap LECs among various access categories to establish rates.

*Need:* These rules were adopted to help ensure that rates are just and reasonable by preventing cross-subsidization of a non-price cap LEC's non-regulated services by its regulated services, thereby creating a more economically rational, cost-based access rate structure.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.307(c), (e) General support facilities.

**Subpart E—Apportionment of Expenses**

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.415 reallocates costs of non-price cap LECs that had been recovered through the transport interconnection charge to other access charge rate elements.

*Need:* Section 69.415 was adopted as part of access rate structure reforms for rate-of-return LECs to promote competition under the 1996 Act and helps ensure that rates are just and reasonable. By eliminating the transport interconnection charge as a separate rate element, the rule was designed to make the access rate structure more economically rational for rate-of-return carriers and drive their traffic sensitive rates toward lower, more cost-based levels.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.415 Reallocation of certain transport expenses.

**Subpart F—Segregation of Common Line Element Revenue Requirement**

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.501 sets forth general rules for isolating the Common Line element revenue requirement. This section was revised to conform the rule to revisions to other rules as part of revising the access rates and rate structure for non-price cap LECs.

*Need:* Section 69.501 was adopted to conform the rule to other revisions to part 69.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.501(b); (c); (e); (f) General.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.502 delineates how carriers should deduct projected revenues from a number of sources from the base factor portion to determine the amount that is assigned to the Carrier Common Line rate element. These revisions were made to conform the rule to other revisions to part 69 as part of reforming access charges for non-price cap LECs.

*Need:* Sections 69.502(d) and (e) were added to conform the rule to other revisions to part 69.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.502(d); (e) Base factor allocation.

**Subpart G—Exchange Carrier Association**

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers. These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Subpart G provides for the establishment and operation of the National Exchange Carrier Association (NECA), which files tariffs on behalf of all telephone companies that do not file separate tariffs or concur in a joint access tariff of another telephone company. Section 69.603(g) and (h)(5) were revised to include interstate common line support in the methodology by which NECA allocates its expenses among its functions and how it recovers those expenses.

*Need:* Section 69.603(g) and (h)(5) were added to include interstate common line support amounts in the processes for allocating and recovering NECA expenses from its various functions.

*Legal Basis:* 47 U.S.C. 154, 201–203, 205, 218 and 403.

*Section Number and Title:*

69.603(g), (h)(5) Association functions.

*Brief Description:* The part 69 rules are designed to implement the provisions of sections 201, 202, and 203 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers (LECs). These rules help ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. Section 69.609(b) was revised to ensure that the formula process for determining hypothetical net balances that are used in distributing pool common line revenues reflected any forgone revenues as a result of a carrier electing to voluntarily reduce its subscriber line charge.

*Need:* Section 69.609(b) was revised to prevent a LEC from gaming the pooling process by taking a voluntary reduction in its subscriber line charges.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 201–203, 205, 218, 220, 254 and 403.

*Section Number and Title:*

69.609(b) End User Common Line hypothetical net balances.

**PART 73—RADIO BROADCAST SERVICES**

**Subpart A—AM Broadcast Stations**

*Brief Description:* This rule allows AM licensees to file Forms 301–AM and 302–AM if a partial proof of performance test indicates that radiation exceeds the standard pattern.

*Need:* This rule is required to limit interference between AM broadcast stations.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.152(b) Modification of directional antenna data.

**Subpart E—Television Broadcast Stations**

*Brief Description:* This rule specifies that applications to construct broadcast TV stations must be for channels and communities designated in the Table of Allotments, and applications for channels or communities not listed in the Table of Allotments can be filed if consistent with the rules and policies established in the Third Report and Order in WT Docket 99–168 (FCC 01–25).

*Need:* This rule is necessary to inform applicants of the requirements for filing an application to construct a broadcast TV station.

*Legal Basis:* 47 U.S.C. 154, 303, 334, and 336.

*Section Number and Title:*

73.607(b) Availability of channels.

*Brief Description:* This rule requires that noncommercial educational television station licensees primarily provide a nonprofit, noncommercial educational service over their entire digital bit stream, including ancillary or supplementary services.

*Need:* The rule is needed to clarify applicability of the requirement that public television stations furnish primarily an educational, as well as a nonprofit and noncommercial broadcast service to the digital environment.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 399.

*Section Number and Title:*

73.621(i) Noncommercial educational TV stations.

*Brief Description:* This rule specifies that applications to construct DTV broadcast stations must be for channels and communities designated in the DTV Table of Allotments, and applications for channels or communities not listed in the DTV Table of Allotments can be filed if consistent with the rules and policies established in the Third Report and Order in WT Docket 99–168 (FCC 01–25).

*Need:* This rule is necessary to inform applicants of the requirements for filing an application to construct a DTV broadcast station.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336, and 339.

*Section Number and Title:*

73.622(c)(2) Digital television table of allotments.

*Brief Description:* This rule sets forth DTV application processing procedures.

*Need:* This rule is necessary to establish a fair, certain, and orderly processes for resolving conflicts with respect to mutually exclusive DTV applications.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.623(h) DTV applications and changes to DTV allotments.

**Subpart G—Low Power FM Broadcast Stations (LPFM)**

*Brief Description:* This rule defines the scope of permissible amendments to pending LPFM station applications.

*Need:* This rule is necessary to provide applicants for LPFM stations some flexibility to make technical changes to their new and major change applications after the close of a filing window.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.871 Amendment of LPFM broadcast station applications.

**Subpart H—Rules Applicable to All Broadcast Stations**

*Brief Description:* This rule cross-references subpart W to part 1 of the Commission's rules, 47 CFR part 1, which requires persons and entities doing business with the Commission to acquire an FRN and

to provide it on all applications or feeable filings as well as other transactions involving the payment of money.

*Need:* This rule is required to facilitate compliance with the Debt Collection Improvement Act of 1996 and to enable the Commission to manage its collection and revenue systems.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.1010(a)(9) Cross reference to rules in other parts.

*Brief Description:* This rule requires applicants, permittees or licensees to provide truthful written statements to the Commission regarding matters within the jurisdiction of the Commission.

*Need:* This rule ensures that the entities the Commission regulates provide truthful information.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.1015 Truthful written statements and responses to Commission inquiries and correspondence.

*Brief Description:* This rule requires licensees or permittees of commercially or non-commercially operated AM, FM, TV, Class A TV or international broadcast stations to comply with rules regarding equal employment opportunity.

*Need:* This rule is needed because it ensures television broadcast station licensees and permittees' compliance with equal employment opportunity rules.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.2080 Equal employment opportunities (EEO).

### Subpart J—Class A Television Broadcast Stations

*Brief Description:* These rules establish requirements delineating how Digital Class A TV stations must protect other authorized broadcast TV services.

*Need:* These rules are necessary to provide interference protection to other TV facilities and to commence the digital television conversion process for Class A stations.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Titles:*

73.6016 Digital Class A TV station protection of TV broadcast stations.

73.6017 Digital Class A TV station protection of Class A TV and digital Class A TV stations.

73.6018 Digital Class A TV station protection of DTV stations.

73.6027 Class A TV notifications concerning interference to radio astronomy, research and receiving installations.

### Subpart K—Application and Selection Procedures for Reserved Noncommercial Educational Channels, and for Certain Applications for Noncommercial Educational Stations on Non-Reserved Channels

*Brief Description:* This rule sets forth a point system to select among mutually exclusive proposals to build FM, TV, and FM translator stations on channels reserved for noncommercial educational use.

*Need:* This rule is needed to provide selection procedures for choosing among competing applications to build noncommercial educational broadcast stations.

*Legal Basis:* 47 U.S.C. 154, 303, 334, 336 and 339.

*Section Number and Title:*

73.7003(e) through (f) Point system selection procedures.

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

### Subpart—General; Rules Applicable to All Services in Part 74

*Brief Description:* This rule cross-references subpart W to part 1 of the Commission's rules, 47 CFR part 1, which requires persons and entities doing business with the Commission to acquire an FRN and to provide it with all applications or feeable filings as well as other transactions involving the payment of money.

*Need:* This rule is required to facilitate compliance with the Debt Collection Improvement Act of 1996 and to enable the Commission to manage its collection and revenue systems.

*Legal Basis:* 47 U.S.C. 154, 302a, 303, 307, 309, 336 and 554.

*Section Number and Title:*

74.5(a)(8) Cross reference to rules in other parts.

### Subpart G—Low Power TV, TV Translator, and TV Booster Stations

*Brief Description:* This rule subjects low power television stations participating in the digital data service pilot project to the provisions of the Commission Order implementing the LPTV Pilot Project Digital Data Services Act.

*Need:* This rule is necessary to provide the general requirements for the pilot program required under the LPTV Pilot Project Digital Data Services Act.

*Legal Basis:* 47 U.S.C. 154, 302a, 303, 307, 336 and 554.

*Section Number and Title:*

74.785 Low power TV digital data service pilot project.

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

### Subpart D—Carriage of Television Broadcast Signals

*Brief Description:* This rule specifies the cable system channel positioning requirements for television signals carried in fulfillment of must-carry obligations.

*Need:* This rule is necessary to spell out where television signals carried pursuant to the mandatory carriage provision are entitled to be carried on a cable system.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.57 (c) Channel positioning.

*Brief Description:* This rule specifies the content of television signals that is subject to the mandatory carriage obligations.

*Need:* This rule is necessary to make clear which material in a television signal is entitled to must-carry rights.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.62 (g) Manner of carriage.

*Brief Description:* This rule specifies the signal carriage obligations of satellite carriers carrying local television signals, and the relevant carriage procedures.

*Need:* This rule is necessary to implement to provisions of section 338 of the Communications Act, which requires satellite carriers to carry local television broadcast stations' signals if specified circumstances are met.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.66 Satellite broadcast signal carriage.

### Subpart K—Technical Standards

*Brief Description:* These rules cover operations of cable television services and multichannel video service.

*Need:* These rules are required to establish the technical standards needed for these services to successfully operate in specific frequency bands, without causing interference.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

*Section Numbers and Titles:*

76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

76.616 Operation near certain aeronautical and marine emergency radio frequencies.

76.640 Support for unidirectional digital cable products on digital cable systems.

### Subpart N—Cable Rate Regulation

*Brief Description:* This rule adds headend equipment costs required to carry digital broadcast signals to the definition of ''external cost'' as used to calculate permitted charges for tiers of cable service subject to rate regulation.

*Need:* This rule is necessary to resolve the consequences for the cable television rate regulation process of the carriage of digital broadcast signals.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.922(f)(1)(vii) Rates for the basic service tier and cable programming service tiers.

**Subpart S—Open Video Systems**

*Brief Description:* This rule applies Equal Employment Opportunity requirements, ownership restrictions, negative option billing, regulation of carriage agreements, signal leakage restrictions, and signal leakage monitoring and aeronautical frequency notifications to open video systems.

*Need:* This rule is needed because it ensures employer compliance with the above-mentioned rules.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.1510 Application of certain Title VI provisions.

**Subpart T—Notices**

*Brief Description:* This rule cross-references subpart W to part 1 of the Commission's rules, 47 CFR part 1, which requires persons and entities doing business with the Commission to acquire an FRN and to provide it with all applications or feeable filings as well as other transactions involving the payment of money.

*Need:* This rule is required to facilitate compliance with the Debt Collection Improvement Act of 1996 and to enable the Commission to manage its collection and revenue systems.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.1610(f) Change of operational information.

**Subpart U—Documents To Be Maintained for Inspection**

*Brief Description:* This rule requires employers with six or more full-time employees to maintain an Equal Employment Opportunity (EEO) program file for public inspection with all annual reports filed with the Commission.

*Need:* This rule is needed because it ensures employer compliance with equal employment opportunity rules.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 560, 561, 571, 572 and 573.

*Section Number and Title:*

76.1702 Equal employment opportunity.

**Subpart V—Reports and Filings**

*Brief Description:* These rules allow for electronic filing of forms by Multichannel Video Programming Distributors (MVPDS) via the Cable Operations and Licensing System (COALS).

*Need:* These rules are needed to reduce the effort for MVPDs to file applications, reports, and other documents.

*Legal Basis:* 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

*Section Number and Titles:*

76.1801 Registration statement.

76.1802 Annual employment report.

76.1803 Signal leakage monitoring.

76.1804 Aeronautical frequencies: Leakage monitoring (CLI).

**PART 78—CABLE TELEVISION RELAY SERVICE**

**Subpart A—General**

*Brief Description:* This rule sets forth the purpose of the licensing and operation of fixed or mobile cable television relay service stations.

*Need:* This rule is needed to assist the Commission in furthering its goal of providing all Americans with access to ubiquitous wireless broadband connections, regardless of their location.

*Legal Basis:* 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

*Section Number and Title:*

78.1 Purpose.

**Subpart B—Applications and Licenses**

*Brief Description:* These rules apply to the application processes for Cable Television Relay Services (CARS) that Commission-regulated entities may take to amend, terminate their station authorizations or coordinate their frequency assignments in certain bands.

*Need:* These rules ensure that Cable Television Relay Services are properly authorized with the Commission.

*Legal Basis:* 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

*Section Numbers and Titles:*

78.17 Amendment of applications.

78.30 Forfeiture and termination of station authorizations.

78.36 Frequency coordination.

**Subpart D—Technical Regulations**

*Brief Description:* These rules were amended permit Broadcast Auxiliary Services (BAS) stations to introduce new technologies and create a more efficient BAS that can more readily adapt as the broadcast industry converts to the use of digital technology, such as digital television (DTV).

*Need:* These rules are needed to permit CARS to operate with BAS and Fixed Services under consistent regulatory guidelines. These services share frequency bands and have technically and operationally similar stations.

*Legal Basis:* 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

*Section Number and Titles:*

78.106 Interference to geostationary satellites.

78.109 Major and minor modifications to stations.

**PART 79—ACCESSIBILITY OF VIDEO PROGRAMMING**

*Brief Description:* In 1996, Congress added section 713 to the Communications Act of 1934, as amended (the Act), requiring the Commission to adopt rules and implementation schedules for the closed captioning of video programming. The Commission's closed captioning rules require video programming distributors to increase gradually the amount of captioned programming offered over a period of years, subject to certain exceptions. The rules allow video programming distributors to exercise discretion with respect to what types of closed captioned programming to provide first. A video programming distributor could use this discretion during the implementation period and choose to not close caption programming providing emergency information. To ensure the accessibility of emergency information on television, in 2000 the Commission established rules requiring that the critical details of emergency information be made accessible to persons with hearing disabilities through closed captioning or by a method of visual presentation. The Commission's rules also require that the critical details of emergency information on television be made accessible to persons with visual disabilities. Section 713 of the Act also instructed the Commission to examine the use of video descriptions on video programming and to report to Congress its findings, including an assessment of appropriate methods and phase-in schedules and a definition of programming for which video descriptions would apply. In 2000, the Commission adopted video description rules. The United States Court of Appeals for the District of Columbia Circuit subsequently vacated these video description rules, stating that section 713 did not authorize the Commission to adopt regulations implementing video descriptions. The Twenty-First Century Communications and Video Accessibility Act of 2010, however, requires the Commission to reinstate its video description regulations, with some modifications.

*Need:* Emergency information is information about a current emergency that is intended to further the protection of life, health, safety, and property, *i.e.,* critical details regarding the emergency and how to respond to the emergency. Significant health and safety issues are inherent in emergency information making it necessary to make this information accessible to all persons. Video description is the description of key visual elements in programming inserted into natural pauses in the audio of the programming. It is designed to make television programming more accessible to the many Americans who have visual disabilities.

*Legal Basis:* 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310 and 613.

*Section Number and Title:*

79.2 Accessibility of programming providing emergency information.

*Brief Description:* In 1996, Congress added section 713 to the Communications Act of 1934, as amended (the Act), which, among

other things, instructed the Commission to examine the use of video descriptions in order to enhance the accessibility of video programming to people with visual disabilities. Section 713 also required the Commission to report to Congress its findings, including an assessment of appropriate methods and phase-in schedules and a definition of programming for which video descriptions would apply. In 2000, the Commission adopted video description rules. The United States Court of Appeals for the District of Columbia Circuit subsequently vacated these video description rules, stating that section 713 did not authorize the Commission to adopt regulations implementing video descriptions. The Twenty-First Century Communications and Video Accessibility Act of 2010, however, required the Commission to reinstate its video description regulations, with some modifications. In August 2011, the Commission adopted an order doing so. Among the video description regulations reinstated in this action were two added in 2001, section 79.3(c)(4) (establishing standards for compliance with video description requirements) and (e)(1)(vi) (requiring that a complainant of a video description rules violation first attempt to resolve the dispute with the video programming distributor against whom the complaint is alleged).

*Need:* Video description is the description of key visual elements in programming inserted into natural pauses in the audio of the programming. It is designed to make television programming more accessible to the many Americans who have visual disabilities.

*Legal Basis:* 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, 310 and 613.

*Section Number and Title:*

79.3 Video description of video programming.

## PART 80—STATIONS IN THE MARITIME SERVICES

### Subpart D—Operator Requirements

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart D rules prescribe coast station operator requirements, ship station operator requirements, minimum operator license requirements, and general operator requirements.

*Need:* Consistent with ITU regulations permitting a restricted operator's certificate for GMDSS operators on ships sailing exclusively within Sea Area A1, section 80.159(d) requires that a passenger ship equipped with a GMDSS installation and operating exclusively within twenty nautical miles of shore carries at least two persons holding either a GMDSS Radio Operator License or a Restricted GMDSS Radio Operator License.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Number and Title:*

80.159(d) Operator requirements of Title III of the Communications Act and the Safety Convention.

### Subpart E—General Technical Standards

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart E rules prescribe the general technical requirements for the use of frequencies and equipment in the maritime services.

*Need:* As proposed by the Coast Guard, section 80.203(m)(6) prohibits ship stations from including any device capable of transmitting on a distress frequency without regulatory authorization.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Number and Title:*

80.203(m)(6) Authorization of transmitters for licensing.

### Subpart F—Equipment Authorization for Compulsory Ships

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart F rules prescribe the general technical requirements for certification of equipment used on compulsory ships.

*Need:* As requested by the Coast Guard, section 80.275 governs the implementation of Automatic Identification Systems (''AIS'') and specifies what information must be submitted to the Coast Guard and the Commission prior to submitting a certification application for a Class A AIS device.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Number and Title:*

80.275 Technical Requirements for Class A Automatic Identification System (AIS) equipment.

### Subpart J—Public Coast Stations

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Section 80.475 (a)(1)–(2) requires licensees seeking to locate public coast stations within a specified distance of channel 13 and channel 10 TV stations to submit an engineering study to the Commission and the TV stations clearly showing the means of avoiding interference with television reception.

*Need:* These requirements ensure interference with television reception is prevented.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Number and Title:*

80.475(a)(1)–(2) Scope of service of the Automated Maritime Telecommunications System (AMTS).

### Subpart R—Technical Equipment Requirements for Cargo Vessels Not Subject to Subpart W

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart R rules provide the radiotelephone requirements for cargo ships of 300 to 1600 gross tons. Sections 80.880 and 80.881 specify equipment requirements for ship stations between 300 to 1600 gross tons operating within 20 and 100 nautical miles of shore.

*Need:* These equipment requirements are needed to ensure that the Commission's ship radar rules are fully compatible with internationally-agreed performance and certification testing standards required to meet international shipboard carriage requirements.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Numbers and Titles:*

80.880 Vessel radio equipment.

80.881 Equipment requirements for ship stations.

### Subpart W—Global Maritime Distress and Safety System (GMDSS)

*Brief Description:* The part 80 rules set forth the conditions under which radio may be licensed and used in the maritime services. Subpart W rules apply to all passenger ships regardless of size and cargo ships of 300 tons gross tonnage and upwards, mostly fishing vessels, with some exceptions.

*Need:* The rules in this subpart require that all compulsory vessels, including fishing vessels of 300 gross tons or more, must comply with all the GMDSS requirements appropriate to their area of operation. A separate safety system for fishing vessels would be expensive, difficult to administer, and would cause confusion during a distress incident.

*Legal Basis:* Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

*Section Numbers and Titles:*

80.1071(c) Exemptions.

80.1083(d)–(g) Ship radio installations.

80.1085(a)(6)(iii), (c), (d) Ship radio equipment-General.

80.1101(c)(11)–(12) Performance standards.

80.1105(k) Maintenance requirements.

## PART 87—AVIATION SERVICES

### Subpart D—Technical Requirements

*Brief Description:* The part 87 rules set forth the conditions under which radio stations may be licensed and used in the aviation services. Subpart R rules provide the technical requirements for such radio stations.

*Need:* The technical requirements are needed to protect the safety of life and property in air navigation and must be periodically updated to reflect technological advancements in the aviation industry and maximize spectral efficiency while maintaining important safeguards against interference.

*Legal Basis:* 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

*Section Numbers and Titles:*

87.147(f) Authorization of equipment.
87.151 Special requirements for differential GPS receivers.

### Subpart F—Aircraft Stations

*Brief Description:* Part 87 contains the Commission rules governing aviation services. Subpart F sets forth the rules governing assignment of frequencies in those services.

*Need:* This rule is needed as it designates certain frequencies for flight information services-broadcast (FIS–B) that may not be used by aircraft for transmission.

*Legal Basis:* 47 U.S.C. 154, 303 and 307(e).

*Section Number and Title:*

87.187(dd) Frequencies.

### Subpart G—Aeronautical Advisory Stations (UNICOMS)

*Brief Description:* The part 87 rules set forth the conditions under which radio stations may be licensed and used in the aviation services. Subpart G rules provide the eligibility, frequencies, and automatic operations requirements for unicoms.

*Need:* Unicoms are important air-ground communication facilities employed at airports with a low volume of general aviation traffic and where no control tower is active. These rules govern their operations at uncontrolled aerodromes and airports.

*Legal Basis:* 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

*Section Number and Title:*

87.215(c)–(e) Supplemental eligibility.

### Subpart I—Aeronautical Enroute Stations, Aeronautical Fixed Stations, and Aircraft Data Link Land Test Stations

*Brief Description:* Part 87 contains the Commission rules governing aviation services. Subpart I sets forth the rule governing assignment of frequencies in those services.

*Need:* This rule is needed as it designates certain frequencies for aeronautical enroute stations, which provide operational control communications to aircraft along domestic or international air routes.

*Legal Basis:* 47 U.S.C. 154, 303 and 307(e).

*Section Number and Title:*

87.263(a)(1)(5) Frequencies.

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

### Subpart B—Public Safety Pool

*Brief Description:* The Public Safety Radio Pool covers the licensing of the radio communications of governmental entities and the following Medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated places, communications standby facilities, and emergency repair of public communications facilities.

*Need:* Modifies the Public Safety Pool Frequency Table in 47 CFR 90.20(c)(3) to provide that operation on specified is subject to the low power provisions of 90.267. These frequencies are assigned to the Public Safety Group in the low power pool.

*Section Number and Title:*

90.20 Public Safety Pool.

### Subpart C—Industrial/Business Radio Pool

*Brief Description:* Part 90 states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, Radiolocations Radio Services, and Commercial Mobile Radio Services. Subpart C covers the licensing of the radio communications of entities engaged in commercial activities, engaged in clergy activities, operating educational, philanthropic, or ecclesiastical institutions, or operating hospitals, clinics, or medical associations. Rules as to eligibility for licensing, frequencies available, permissible communications and classes and number of stations, and any special requirements are set forth in this subpart.

*Need:* These rules are needed as they designate certain frequencies for Industrial/Business Pool services.

*Legal Basis:* 47 U.S.C. 154, 303 and 307(e).

*Section Number and Title:*

90.35(b)(2)(ii)(iii) Industrial/Business Pool.

### Subpart H—Policies Governing the Assignment of Frequencies

*Brief Description:* The part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart H rules inform about the policies under which the Commission assigns frequencies for the use of licensees under this part, frequency coordination procedures, and procedures under which licensees may cooperatively share radio facilities.

*Need:* These rules are needed as they designate certain frequencies for Private Land Mobile Radio Services (PLMRS) and authorize licensees to share use of their facilities and given that the Universal Licensing System (ULS) now provides frequency coordinators with immediate access to frequency and site information, it is necessary to clarify that a part 90 frequency or site deletion request need not be accompanied by a frequency coordination. It would be inconsistent to require coordination for a deletion of a site or a frequency when it is not required for a request to cancel an entire authorization.

*Legal Basis:* Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

*Section Numbers and Titles:*

90.175(b)(1)–(3), (j)(17) Frequency coordinator requirements.
90.179(j) Shared use of radio stations.

### Subpart I—General Technical Standards

*Brief Description:* These rules set out the certification standards for part 90 transmitters, including the maximum bandwidth per voice or data channel.

*Need:* To ensure efficient use of spectrum by enabling the maximum number of users within a given spectrum band, the Commission has established maximum bandwidths for different applications. Manufacturers of transmission equipment must demonstrate, as a prerequisite to certification or verification, that their equipment meets the maximum bandwidth restrictions in the rules.

*Legal Basis:* 47 U.S.C. 303(g), 303(r), 332(a), 332(c), and 332(d).

*Section Number and Title:*

90.203(j), (l) Certification required.

### Subpart I—General Technical Standards

*Brief Description:* The part 90 rules set forth the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart I rules set forth the general technical requirements for use of frequencies and equipment in the radio services governed by this part. Such requirements include standards for acceptability of equipment, frequency tolerance, modulation, emissions, power, and bandwidths.

*Need:* These technical standards are needed to ensure that public safety communications devices are interoperable and do not cause harmful interference to other authorized communications.

*Legal Basis:* Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

*Section Number and Title:*

90.209(b)(6) Bandwidth limitations.

### Subpart N—Operating Requirements

*Brief Description:* Part 90 provides general operating requirements for stations licensed under part 90 and used in the Public Safety, Industrial/Business Radio Pool, Radiolocations Radio Services, and Commercial Mobile Radio Services. Subpart N sets forth the rules for station operating procedures, points of communications, methods of station identification, control requirements, and station record-keeping requirements.

*Need:* This rule allows hand-held and vehicular transmitters in private land mobile radio services to be operated by any licensee

holding a license in the 700 MHz Public Safety Band or by any licensee holding a license for any other public safety frequency pursuant to part 90.

*Legal Basis:* 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

*Section Number and Title:*

90.421(a)(3) Operation of mobile station units not under the control of the licensee.

**Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands**

*Brief Description:* These rules set out the eligibility, operational, planning and licensing requirements, and technical standards for stations licensed in these bands, including interoperability requirements.

*Need:* Nationwide interoperability channels in the 700 MHz narrowband public safety spectrum are essential to provide first-responders with multiple communications channels using a common technology. Interoperability channels allow users to integrate their communications into other 700 MHz systems other than their ''home'' systems during emergency response operations.

*Legal Basis:* 47 U.S.C. 151, 154(i), 157, 301, 302, 303, 337.

*Section Number and Title:*

90.531(b)(1) Narrowband Interoperability Channels.

**Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands**

*Brief Description:* These rules set out the eligibility, operational, planning and licensing requirements, and technical standards for stations licensed in these bands, including interoperability requirements.

*Need:* Limits on the maximum power allowed for certain devices are necessary to limit interference while still allowing sufficient power for a communications device to perform its functions. Thus, for example, transmitters operating on the 700 MHz Nationwide Interoperability Low Power Channels are limited to an effective radiated power (ERP) of two watts.

*Legal Basis:* 47 U.S.C. 151, 154(i), 154(j), 303(f), 303(r), 309, 332, 337, 403 and 405.

*Section Number and Title:*

90.541(d) Transmitting power and antenna height limits.

**Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands**

*Brief Description:* These rules set out the eligibility, operational, planning and licensing requirements, and technical standards for stations licensed in these bands, including interoperability requirements.

*Need:* Ensuring interoperability on the 700 MHz nationwide narrowband interoperability channels requires the use of a common technology. Otherwise, first responders using a given proprietary technology would be unable to communicate with first responders in a different jurisdiction using a different technology. Accordingly the Commission adopted the mandatory use of ANSI/TIA/EIA (Project 25) technology for the 700 MHz nationwide narrowband interoperability channels.

*Legal Basis:* 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), 332(c).

*Section Number and Title:*

90.548 Interoperability Technical Standards.

*Brief Description:* These rules set out the eligibility, operational, planning and licensing requirements, and technical standards for stations licensed in these bands, including interoperability requirements.

*Need:* Encryption ensures that public safety communications cannot be intercepted. Requiring a common encryption protocol ensures that first responders ''roaming'' into another jurisdiction to provide assistance will have their transmissions encrypted using the same protocol as in their home jurisdiction. The rules require that licensees employing encryption use the DES encryption protocol, ANSI/TIA/EIA–102 AAAA–A–2001.

*Legal Basis:* 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), 332(c).

*Section Number and Title:*

90.553 Encryption.

**Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands**

*Brief Description:* Part 90 states the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, Radiolocations Radio Services, and Commercial Mobile Radio Services. Subpart S sets forth the rules governing the licensing and use of frequencies in the 806–824 MHz, 851–869 MHz, 896–901 MHz, and 935–940 MHz Bands.

*Need:* This rule sets forth the procedures for applicants with respect to selection and assignment of licenses of channels in the Business/Industrial/Land Transportation category.

*Legal Basis:* 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7).

*Section Number and Title:*

90.621 Selection and assignment of frequencies.

*Brief Description:* These rules set out the eligibility, operational, planning and licensing requirements, and technical standards for stations licensed in these bands.

*Need:* Where a large-scale or complex communications system cannot be constructed and placed into operation within the required one-year period, the Commission's rules, provide an extended implementation period (5 years) when the licensees provide adequate justification.

*Legal Basis:* 47 U.S.C. 154(i), 303(r) and 331(a).

*Section Number and Title:*

90.629 Extended implementation period.

*Brief Description:* This subpart regulates licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands. These rules permit 800 MHz high density cellular system operations on channels 551–830 in non-border areas and on channels 411–830 in specific counties and parishes. Also, these rules impose a strict responsibility to abate unacceptable interference to non-cellular licensees and establish interference resolution procedures to be followed before, during, and after band reconfiguration.

*Need:* These rules result in efficient use of the spectrum regardless of the reconfiguration status of the band while preventing interference along the border and protecting operations by non-cellular licensees.

*Legal Basis:* 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7); Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156.

*Section Numbers and Titles:*

90.614 Segments of the 806–824/851–869 MHz band for non-border areas.

90.673–77 Obligation to abate unacceptable interference; Interference resolution procedures before, during, and after band reconfiguration; Information exchange; Transition administrator for reconfiguration of the 806–824/8512–869 MHz band in order to separate cellular systems from non-cellular systems; Reconfiguration of the 806–824/851–869 MHz band in order to separate cellular systems from non-cellular systems.

**PART 95—PERSONAL RADIO SERVICES**

**Subpart B—Family Radio Services (FRS)**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Subpart B sets forth the rules governing Family Radio Service (FRS).

*Need:* FRS provide a high-quality low-cost communications service to hunters, campers, hikers, bicyclists and other outdoor activity enthusiasts who need to communicate with other members of their party who are out of speaking range or sight but still in the same general area.

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

*Section Number and Title:*

95.194(d) (FRS Rule 4) FRS units.

**Subpart D—Citizens Band (CB) Radio Service**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Subpart D sets forth the rules governing the various citizens band services, including the Citizens Band (CB) Radio Service; Family Radio Service (FRS); Low Power Radio Service (LPRS); Medical Device Radiocommunication Service (MedRadio); Wireless Medical Telemetry Service (WMTS); Multi-Use Radio Service (MURS); and Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs).

*Need:* The rule lists Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs) among citizens band services.

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

*Section Number and Title:*

95.401(g) (CB Rule 1) What are the Citizens Band Radio Services?

**Subpart E—Technical Regulations**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Subpart E sets forth the technical standards under which part 95 licensees may operate.

*Need:* The rules specify technical standards for Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBU).

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

*Section Numbers and Titles:*

95.603(h) Certification required.
95.631(k) Emission types.
95.633(g) Emission bandwidth.
95.635(f) Unwanted radiation.
95.637(f) Modulation standards.
95.639(i) Maximum transmitter power.
95.643 DSRCS-OBU certification.
95.655(d) Frequency capability.

**Subpart F—218–219 MHz Service**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Subpart F sets forth the rules governing the 218–219 MHz service.

*Need:* These rules are needed to set forth the various regulations governing the operation of Personal Radio Service in the 218–219 MHz band.

*Legal Basis:* 47 U.S.C. 154 and 303.

*Section Numbers and Titles:*

95.803 218–219 MHz service description.
95.807(a), (1), (4) Requesting regulatory status.
95.811(b), (e) License requirements.
95.812(a) License term.
95.816(b) Competitive bidding proceedings.
95.819 License transferability.
95.861(c) Interference.

**Subpart K—Personal Locator Beacons (PLB)**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Rules in subpart K provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel locate those in distress.

*Need:* These rules provide individuals in remote areas a means to alert others of an emergency situation and to aid search and rescue personnel locate those in distress.

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

*Section Numbers and Titles:*

95.1400 Basis and purpose.
95.1401 Frequency.
95.1402 Special requirements for 406 MHz PLBs.

**Subpart L—Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUS)**

*Brief Description:* Part 95 contains the Commission rules relating to personal radio services. Subpart L sets out the regulations governing Dedicated Short-Range Communications Service On-Board Units (DSRCS–OBUs) in the 5850–5925 MHz band.

*Need:* DSRC provides the critical communications link for intelligent transportation systems, which according to the Secretary of Transportation, are the key to achieving the United States Department of Transportation's number one priority, reducing highway fatalities. The rules in subpart L pertain to licensing of On-Board Units, in-vehicle communications units.

*Legal Basis:* 47 U.S.C. 154, 301, 302(a), 303, and 307(e).

*Section Numbers and Titles:*

95.1501 Scope.
95.1503 Eligibility.
95.1505 Authorized locations.
95.1507 Station identification.
95.1509 ASTM E2213–03 DSRC Standards.
95.1511 Frequencies available.

**PART 97—AMATEUR RADIO SERVICES**

**Subpart A—General Provisions**

*Brief Description:* Part 97 contains the Commission rules relating to amateur radio services. Subpart A sets forth the general provisions pertaining to Commission's scope and authority and definitions related to amateur radio services.

*Need:* These rules are needed to define ''question pool,'' which is the set of current examination questions for the written element of the examination required to receive an amateur radio license as it pertains to amateur radio services. The rules also provide the definitions of technical symbols used in this part.

*Legal Basis:* 47 U.S.C. 151–155 and 301–609.

*Section Number and Title:*

97.3(a)(35), (b) Definitions.

**Subpart B—Station Operation Standards**

*Brief Description:* Part 97 contains the Commission rules relating to amateur radio services. Subpart B sets forth station operation standards for amateur radio services.

*Need:* These rules describe how amateur radio license operators must indicate their license class (Novice, Technician, General, Advanced, and Amateur Extra) using the license call sign.

*Legal Basis:* 47 U.S.C. 154, 303. 47 U.S.C. 151–155 and 301–609.

*Section Number and Title:*

97.119(f)(2)(3) Station identification.

**Subpart F—Qualifying Examination Systems**

*Brief Description:* Part 97 contains the Commission rules relating to amateur radio services. Subpart F sets forth rules for the examination required for new amateur operator license grants.

*Need:* This rule allows Volunteer Examiners (VEs) and Volunteer Examiner-Coordinators (VECs) to be reimbursed by examinees for out-of-pocket expenses related to the amateur operator license exam.

*Legal Basis:* 47 U.S.C. 154, 303, 47 U.S.C. 151–155 and 301–609.

*Section Number and Title:*

97.527 Reimbursement for expenses.

**PART 101—FIXED MICROWAVE SERVICES**

**Subpart B—Applications and Licenses**

*Brief Description:* Part 101 contains service and licensing rules for Fixed Microwave Services. Subpart B establishes application and licensing requirements for a number of different fixed microwave services.

*Need:* The revised rules govern the relocation of fixed microwave licensees in the 1850–1990 MHz, 2110–2150 MHz and 2160–2200 MHz bands by mobile satellite service licensees (101.69(e)) and the relocation of fixed microwave licensees in the 1910–1920 MHz and 2175–2180 MHz bands by Advanced Wireless Service (AWS) licensees (101.69(f)).

*Legal Basis:* 47 U.S.C. 154 and 303.

*Section Number and Title:*

101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

*Brief Description:* Part 101 of the Commission's rules prescribes the manner in which spectrum may be made available for private operational, common carrier, 24 GHz Service, and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf. Subpart B sets forth the general filing requirements for applications and licenses in the Fixed Microwave Services.

*Need:* The revised rules update frequency assignments to reflect the reallocation of frequencies in the 18 GHz band from terrestrial Fixed Service to the Fixed Satellite Service, as well as the grandfathering of existing Fixed Service facilities.

*Legal Basis:* 47 U.S.C. 154 and 303.

*Section Numbers and Titles:*

101.85 Transition of the 18.3–19.3 GHz band from the terrestrial fixed services to the fixed-satellite service (FSS).
101.91 Involuntary relocation procedures.
101.95 Sunset provisions for licensees in the 18.30–19.30 GHz band.
101.97 Future licensing in the 18.30–19.30 GHz band.

**Subpart C—Technical Standards**

*Brief Description:* Part 101 of the Commission's rules prescribes the manner in which spectrum may be made available for private operational, common carrier, 24 GHz Service, and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf. Subpart C sets forth technical standards for applications, service and licensing rules for Fixed Microwave Services.

*Need:* The revised rules establish revised technical standards for Multiple Address Systems and Operational Fixed Stations and establish the emissions mask for the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (101.111(a)(2)(v)); establish requirements for existing private operational fixed wireless licensees applying to become common carrier licensees (101.133(e)); and establish frequency assignments for the 71–

76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (101.147(z)). The need for these rules is ongoing.

*Legal Basis:* 47 U.S.C. 154 and 303.

*Section Numbers and Titles:*

101.105 Interference protection criteria.
101.107 Frequency tolerance.
101.111 Emission limitations.
101.113 Transmitter power limitations.
101.133(e) Limitations on use of transmitters.
101.135 Shared use of radio stations and the offering of private carrier service.
101.147 Frequency assignments.

**Subpart O—Multiple Address Systems**

*Brief Description:* Part 101 of the Commission's rules prescribes the manner in which spectrum may be made available for private operational, common carrier, 24 GHz Service, and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf. Subpart O sets forth the general provisions, system license requirements, and system requirements for Multiple Address Systems as well as the provisions implementing section 309(j) of the Communications Act of 1934, as amended, authorizing the Commission to employ competitive bidding procedures to resolve mutually exclusive applications for certain initial licenses.

*Need:* The subpart O rules establish service and technical rules applicable to Multiple Address Systems and implement the Commission's competitive bidding authority under 47 U.S.C. 309(j).

*Legal Basis:* 47 U.S.C. 154(i), 303 and 309.

*Section Numbers and Titles:*

101.1307 Permissible communications.
101.1315 Service areas.
101.1331 Treatment of incumbents.

**Subpart Q—Service and Technical Rules for the 70/80/90 GHz Bands**

*Brief Description:* Part 101 contains service and licensing rules for Fixed Microwave Services. Subpart Q sets forth the service, licensing and technical rules for the 71–76 GHz, 81–86 GHz, 92–94 GHz, and 94.1–95 GHz bands (known colloquially as the 70/80/90 GHz bands).

*Need:* These rules establish service, licensing and technical rules for the 70/80/90 GHz bands. The need for these rules is ongoing.

*Legal Basis:* 47 U.S.C. 154, 303.

*Section Numbers and Titles:*

101.1501 Service areas.
101.1505 Segmentation plan.
101.1507 Permissible operations.
101.1511 Regulatory status and eligibility.
101.1513 License term and renewal expectancy.
101.1523 Sharing and coordination among non-government licensees and between non-government and government services.
101.1525 RF safety.
101.1527 Canadian and Mexican coordination.

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# FEDERAL REGISTER

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Part III

## Federal Reserve System

12 CFR Parts 225 and 252
Amendments to the Capital Plan and Stress Test Rules; Regulations Y and YY; Final Rule

**FEDERAL RESERVE SYSTEM**

**12 CFR Parts 225 and 252**

**[Docket No. R–1548]**

**RIN 7100–AE59**

## Amendments to the Capital Plan and Stress Test Rules; Regulations Y and YY

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule.

**SUMMARY:** The Board is adopting a final rule that revises the capital plan and stress test rules for bank holding companies with $50 billion or more in total consolidated assets and U.S. intermediate holding companies (IHCs) of foreign banking organizations. Under the final rule, large and noncomplex firms (those with total consolidated assets of at least $50 billion but less than $250 billion, nonbank assets of less than $75 billion, and that are not U.S. global-systemically important banks) are no longer subject to the provisions of the Board's capital plan rule whereby the Board may object to a capital plan on the basis of qualitative deficiencies in the firm's capital planning process. Accordingly, these firms will no longer be subject to the qualitative component of the annual Comprehensive Capital Analysis and Review (CCAR). The final rule also modifies certain regulatory reports to collect additional information on nonbank assets and to reduce reporting burdens for large and noncomplex firms. For all bank holding companies subject to the capital plan rule, the final rule simplifies the initial applicability provisions of both the capital plan and the stress test rules, reduces the amount of additional capital distributions that a bank holding company may make during a capital plan cycle without seeking the Board's prior approval, and extends the range of potential as-of dates the Board may use for the trading and counterparty scenario component used in the stress test rules.

The final rule does not apply to bank holding companies with total consolidated assets of less than $50 billion or to any state member bank or savings and loan holding company.

**DATES:** *Effective Date:* March 6, 2017.

**FOR FURTHER INFORMATION CONTACT:** Lisa Ryu, Associate Director, (202) 263–4833, Richard Naylor, Associate Director, (202) 728–5854, Molly Mahar, Deputy Associate Director, (202) 973–7360, Constance Horsley, Assistant Director, (202) 452–5239, Mona Touma Elliot, Manager, (202) 912–4688, Celeste Molleur, Manager (202) 452–2783, Elizabeth MacDonald, Manager, (202) 475–6316, Christine Graham, Senior Supervisory Financial Analyst, (202) 452–3005, Seth Ruhter, Senior Supervisory Financial Analyst, (202) 452–3997, Joseph Cox, Supervisory Financial Analyst, (202) 452–3216, Kevin Tran, Supervisory Financial Analyst, (202) 452–2309, or Hillel Kipnis, Financial Analyst, (202) 452–2924, Division of Banking Supervision and Regulation; Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Counsel, (202) 475–6682, Brian Chernoff, Senior Attorney, (202) 452–2952, or Amber Hay, Senior Attorney, (202) 973–6997, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

### I. Background

#### *A. Overview of Proposed Changes to the Capital Plan and Stress Test Rules and Comments Received*

Capital planning and stress testing are two key components of the Federal Reserve's supervisory framework for large financial companies.[1] Through these programs, the Federal Reserve annually assesses whether bank holding companies with $50 billion or more in total consolidated assets have effective capital planning processes and sufficient capital to absorb losses during stressful conditions, while meeting obligations to creditors and counterparties and continuing to serve as credit intermediaries.

On September 26, 2016, the Board of Governors of the Federal Reserve System (Board) invited comment on a proposal to reduce the burden of capital planning and stress testing requirements for certain firms with a lower risk profile, while continuing to hold the largest and most complex firms to the highest standards.[2] Under the proposal, a large and noncomplex firm (a bank holding company with total consolidated assets of at least $50 billion but less than $250 billion, on-balance sheet foreign exposure of less than $10 billion, and nonbank assets of less than $75 billion) would no longer have been subject to the provisions of the Board's capital plan rule whereby the Board may object to a firm's capital plan based on unresolved supervisory issues or concerns with the assumptions, analysis, and methodologies in the firm's capital plan.[3] In connection with this change, large and noncomplex firms would have remained subject to a quantitative, but not a qualitative, assessment of their capital plans under the capital plan rule. All other bank holding companies that would have been subject to the capital plan rule (a LISCC firm, if the bank holding company is subject to the Large Institution Supervision Coordinating Committee (LISCC) supervisory framework,[4] or large and complex firm, if the bank holding company otherwise had total consolidated assets of $250 billion or more, on-balance sheet foreign exposure of $10 billion or more, or nonbank assets of $75 billion or more) would have remained subject to objection to their capital plan based on qualitative deficiencies under the rule.

Additionally, the proposal would have reduced the de minimis exception amount for capital distributions under the capital plan rule. Generally, the capital plan rule provides that a bank holding company must obtain the Federal Reserve's prior approval before making capital distributions above the dollar amount described in its capital plan.[5] However, a bank holding company that is well capitalized, as defined in 12 CFR 225.2(r), may make capital distributions above such dollar amount without seeking the Board's prior approval if other requirements are met. These include the requirement that the aggregate additional total

[1] In addition to bank holding companies with total consolidated assets of $50 billion or more, the changes in this final rule also apply to any nonbank financial company supervised by the Board that becomes subject to the capital planning and stress test requirements pursuant to a rule or order of the Board and to U.S. intermediate holding companies of foreign banking organizations in accordance with the transition provisions under the capital plan rule and subpart O of the Board's Regulation YY (12 CFR part 252). Currently, no nonbank financial companies supervised by the Board are subject to the capital planning or stress test requirements. A U.S. intermediate holding company that was required to be established by July 1, 2016 and that was not previously subject to the Board's capital plan rule is required to submit its first capital plan in 2017 and will become subject to the Board's stress test rules beginning in 2018. References to ''bank holding companies'' or ''firms'' in this preamble should be read to include all of these companies, unless otherwise specified.

[2] 81 FR 67239 (September 30, 2016).

[3] The proposal also proposed amending the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP) to include a new line item for purposes of identifying large and noncomplex firms.

[4] Based on the current population of bank holding companies, all LISCC firms have total consolidated assets of $250 billion or more, on-balance sheet foreign exposure of $10 billion or more, or nonbank assets of $75 billion or more.

[5] *See* 12 CFR 225.8(g)(1).

distribution amount for the one-year period following the Federal Reserve's action on the bank holding company's capital plan not exceed 1.00 percent of the bank holding company's tier 1 capital (the de minimis exception).[6]

The proposal would have amended the de minimis exception in two ways for all bank holding companies subject to the capital plan rule. First, the proposal would have lowered the de minimis amount from 1.00 percent to 0.25 percent of a bank holding company's tier 1 capital, beginning April 1, 2017. Second, the proposal would have established a one-quarter ''blackout period'' while the Federal Reserve is conducting CCAR (the second quarter of a calendar year), during which bank holding companies would not be able to submit a notice to use the de minimis exception or to request prior approval from the Federal Reserve to make additional capital distributions.

The proposal also would have modified the range of starting dates for the trading and counterparty component of the stress test. Under the Board's stress test rules, the Board may require a bank holding company with significant trading activity to include a trading and counterparty component (global market shock) in its adverse and severely adverse scenarios for its company-run stress tests.[7] Currently, the Board must select a date between January 1 and March 1 of the calendar year of the current stress test cycle for the ''as-of'' date for the data used as part of the global market shock components of the bank holding company's adverse and severely adverse scenarios.[8] The proposal would have extended the range of dates from which the Board may select the as-of date for the global market shock to October 1 of the calendar year preceding the year of the stress test cycle to March 1 of the calendar year of the stress test cycle.

Finally, the proposal would have modified associated regulatory reporting requirements for large and noncomplex firms to collect less detailed information on stress test results and raise the materiality threshold for reporting on specific portfolios. The proposal also would have simplified the timing of the initial applicability of the capital plan and stress test rules for all bank holding companies with $50 billion or more in total consolidated assets.

The Board received twelve comments in response to the proposal from the public, banking organizations, and trade associations. Commenters generally expressed support for the proposal, and provided alternative views on certain aspects of the proposed rule, including the definition of a large and noncomplex firm and the proposed reduction of the de minimis exception amount for capital distributions not included in a firm's capital plan.

*B. Description of Capital Plan and Stress Test Requirements*

Under Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board is required to establish enhanced prudential standards for bank holding companies with total consolidated assets of $50 billion or more.[9] As part of this requirement, the Board must conduct annual supervisory stress tests with respect to these bank holding companies and issue regulations requiring these bank holding companies to conduct semi-annual company-run stress tests.[10] The Board adopted final rules to implement these requirements on October 12, 2012.[11]

The Dodd-Frank Act also requires the enhanced prudential standards established by the Board to increase in stringency based on several factors, including the size and risk characteristics of the bank holding companies subject to the requirements.[12] In prescribing more stringent prudential standards, including stress test requirements, the Board may differentiate among bank holding companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board deems appropriate.[13]

*C. Implementation of Capital Plan and Stress Test Requirements*

Consistent with the Dodd-Frank Act mandate, the Board conducts an annual assessment of the capital planning and post-stress capital adequacy of bank holding companies with total consolidated assets of $50 billion or more.[14] The Board's capital planning and stress testing framework for these firms consists of two related programs: CCAR, which is conducted pursuant to the Board's capital plan rule,[15] and the Dodd-Frank Act stress tests, which are conducted pursuant to the Board's stress test rules.[16]

In CCAR, the Board assesses the internal capital planning processes of bank holding companies and these companies' ability to maintain sufficient capital to continue their operations under expected and stressful conditions. Pursuant to the capital plan rule, each bank holding company must submit an annual capital plan to the Board that describes its capital planning processes and capital adequacy assessment. In the current CCAR process, the Federal Reserve conducts a qualitative assessment of the strength of each bank holding company's internal capital planning process and a quantitative assessment of each bank holding company's capital adequacy. In the qualitative assessment, the Federal Reserve evaluates the extent to which the analysis underlying each bank holding company's capital plan comprehensively captures and addresses potential risks stemming from company-wide activities. In addition, the Federal Reserve evaluates the reasonableness of a bank holding company's capital plan, the assumptions and analysis underlying the plan, and the robustness of the bank holding company's capital planning process. Under the capital plan rule, the Board may object to a bank holding company's capital plan if the Board determines that (1) the bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process; (2) the assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies for reviewing its capital adequacy process, are not reasonable or appropriate; [17] or (3) the bank holding company's capital planning process or proposed capital distributions otherwise

[6] *See* 12 CFR 225.8(g)(2).

[7] *See* 12 CFR 252.14(b)(2).

[8] *Id.*

[9] 12 U.S.C. 5365.

[10] 12 U.S.C. 5365(i).

[11] 77 FR 62380 (October 12, 2012). *See* 12 CFR part 252, subparts E and F. On October 12, 2012, as required by section 165(i) of the Dodd-Frank Act, the Federal Reserve also adopted a final rule to impose company-run stress testing requirements for state member banks and savings and loan holding companies with assets of more than $10 billion and bank holding companies with assets of more than $10 billion but less than $50 billion, which is codified at subpart B of 12 CFR part 252. The Board is not adjusting the requirements in subpart B of 12 CFR part 252 at this time.

[12] *See* 12 U.S.C. 5365(b).

[13] 12 U.S.C. 5363(a)(2)(A).

[14] In addition, U.S. intermediate holding company (IHC) subsidiaries of foreign banking organizations became subject to the Board's capital plan rule beginning on January 1, 2017.

[15] 12 CFR 225.8.

[16] Subparts E and F of the Board's Regulation YY (12 CFR part 252, subparts E and F).

[17] As discussed in section II.H of this preamble below, the proposal would revise this criterion to permit objection where the Board determines that the assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's *methodologies and practices that support its capital planning process,* are not reasonable or appropriate.

constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or condition imposed by, or written agreement with, the Board or the appropriate Federal Reserve Bank (together, qualitative objection criteria).[18] The Board may also object to a bank holding company's capital plan if the bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon (that is, based on a quantitative assessment).[19] In past CCAR exercises, the Board has publicly announced its decision to object to a bank holding company's capital plan, along with the basis for the decision.[20]

If the Federal Reserve objects to a bank holding company's capital plan, the bank holding company may not make any capital distributions unless the Federal Reserve indicates in writing that it does not object to such distributions.[21]

Pursuant to the Board's stress test rules, the Board conducts supervisory stress tests of bank holding companies with total consolidated assets of $50 billion or more, and these bank holding companies are required to conduct annual and mid-cycle company-run stress tests.

## II. Revisions to the Capital Plan and Stress Test Rules

### *A. Elimination of CCAR Qualitative Assessment and Objection for Large and Noncomplex Firms*

The Board has different expectations for sound capital planning and capital adequacy depending on the size, scope of operations, activity, and systemic risk profile of a firm.[22] Consistent with those different expectations, the proposal would have differentiated the supervisory process for evaluating firms' capital planning practices. Under the proposal, large and noncomplex firms would no longer have been subject to the provisions of the Board's capital plan rule whereby the Board may object to a capital plan on the basis of deficiencies in the firm's capital planning process or unresolved supervisory issues; that is, large and noncomplex firms would no longer have been subject to the qualitative component of the annual CCAR assessment.

Under the proposal, the Federal Reserve would have conducted its supervisory assessment of a large and noncomplex firm's risk-management and capital planning practices through the regular supervisory process and targeted, horizontal assessments of particular aspects of capital planning, rather than through the annual CCAR assessment. Further, the preamble noted that the Board would not object to the capital plans of large and noncomplex firms due to qualitative deficiencies in their capital planning process, but rather would incorporate an assessment of these practices into its regular, ongoing supervisory activities. As compared to the annual CCAR assessment, the review process for large and noncomplex firms would have been more limited in scope, include targeted horizontal evaluations of specific areas of the capital planning process, and focus on the standards set forth in the capital plan rule and Supervision and Regulation (SR) Letter 15–19.

Under the proposal, the Board would have continued to perform an annual quantitative assessment of capital plans of the large and noncomplex firms and publicly announce a decision to object or not object to a firm's capital plan on this basis. Consistent with the current capital plan rule, nothing in the proposal would have limited the authority of the Federal Reserve to issue a capital directive, such as a directive to reduce capital distributions, or take any other supervisory enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law, such as an unsafe and unsound capital planning process.[23]

Commenters strongly supported removing large and noncomplex firms from the qualitative component of the annual CCAR assessment and eliminating the qualitative objection for these firms. Commenters expressed the view that the qualitative component of the CCAR assessment was unduly burdensome for large and noncomplex firms because it required the development of large amounts of documentation and sophisticated stress test models to the same degree as the largest firms. The commenters agreed that further tailoring of regulatory requirements for large and noncomplex firms would incentivize such firms to invest in capital planning processes that are appropriate for the risks of those firms.

1. Supervisory Review of Capital Plans

A commenter recommended that the Federal Reserve clarify how it plans to implement the supervisory review of the capital plans for large and noncomplex firms. Specifically, the commenter sought clarification on whether the Federal Reserve intended to use the ''regular'' supervisory process and whether the targeted horizontal review would be similar to current horizontal reviews undertaken by the Federal Reserve (such as the shared national credit review). Commenters sought additional information about whether the Federal Reserve would provide advance notice of examination focus in a first day letter, use standard procedures for communicating with management and communicating matters requiring attention, and use standard time frames for addressing any supervisory findings. Commenters also requested that the Board clarify that supervisors will apply the expectations set forth in SR Letter 15–19 for large and noncomplex firms in the capital plan review.

The Federal Reserve intends to conduct the supervisory review of capital plans of large and noncomplex firms in a manner similar to existing supervisory programs, which typically include a distribution of a first day letter in advance of the start of the review, standard communication during the exam, lead time to meet requests for additional information, and sufficient time frames for addressing the findings. With respect to the capital plan review, the Federal Reserve intends to provide large and noncomplex firms with several months' advance notice of the areas of focus of the annual capital plan review. For an individual firm, the review may also cover areas where the firm's practices are changing and issues raised in previous firm-specific supervisory communication.

In addition, as requested by commenters, the Board will ensure that communication and standards are coordinated between any teams conducting targeted horizontal reviews and the dedicated supervisory teams, who will conduct a holistic review of the capital plan at their respective supervised institutions each year. The Board confirms that it will apply capital planning expectations based on the size and complexity of a firm. As such, large and noncomplex firms will continue to be subject to the standards in SR Letter 15–19.

[18] *See* 12 CFR 225.8(f)(2)(ii)(A), (B), and (D).

[19] *See* 12 CFR 225.8(f)(2)(ii)(C).

[20] *See* 12 CFR 225.8(f)(v).

[21] *See* 12 CFR 225.8(f)(2)(iv).

[22] *See* SR Letter 15–18, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms.'' (April 4, 2011), *available at: https://www.federalreserve.gov/bankinforeg/srletters/sr1518.htm.*>*See* SR Letter 15–19, ''Federal Reserve Supervisory Assessment of Capital Planning and Positions for Large and Noncomplex Firms.'' (December 18, 2015), *available at: https://www.federalreserve.gov/bankinforeg/srletters/sr1519.htm.*

[23] *See* 12 CFR 225.8(b)(4).

The proposal indicated that the supervisory review of capital plans would likely occur in the third quarter of each calendar year. Commenters requested that the review take place during the second quarter, concurrent with CCAR, to avoid coinciding with the DFAST mid-cycle process, which occurs in the third quarter. While moving the supervisory review to the second quarter may avoid the resource and time constraints resulting from the DFAST mid-cycle process occurring the same quarter as the supervisory capital plan review, it would also limit the amount of time that a firm would have to prepare supporting documentation. The Federal Reserve intends to provide the first day letter to firms during the first quarter and firms will have additional time to provide supporting documentation after they submit their capital plans. In addition, the timing of the supervisory review of large and noncomplex firms will be separate from the comprehensive CCAR qualitative assessment in order to clarify the differences in the review to the public. For these reasons, the supervisory review of the capital plans of large and noncomplex firms will generally begin in the third quarter of the year.

2. Required Elements of Capital Plan Submission

The proposal would have maintained the minimum elements of a capital plan outlined in the capital plan rule, but would have reduced the supporting documentation a large and noncomplex firm would have been required to be submit with its capital plan. Specifically, the proposal would have revised the instructions to Appendix A of the FR Y–14A to remove the requirement that a large and noncomplex firm include in its capital plan submission certain documentation regarding its models, including any model inventory mapping document, methodology documentation, model technical documents, and model validation documentation. The preamble to the proposal noted that large and noncomplex firms would still be required to produce these materials upon request by the Federal Reserve based on the focus of the supervisory review of a large and noncomplex firm's capital plan.

One commenter requested that the Board revise the minimum elements of a capital plan to require firms to submit only the summary portion of their capital plan and not submit the other components of the capital plan (capital policies, planned capital actions, capital planning process, etc.) In addition, commenters questioned whether the proposed revisions to the supporting documentation requirements would meaningfully reduce burden for large and noncomplex firms, as firms would continue to have to update and be prepared to produce the documentation upon request. Commenters recommended that the Board specify the documents it expects firms to maintain, identify the frequency with which documentation needs to be refreshed, and clarify the timeframe within which firms would be required to produce model-related documentation.

The final rule maintains the minimum elements of a capital plan, as these elements, such as a firm's capital policy and description of the firm's capital planning process, are important inputs into the supervisory assessment of the firm's capital plan regardless of whether the assessment occurs through CCAR or though the regular supervisory process. Furthermore, these elements enable the firm's board of directors to understand and approve of the firm's capital adequacy, capital planning processes, and capital-related decisions. The Board is also adopting the proposed revisions to the supporting documentation requirements, and intends to implement these revisions in a manner that will meaningfully reduce burdens for large and noncomplex firms. Large and noncomplex firms will no longer be expected to include this supporting documentation in the capital plans that are vetted by senior management and approved by the board of directors of the firm. In addition, the proposed process will inform firms of the proposed areas of focus and provide them lead time to provide requested documents, which will enable them to prioritize improvements in the Federal Reserve's areas of focus and reduce resource requirements for the firm's capital planning process.

3. Expectation for Model Risk Management for Large and Noncomplex Firms

Commenters requested that the Board clarify its expectations for model documentation for large and noncomplex firms, and confirm that the model risk management guidance in SR Letter 11–7 is appropriate for large and noncomplex firms.[24]

Large and noncomplex firms are expected to maintain documentation regarding the loss, revenue, and expense estimation models used for stress scenario analysis, and update that documentation to reflect revisions to the models.[25] As described in SR Letter 15–19, the expectations for models are reduced for large and noncomplex firms as compared to large and complex and LISCC firms, including with respect to the granularity of projections, variable selection process, controls around the use of vendor models, and measures for assessing model performance.[26] Commensurate with the reduced expectations for the use of models, expectations for model documentation are also lower for large and noncomplex firms, as compared to LISCC and large and complex firms.

Regarding commenters' questions on the application of SR Letter 11–7, the Board confirms that SR Letter 11–7 continues to apply to all firms, including large and noncomplex firms. SR Letter 15–19 was drafted to be consistent with the standards in SR Letter 11–7 and describes a particular application of SR Letter 11–7 for capital planning. As discussed in SR Letter 15–19, supervisory expectations for various aspects of capital planning processes, including model risk management, for large and noncomplex institutions differ from those for LISCC and large and complex firms. For example, while a large and noncomplex firm should independently validate or otherwise conduct effective challenge of estimation methods used in internal capital planning, it should prioritize those activities only for its material models. Other specific expectations around validation and effective challenge are also reduced relative to the expectations for LISCC and large and complex firms.[27] Further, the tailored evaluation of model risk management at large and noncomplex firms means that the Federal Reserve generally does not expect the same level of sophistication and intensity of model risk management at large and noncomplex firms compared to LISCC and large and complex firms.

4. Application of Market Shock and Large Counterparty Default Component

Commenters requested that the Board specify that large and noncomplex firms would not be subject to the global market shock and large counterparty default components of the supervisory stress test. Currently, only firms with over $500 billion in total consolidated assets who are subject to the market risk rule are subject to the global market shock component, as such, no large and noncomplex firm could qualify for

[24] *See* SR Letter 11–7, ''Guidance on Model Risk Management.'' (April 4, 2011), *available at: https://www.federalreserve.gov/bankinforeg/srletters/sr1107.htm.*

[25] *See* SR Letter 15–19.

[26] *See* SR Letter 15–19.

[27] *See* SR Letter 15–19.

inclusion in the global market shock component of the supervisory stress test.[28] In addition, the Board did not propose to apply the global market shock component or the large counterparty default component to any large and noncomplex firm. Under the Board's stress test rules, the Board provides notice and an opportunity for response to firms that are subject to the large counterparty default component of the stress test.

*B. Identifying Large and Noncomplex Firms*

Under the proposed rule, a bank holding company would have been considered large and noncomplex if, as of December 31 of the calendar year prior to the beginning of the capital plan cycle, the firm had average total consolidated assets of at least $50 billion but less than $250 billion,[29] total on-balance sheet foreign exposure of less than $10 billion, and average total nonbank assets of less than $75 billion. These firms would no longer have been subject to the provisions of the Board's capital plan rule whereby the Board may object to a capital plan on the basis of qualitative deficiencies in the firm's capital planning process.

Some commenters recommended that the Board replace the proposed thresholds with measures the commenters viewed as being more comprehensive and risk-sensitive, such as the systemic risk indicator approach used to identify global systemically important bank holding companies (GSIBs), and further recommended that the Board apply the qualitative component of the CCAR assessment solely to firms identified as GSIBs. One commenter also argued that only firms identified as GSIBs should be considered large and complex. Another commenter recommended that the Board use a more discretionary, risk-based assessment to identify individual firms for a designation as large and complex.

Firms that are identified as large and complex by the dollar thresholds, but are not GSIBs, still face risks or could present systemic risks that warrant enhanced capital planning expectations and greater supervisory oversight through the qualitative component of the CCAR assessment. Though a firm that exceeds the thresholds in the final rule but that is not a GSIB does not typically present the same level of systemic risk as a GSIB, these firms still tend to be interconnected with the financial system such that a material distress suffered by the firm could create economic disruption or spread quickly to similarly situated firms. Moreover, the qualitative component of the CCAR assessment and more detailed reporting requirements support greater supervisory oversight of these firms. In particular, CCAR and the related reporting requirements help to ensure that these firms are effectively identifying and managing risks that may arise in connection with their greater size and complexity or nonbanking operations in order to mitigate the possibility that these firms may experience material distress.

The Board considered a range of factors, including size, complexity of operations, and interconnectedness with other financial institutions, when considering the applicability of the qualitative component of the CCAR assessment to large banking organizations, which allows the Board to assess the systemic risk and to promote the resiliency of these firms. Banking organizations with total consolidated assets in excess of $250 billion generally have more substantial systemic risk profiles and larger market shares in many sectors of the financial industry and in geographic regions. In particular, the significant types and volume of client services provided by such firms make it more likely that in the event that the firm were to experience distress or failure other market participants could have difficulty in absorbing and replacing all of those services, which may lead to significant disruption. Banking organizations of this size within the current population of firms also have the capacity and often tend to engage in more complex transactions that expose them to a broader range of risks, such as those resulting from transactions with a wide variety of counterparties, exposure to complex products and asset classes, and large trading portfolios.

Commenters also provided specific views on the $10 billion foreign exposure threshold, which included a suggestion that the Board instead use the criteria for identifying U.S. GSIBs to define which firms are subject to the qualitative objection in the capital plan rule.

As a general matter, firms with substantial foreign exposure tend to face risks that arise from maintaining numerous or significant and complex cross-border relationships that require knowledge of and cooperation with multiple jurisdictions. Large cross-border exposures also create greater challenges in recovery and resolution, increasing the need for firms with such a profile to maintain capital and capital planning practices that limit their probability of default or do not pose heightened risk to a firm. However, foreign exposures may also arise from business activities that are not as complex. For example, a firm may offer a simple, non-complex product such as consumer credit in multiple jurisdictions or have foreign exposures as a natural extension of its U.S.-based business that do not make the firm more complex or risky. As a result, a metric aimed at accounting for complexity that is based solely on the size of a firm's foreign exposures, in this context, may be over-inclusive. Including the GSIB requirement mitigates the potential that the proposed foreign exposure test may include firms that are not complex, while ensuring that the qualitative component of the CCAR assessment continues to apply to the most systemically important U.S. banking organizations.

As explained above, the final rule retains the other two prongs of the definition as proposed. Accordingly, this modification has the effect of expanding the applicability of the proposed definition and thereby increasing the number of firms removed from the qualitative component of the CCAR Assessment. For the current population of bank holding companies that would have been identified as large and noncomplex under the proposal but for the size of their foreign exposure, the supervisory capital plan review for large and noncomplex firms should be sufficient. As noted, that process may include a firm-specific review of particular capital planning practices, including management of risks arising specifically from foreign exposure. Under the final rule, the Board will retain the authority to take supervisory actions related to capital planning against large and noncomplex firms, including an action to address unsafe and unsound practices or conditions or violations of law, such as an unsafe and unsound capital planning process. In addition, the Board expects such firms to meet the capital planning standards

[28] Capital Assessments and Stress Testing information collection (FR Y–14A/Q/M; OMB No. 7100–0341), FR Y–14Q General Instructions. *https://www.federalreserve.gov/reportforms/forms/FR_Y-14Q20161231_i.pdf.*

[29] The proposed rule would not have amended the existing methodology for determining average total consolidated assets under the capital plan rule. Under the capital plan rule, average total consolidated assets equals the amount of total assets reported on the bank holding company's Consolidated Financial Statements for Holding Companies (FR Y–9C), measured as an average over the preceding four quarters. If a bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, its total consolidated assets are measured as the average of its total consolidated assets, as reported on the FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. *See* 12 CFR 225.8(b)(2).

set forth in the capital plan rule and SR Letter 15–19.

Several commenters questioned the proposed $75 billion nonbank asset threshold for determining whether a firm is considered large and noncomplex. One commenter argued that a higher nonbank asset threshold, specifically, one set at $100 billion, would be more appropriate and consistent with a provision in the Board's resolution plan rule (Regulation QQ) that permits a firm to submit a tailored resolution plan.[30] Another commenter asserted that empirical data did not support the inclusion of a nonbank asset threshold as an appropriate indicator of a firm's systemic risk and that the total consolidated asset and foreign exposure thresholds adequately reflect a bank holding company's size, complexity, and riskiness to the financial system.

Commenters' suggestion that the Board use a $100 billion nonbank asset threshold in order to align with the threshold under Regulation QQ that permits a firm to submit a tailored resolution plan misstates the requirement and would result in a more stringent measure than the $75 billion nonbank asset threshold set forth in the proposal. Regulation QQ uses a two-part threshold based on nonbank assets to determine whether a firm is permitted to submit a tailored resolution plan. Specifically, this threshold permits a firm to submit a tailored resolution plan if the firm has less than $100 billion in nonbank assets and insured depository institution assets constitute at least 85 percent of the firm's assets.[31] Since a firm would also need to have less than $250 billion in total assets to be considered large and noncomplex under the final rule based on the total assets threshold, using the Regulation QQ measure would in effect result in a nonbank assets threshold of no greater than $37.5 billion. Accordingly, adoption of the same nonbank assets threshold used in Regulation QQ would represent a more stringent measure than the $75 billion nonbank asset threshold set forth in the proposal.

Commenters asserted that a threshold based on nonbank assets would not be an appropriate measure for determining whether a firm should be subject to heightened requirements under the capital plan rule, or that such a threshold should be set at a level higher than $75 billion. The Board, in developing the nonbank asset threshold, reviewed the risk profile of the current population of bank holding companies and the effects on U.S. financial stability associated with the distress or failure of large financial firms. A nonbank asset threshold of $75 billion would separate out bank holding companies that are significantly engaged in activities outside the business of banking. Such activities may involve a broader range of risks and result in more interconnections with other financial institutions than those associated with purely banking activities, requiring sophisticated risk management and heightened capital planning standards. For example, bank holding companies with significant nonbank assets are generally engaged in financial intermediation of a different nature and magnitude (such as complex derivatives and capital markets activities like underwriting) than those typically conducted through an insured depository institution. Further, nonbank entities tend to be more vulnerable to funding runs, given that they generally rely to a greater degree on less stable forms of funding than insured depository institutions. In addition, the Board notes that, historically, the distress or failure of firms with significant nonbank assets has coincided with or increased the effects of significant disruptions to the stability of the U.S. financial system.[32] The correlation between the distress of financial firms with significant nonbank assets and the disruption of the U.S. financial system, coupled with the additional complexities found in bank holding companies with large nonbank activities, supports the use of a nonbank asset threshold. A threshold of $75 billion represents a conservative level relative to historical experience and would help to ensure that heightened standards are applied to firms that engage in complex activities and have significant potential for disrupting the financial system. In addition, a threshold higher than $75 billion would exclude some firms with risk profiles that are significantly concentrated in riskier activities, particularly IHCs that engage in significant capital market activities. In particular, a higher threshold would exclude companies that engage in equities trading, prime brokerage, and investment banking activities, and therefore have risk profiles that are more similar to those of the most complex U.S. financial firms than to the risk profiles of the smaller, less complex BHCs.

One commenter requested that the Board clarify whether a firm considered to be part of the LISCC portfolio that reduces its size or complexity to meet the criteria for a large and noncomplex firm would be subject to the qualitative component of the CCAR assessment. The commenter also asked the Board to clarify whether a firm that qualified as a large and complex firm due to the nonbank asset threshold would be subject to the supervisory expectations set forth in SR Letter 15–18 or SR Letter 15–19.[33]

Under the final rule, a LISCC firm that is a large and noncomplex firm would no longer be subject to the qualitative component of the CCAR assessment or the provisions of the capital plan rule whereby the Board may object to the firm's capital plan; however, the firm would remain subject both to the Board's highest expectations for capital planning as set forth in SR Letter 15–18 and to ongoing supervisory scrutiny of its capital planning practices.[34] The Board would, however, evaluate whether the firm's activities and risk profile continued to warrant the LISCC designation.[35] Non-LISCC firms that qualify as large and complex as a result of the nonbank asset threshold would be subject to the supervisory expectations in SR Letter 15–18.[36]

The Board is accordingly adopting the proposed total consolidated asset and nonbank asset thresholds to define a large and noncomplex firm without modification. However, because the thresholds are based on static measures of size and nonbank assets, the Board will periodically re-assess the appropriateness of the thresholds for purposes of the requirements of the capital plan and stress test rules to ensure they remain suitable indicators for measuring complexity and risk.

[30] *See* 12 CFR 243.4(a)(3).

[31] *See* 12 CFR 243.4(a)(3).

[32] Examples include the near-failures of Wachovia (a bank holding company with $162 billion in nonbank assets as of September 30, 2008) and of Long Term Capital Management (a hedge fund with $125 billion in assets as of August 31, 1998).

[33] *See* SR Letter 15–19.

[34] *See* SR Letter 15–18.

[35] For a foreign banking organization, such an evaluation would include consideration of the banking organization's branch and agency network.

[36] ''The public nature of the CCAR process and disclosure of the results of the Federal Reserve's qualitative assessment helps to ensure that LISCC firms and large and complex firms maintain focus on ensuring that their practices are consistent with the Federal Reserve's capital planning expectations articulated in SR Letter 15–18.'' 81 FR 67239 (30 September 2016) Further, the Board is amending the applicability thresholds in SR Letters 15–18 and 15–19 to reflect the definition of a large and noncomplex firm set forth in the final rule.

*C. Measurement and Reporting of Average Total Nonbank Assets*

1. General Approach to Measuring Nonbank Assets

The proposed rule set forth a methodology for calculating nonbank assets for purposes of the $75 billion nonbank asset threshold. The measure of nonbank assets would have included the assets of all nonbank subsidiaries, any direct equity investments in unconsolidated nonbank entities held by the parent, and any nonbanking Edge Act subsidiaries. Beginning on March 31, 2017, bank holding companies with $50 billion or more in total consolidated assets would be required to report their nonbank assets on the FR Y–9LP on new line item 17 of PC–B Memoranda, in accordance with the proposed instructions to that form. [37] For purposes of the capital plan cycle beginning January 1, 2017, firms would use the FR Y–9LP to determine their average total nonbank assets for purposes of the final rule,[38] according to the calculation methodology described in the proposal.[39]

Commenters suggested certain changes to the nonbank asset measure. For instance, commenters suggested that the Board exclude bank-permissible assets or cash and high-quality liquid assets held in nonbank entities. Commenters also suggested removing from the calculation intangible assets that are deducted from regulatory capital pursuant to the Board's regulatory capital rules.

The proposal defined nonbank assets to include all assets held by nonbank entities, regardless of the type of asset, in order to quantify the scale of a firm's nonbanking activities. This measure of nonbank activities would have included all assets in nonbank entities because those entities are permitted to conduct a wide range of complex activities, and assets held by those entities, including those that present low inherent risk, may be used in connection with complex activities, including prime brokerage or other trading activities. The proposal focused on the overall amount of nonbank activities because of the need for supervisory scrutiny of those activities when performed outside a banking entity. In addition, as noted above, asset measures are relatively simple and transparent measures of a firm's nonbank activities, and exclusion of specific assets based on risk could undermine the transparency of the measure. Accordingly, the final rule defines nonbank assets to include all assets of a nonbank subsidiary, regardless of type.

The Board requested comment on whether the rule should permit firms to net intercompany exposures among nonbank subsidiaries for purposes of the measurement of nonbank assets for the 2017 capital plan cycle. Commenters expressed support for permitting firms to net intercompany assets between nonbank subsidiaries, and also requested that the Board permit a firm to exclude a broader set of intercompany assets from the nonbank measure, including exposures between a nonbank subsidiary and a foreign parent holding company, if any, and non-U.S. affiliates. The final rule would permit a firm to net intercompany exposures among nonbank subsidiaries for purposes of measuring nonbank assets for the 2017 cycle, in order to avoid double counting those assets. However, the final rule would not permit a firm to net intercompany assets between a nonbank company and an affiliate whose assets are not included in the nonbank asset measure, as the concern of double counting is not present in this case.

Commenters also requested technical clarifications on the nonbank assets measure for purposes of the capital plan cycle beginning January 1, 2017. For instance, commenters requested that the Board clarify that the ''Investments in nonbank subsidiaries'' in line item 2.a reflects the underlying assets of those nonbank subsidiaries. Commenters also requested that the Board clarify whether the elimination of investments in line item 15a from line item 2a is intended to avoid double counting nonbank assets, because line item 15a of Schedule PCB reflects the underlying assets of a firm's nonbank subsidiaries. As described in the instructions to the FR Y–9LP, investments in nonbank subsidiaries should reflect the total amount of equity investments in nonbank subsidiaries and associated companies under the equity method of accounting, as prescribed by U.S. generally accepted accounting principles. The Board is hereby clarifying that for purposes of the capital plan cycle that began on January 1, 2017, the elimination of investments in nonbank subsidiaries that are reflected in line 2a of Schedule PC–A was intended to eliminate double counting in the measure.

Commenters also provided views on the frequency of the calculation of the proposed nonbank asset measure on FR Y–9LP. The proposal requested views on whether the proposed nonbank asset measure should be calculated on a daily, weekly, or monthly basis. Commenters requested that the Board finalize the calculation on a monthly basis, and indicated that monthly calculation would provide the necessary information without further burdening firms. Consistent with the comments, the final revision to the FR Y–9LP will require firms to perform the calculation on a monthly basis. The new line item will be reported quarterly on the FR Y–9LP and reflect the average nonbank assets measure for that quarter. The initial filing of the line item should be the actual amount as of December 2016, not a four-quarter average.

*D. Lowering the de Minimis Exception Amount for All Bank Holding Companies*

The de minimis exception in the capital plan rule allows a well-capitalized bank holding company to

[37] Specifically, nonbank assets are defined to include assets of consolidated nonbank subsidiaries, whether held directly or indirectly or held through lower-tier holding companies, and a bank holding company's direct investments in unconsolidated nonbank subsidiaries, associated nonbank companies, and those nonbank corporate joint ventures over which the bank holding company exercises significant influence (collectively, ''nonbank companies''). Nonbank companies would exclude (i) all national banks, state member banks, state nonmember insured banks (including insured industrial banks), federal savings associations, federal savings banks, and thrift institutions (collectively, ''depository institutions'') and (ii) except for an Edge or Agreement Corporation designated as ''Nonbanking'' in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b), any subsidiary of a depository institution (''depository institution subsidiary''). All intercompany assets among the nonbank companies should be eliminated from the measure of nonbank assets, but all assets with the reporting bank holding company; any depository institution; and any depository institution subsidiary should be included.

[38] The $75 billion average total nonbank asset threshold is the average of the total nonbank assets of a holding company, calculated in accordance with the instructions to the FR Y–9LP, for the four most recent consecutive quarters or, if the bank holding company has not filed the FR Y–9LP for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters, as applicable.

[39] As described in the proposal and adopted as final, for purposes of the capital plan cycle beginning January 1, 2017, average total nonbank assets under the proposal would have equaled (i) total combined nonbank assets of nonbank subsidiaries, as reported on line 15a of Schedule PC–B of the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP) as of December 31, 2016; plus (ii) the total amount of equity investments in nonbank subsidiaries and associated companies as reported on line 2a of Schedule PC–A of the FR Y–9LP as of December 31, 2016, (except that any investments reflected in (i) may be eliminated); plus (iii) assets of each Edge and Agreement Corporation, as reported on the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b) as of December 31, 2016, to the extent such corporation is designated as ''Nonbanking'' in the box on the front page of the FR 2886b; minus (v) assets of each federal savings association, federal savings bank, or thrift subsidiary, as reported on the Call Report as of December 31, 2016.

distribute small, additional amounts of capital above those approved in its capital plan, without the need for a complete re-assessment of the bank holding company's capital plan. The proposal would have reduced the de minimis exception from 1.00 percent to 0.25 percent of a bank holding company's tier 1 capital in order to ensure that the de minimis exception serves its intended purpose, which is to provide flexibility for well-capitalized bank holding companies to respond to unanticipated events that improved a bank holding company's capital levels.

Commenters argued that the Federal Reserve should maintain the current de minimis amount of 1.00 percent in order to permit firms to address unforeseen events, such as changes in economic conditions, market disruptions, or mergers and acquisitions. Commenters noted that the Board already has the capacity to require changes or object to a de minimis capital distribution request within a 15-day period. Commenters also asserted that it is not clear that firms that have relied on the de minimis exception under the current rule have fallen below prudent capital levels or otherwise become more vulnerable to financial distress.

As described in the proposal, the Board has observed a pattern of certain bank holding companies using the de minimis exception to increase their common stock repurchases by the maximum amount allowed under the exception, even in the absence of unforeseen circumstances. For example, since July 1, 2016, the start of the first quarter subsequent to the publication of the results of CCAR 2016, the Federal Reserve has received de minimis requests from 13 of the 25 U.S. bank holding companies that participated in CCAR 2016. Ten of these firms provided requests in excess of 0.75 percent of the firm's tier 1 capital. Some firms have increased their common stock repurchases by approximately 30 percent above the amount that had been approved in their capital plans six months prior. The Federal Reserve reviewed the circumstances associated with these additional capital distributions, and this review indicated that certain firms may be treating the de minimis exception as an add-on to approved common stock distributions under the bank holding company's capital plan, rather than to address unanticipated events. While these distributions have not resulted in any given firm's capital levels falling below prudent capital levels to date, they call into question the strength of a firm's capital planning practices, as requesting additional distributions that do not directly respond to unanticipated events suggests some firms may not have a rigorous capital planning process.

Commenters also requested that the Board consider allowing a firm to continue to make de minimis distributions equal to or less than 1.00 percent of tier 1 capital if the firm demonstrates capital ratios above those submitted in its baseline scenario projections, therefore allowing the firm to maintain its target capital ratios. Firms submit baseline projections of their capital ratios to the Federal Reserve as part of the capital plan submission: These are referred to as the BHC baseline scenario projections. The Board's current standards for reviewing a de minimis distribution request already account for a firm's performance relative to expected conditions, but do not include a requirement for the distribution to respond to an unanticipated event that improves a firm's capital levels.

One commenter requested that the Board provide an exemption from the lower de minimis exception amount for IHCs, as IHCs are closely held and thus less likely than public companies to face external pressure to engage in additional capital distributions to meet the demand of shareholders. Further, the commenter asserted that these firms are more likely to keep capital distributed from an IHC within the larger banking organization. As described above, the intended purpose of the de minimis exception is to provide flexibility for well-capitalized bank holding companies to distribute small, additional amounts of capital without the need for a complete re-assessment of the firm's capital plan, a consideration that applies equally to IHCs as well as to publicly traded companies, and is not dependent on whether distributions are made to parent companies or third-party shareholders. Like U.S.-domiciled bank holding companies, IHCs would maintain the ability under the capital plan rule to submit requests for Board approval of additional capital distributions.[40]

In addition, commenters requested that the Board delay finalization of the proposed change to the de minimis exception until after the Board completes its broad retrospective review of the capital planning and stress-testing frameworks. As noted, the Federal Reserve has observed that many firms are using the de minimis exception in a manner that may undermine the credibility of a firm's capital plan. Accordingly, it is important to implement this proposed change for this capital planning cycle to strengthen firms' capital planning processes. The Board will consider any necessary harmonization in developing proposed revisions to the capital plan and stress test rules, which would be issued through the notice and comment process.

For all these reasons, the Board is adopting the proposed change to the de minimis amount, from 1.00 percent to 0.25 percent of tier 1 capital, without modification. Firms will still be able to execute capital distributions consistent with meeting their targeted capital ratios as part of the next capital planning cycle. For example, firms can address small fluctuations in capital levels by providing prior notice that the firms intend to use the de minimis exception to distribute additional capital.[41] In addition, the final rules retains the ability for firms to submit requests for larger amounts of capital distributions beyond those included in the firm's capital plan with the Board's prior approval.[42]

As noted in the proposal, one important factor in the Board's decision on a capital distribution request is the size and complexity of the bank holding company making the request. All else equal, a capital distribution request from a LISCC or large and complex firm would likely require stronger justification than a request from a large and noncomplex firm. For instance, a request from a LISCC or large and complex firm directly related to an unforeseeable event at the time of the last capital plan submission that has a positive expected impact on current or future capital ratios would likely require more supporting evidence (for instance, updated stress test results) than a similar request from a large and noncomplex firm. This difference reflects the Federal Reserve's elevated expectations for capital planning at LISCC and large and complex firms, where any revision to a firm's capital plan to increase capital distributions following the qualitative component of the CCAR assessment requires strong evidence and support.

*E. Blackout Period for the de Minimis Exception and Requests for Approval To Make Additional Distributions Not Included in a Bank Holding Company's Capital Plan*

The proposal would have established a one-quarter ''blackout period'' during the second quarter of a calendar year,

[40] *See* 12 CFR 225.8(g)(4).

[41] The Board reminds firms that it generally expects a firm to obtain approval from its board of directors before it provides notice of a proposed de minimis transaction.

[42] *See* 12 CFR 225.8(g)(4).

when each firm submits its updated capital plan and while the Board is conducting CCAR to review that capital plan. During this blackout period a bank holding company would not have been able to submit a notice regarding its intention to use the de minimis exception or submit a request for prior approval for additional capital distributions. Under the proposal, a bank holding company seeking to make capital distributions in the second quarter of a calendar year in excess of the amount described in the capital plan for which a non-objection was issued would have been required to submit a notice to use the de minimis exception by March 15 or submit a request for prior approval for incremental capital distributions that do not qualify for the de minimis exception by March 1 and reflect the additional distributions in its capital plan. The proposed blackout periods were expected to be effective for CCAR 2017.

Commenters questioned the need for the proposed blackout period for incremental distribution requests during the second quarter. For instance, commenters noted that the Board can already stop or impose restrictions on inappropriate distributions requested either under the de minimis exception or the additional distributions not included in a firm's approved capital plan. Commenters also requested the removal of the blackout period for IHCs to allow these firms to freely distribute capital or liquidity to their FBO parent as may be necessary to support the safety and soundness of the entire organization.

The proposed blackout period was intended to ensure that the Board's analysis in CCAR would represent a comprehensive and current evaluation of the bank holding company's capital adequacy. To the extent an unanticipated event arises, the Board generally expects that a firm could provide notice or seek approval in the third quarter, following the CCAR assessment. Were an exigent circumstance to arise (for example, one similar to the circumstance contemplated by commenters regarding distributions by an IHC to support the safety and soundness of the broader foreign banking organization), the firm could determine that there had been or will be a material change in the firm's risk profile, financial condition, or corporate structure since the bank holding company last submitted the capital plan, and resubmit its capital plan.[43]

[43] 12 CFR 225.8(e)(4).

Commenters also requested that the Board allow firms to request additional capital distributions for business activities, such as mergers and acquisitions or acquiring troubled assets in times of market disruptions, during the second quarter. With respect to mergers and acquisitions and similar predictable actions, firms should be planning in advance for business changes and ensure that the change is reflected in the firm's capital plan. In addition, if a firm is changing its business activities, the capital impact of the business change should be examined as part of the evaluation of a firm's capital plan to ensure the new entity is adequately capitalized.

The blackout period facilitates the sound assessment of firms' capital plans because it allows the assessment to be based on information that is as accurate and complete as possible. Accordingly, a firm should include all distributions it intends to make during the projection horizon to allow for a comprehensive analysis of distributions in CCAR. In the absence of this modification, the Federal Reserve's analysis in CCAR may not in all cases represent a comprehensive evaluation of the bank holding company's capital adequacy and the appropriateness of the bank holding company's planned capital actions in CCAR, potentially limiting the effectiveness of the evaluation. Moreover, firms should be able to plan the capital distributions for the quarter that CCAR is being conducted and include those planned distributions in their CCAR exercise. As noted above, a firm that experiences unanticipated events that materially change its risk profile, financial condition, or corporate structure during the second quarter must resubmit its capital plan for review, and based on the circumstances of the transaction and prevailing market conditions, the Board may expedite its review of the resubmitted capital plan. The Board is finalizing this aspect of the proposal without change.

*F. Implementation of Modified Reporting Requirements*

The proposal would have modified the series of reports used to support supervisory stress testing to reduce burdens for large and noncomplex firms. The series of reports, the Capital Assessments and Stress Testing Report (FR Y–14 series of reports; OMB No. 7100–0341), consists of three reports: the semi-annual FR Y–14A, the quarterly FR Y–14Q, and monthly FR Y–14M. Commenters were generally supportive of the proposed revisions to the reporting forms, while providing views on specific revisions, as discussed below.

1. Increased Materiality Thresholds

First, the proposal would have increased the materiality thresholds for filing schedules on the FR Y–14Q report and the FR Y–14M report for large and noncomplex firms. The FR Y–14 instructions currently define material portfolios as those with asset balances greater than $5 billion or asset balances greater than five percent of tier 1 capital, each measured as an average for the four quarters preceding the reporting quarter.[44] The proposal would have revised the FR Y–14's definition of a ''material portfolio'' for large and noncomplex firms to mean a portfolio with asset balances greater than either (1) $5 billion or (2) 10 percent of tier 1 capital, each measured as an average for the four quarters preceding the reporting quarter.[45] The preamble to the proposal noted that, in modeling losses on these portfolios for large and noncomplex firms, the Federal Reserve intended to apply the median, rather than 75th percentile, loss rate from supervisory projections based on the firms that reported data, so as not to discourage firms from using the increased threshold for materiality.

While commenters were supportive of the proposal's goal of increasing materiality thresholds, they argued that the 10 percent materiality threshold was too low to substantially reduce reporting burdens. However, increasing the materiality threshold to 10 percent of tier 1 capital would relieve burden on a number of firms. For example, the Board found that the number of firms required to submit a particular Y–14M sub-schedule fell from 20 to 12 under the new threshold.[46] A higher threshold would not be appropriate as losses on a portfolio that represents more than 10 percent of the firm's tier 1 capital could have a material effect on a firm's capital position. Accordingly, the final rule provides that the definition of a ''material portfolio'' for large and noncomplex firms is a portfolio with asset balances greater than either (1) $5 billion or (2) 10 percent of tier 1 capital, each measured as an average for the four quarters preceding the reporting quarter. This revised definition will be effective

[44] Respondents have the option to complete the data schedules for immaterial portfolios.

[45] The four-quarter average percent of tier 1 capital is calculated as the sum of the firm's preceding four quarters of balances subject to the particular materiality threshold divided by the sum of the firm's preceding four quarters of tier 1 capital.

[46] Analysis was performed as of March 31, 2016 reporting.

beginning with the first ''as-of'' date after the final rule has become effective.

Some commenters requested that the Board also apply the median loss rate to immaterial portfolios held at large and complex firms, instead of a loss rate equal to the 75th percentile among firms that report data to the Federal Reserve. In order to avoid discouraging firms from reporting a portfolio as immaterial, the final rule applies the median loss rate on immaterial portfolios held at all firms subject to the supervisory stress test.

In addition, a commenter requested that the Board exempt a firm from reporting historical data on a portfolio if the portfolio currently meets the materiality threshold but did not meet the materiality threshold in the past. Historical data is required for stress testing modeling purposes, and, for schedules that require submission of historical data, firms must continue to submit complete historical data for material portfolios even if the portfolios did not meet the materiality threshold during the entire historical period.

2. Revisions to the FR Y–14A

Under the proposal, large and noncomplex firms would no longer have been required to complete several elements of the FR Y–14A Schedule A (Summary).[47] Under the proposal, a large and noncomplex firm could have adopted these changes for the FR Y–14A report as of December 31, 2016, or as of June 30, 2017. Commenters were generally supportive of the proposal to modify the reporting requirements for large and noncomplex firms, observing that removing the requirements would reduce the resources needed to prepare the capital plan and alleviate concerns of an adverse supervisory finding that a capital plan is incomplete based on a failure to provide documentation. Commenters suggested that the Board also consider removing additional requirements to report certain schedules or sub-schedules of the Y–14A for all or specific groups of firms subject to the capital plan rule. In particular, commenters requested that the Board remove schedules that collect detailed information on a firm's retail repurchase exposure and projections of retail repurchase exposure, estimates of expected and stressed retail loan balances and loss projections, granular detail on a firm's revenue streams, and projections of the firm's expected regulatory capital over a five year horizon.[48] However, all of these schedules will continue to be used to produce either the Dodd-Frank Act stress test estimates or as part of the qualitative capital plan assessment (either through the qualitative component of the CCAR assessment for LISCC and large and complex firms or through the annual supervisory review for large and noncomplex firms). The Federal Reserve reviews the items required to be reported in the FR Y–14 series of reports on an ongoing basis, and may propose additional changes in the future to further reduce burdens associated with these reporting requirements or in connection with updates to stress-test projections. The Board also continues to engage with the OCC and FDIC to promote consistency among amendments to reporting forms.

The Board did not propose any changes to the Y–14A reporting requirements related to the adverse scenario, but commenters also suggested that the Federal Reserve reduce the reporting requirements for the adverse scenario, and some commenters requested that the Federal Reserve remove the requirement to perform a stress test in the adverse scenario. Pursuant to the Dodd-Frank Act, firms are required to perform the stress test under three scenarios: baseline, adverse, and severely adverse.[49] In addition, the Board is not changing the requirement that firms report the results of the adverse scenario because these results inform the qualitative capital plan review, as well as the Board's macroeconomic assessments of the ability of firms to withstand a variety of economic conditions.

3. Other Comments Received Regarding Regulatory Reporting

Commenters also requested that the Federal Reserve require the firms to report the FR Y–14M on a quarterly, rather than monthly, basis. Moving to quarterly reporting of the FR Y–14M would substantially affect the quality and usability of the data for loss projections. As such, the final rule does not modify the reporting period for the FR Y–14M.

A commenter also requested that the Board increase the edit check thresholds for the FR Y–14 and increase the ''permanent closure option'' for edit checks. The current edit check thresholds and permanent closure of edit checks are varied and have been determined on a case-by-case basis depending on the data item to which the edit check pertains. Given the disparate nature of the data items being collected, it would be inappropriate to create uniform minimum thresholds across all schedules. The Board will continue to work with the firms and the modeling teams to review the appropriateness of edit checks and will consider feedback regarding specific edits on a case-by-case basis with the objective of improving the edit checks or reducing the burden of the edit check process.

Commenters requested that the Federal Reserve undertake a periodic, full-scale review of the data required in the FR Y–14 submissions. The Federal Reserve regularly reviews the required elements of the FR Y–14 submissions, as demonstrated by this rule, and will continue to review the requirements to ensure they are appropriate.

For the reasons described above, the Board is finalizing the revision to the FR Y–14 as proposed, and will continue to review the FR Y–14 reporting requirements to identify areas for further burden reduction.

*G. Alignment of Initial Application of Capital Plan and Stress Test Rules and Extension of Onboarding Period for Regulatory Reporting Requirements*

The proposal would have aligned the provisions for the capital plan and stress test rules that determine when a firm that crosses the threshold of with $50 billion in total consolidated assets must initially comply with the capital plan rule (subparts E and F of the Board's Regulation YY, hereafter subparts E and F) and would have provided additional time before the application of these requirements for bank holding companies that cross the $50 billion asset threshold close to the April 5 capital plan submission and stress test date. The capital plan rule provides that a bank holding company that crosses the $50 billion asset threshold on or before December 31 of a calendar year must submit a capital plan by April 5 of the following year. Under the proposal, the cutoff date for the capital plan rule would be moved to September 30, such that a firm that crosses the $50 billion asset threshold in the fourth quarter of a calendar year would not have been required to submit a capital plan until

[47] These would have included the Securities OTTI methodology sub-schedule, Securities Market Value source sub-schedule, Securities OTTI by security sub-schedule, the Retail repurchase sub-schedule, the Trading sub-schedule, Counterparty sub-schedule, and Advanced RWA sub-schedule. A large and noncomplex firm would be required to report line item 138 of the income statement, as that line item is currently derived from the retail repurchase sub-schedule. The revised instructions for the FR Y–14A Summary schedule reporting form are available on the Board's public Web site.

[48] Specifically, commenters requested that the Board remove the requirements to report Schedule G Retail Repurchase Exposure, Schedule A.2.a Retail Balance and Loss Projections and Schedule A.7.c PPNR Metrics, Schedule D, Regulatory Capital Transitions, and Summary—Retail repurchase sub-schedule (A.2.b).

[49] *See* 12 U.S.C. 5365(i).

April 5 of the second year after it crosses the threshold.

The proposal also would have aligned the cutoff date for initial application of the stress test rules in subparts E and F with the proposed September 30 cutoff date for the initial application of the capital plan rule. Under the stress test rules, a bank holding company that crosses the $50 billion asset threshold before March 31 of a given year becomes subject to the stress test rules under subparts E and F beginning in the following year, and accordingly, may have only nine months before its first stress test under these subparts. Under the proposal, a bank holding company would have become subject to the stress test rules in subparts E and F in the year following the first year in which the bank holding company submitted a capital plan. As a result, a firm would have had at least a year before it would have been subject to its initial stress tests under subparts E and F.[50]

The proposal would also have provided an extended onboarding period for regulatory reporting requirements for a bank holding company after it first crosses the $50 billion asset threshold. Currently, a bank holding company that crosses the $50 billion asset threshold must prepare FR Y–14M reports as of the end of the month in which it crosses the threshold, and must submit its first FR Y–14M within 90 days after the end of the month (at which time, data for the three intervening months is due). For example, if a firm crosses the threshold as of September 30, 2017 the firm is required to submit data for the months of September, October, and November 2017 at the end of December 2017. The proposal would have required a bank holding company to begin preparing its initial FR Y–14M as of the end of the *third* month after the bank holding company first meets the $50 billion asset threshold (rather than as of the month in which the bank holding company crosses the threshold) and to submit its first FR Y–14M within 90 days after the end of that month (at which time, data for the three intervening months would be due). For example, under the proposal, a bank holding company that crosses the $50 billion asset threshold as of September 30, 2017, would have been required to prepare its initial FR Y–14M report as of December 2017, and file its FR Y–14M reports for December 2017, January 2018, and February 2018 in March 2018. A bank holding company would have continued to prepare its FR Y–14Q report as of the end of the first quarter after it initially crosses the threshold.

Commenters were generally supportive of the modifications to the initial applicability of the capital plan and stress test rules, as the changes would simplify the application of the capital plan and stress test rules and allow for a more orderly onboarding process for new FR Y–14 filers. One commenter further requested that a newly formed IHC be provided an additional year after becoming subject to the capital plan rule prior to being subject to a qualitative objection to its capital plan. As the Board has previously indicated, newly formed IHCs will be evaluated under the same process used to evaluate all new entrants into the stress testing program.[51] This process includes a year of capital plan review including a more limited quantitative assessment of the IHC's capital plan based on the company's own stress scenario and any scenarios provided by the Board and a qualitative assessment of the firm's capital planning processes and supporting practices. The Board recognizes the challenges that a company new to the CCAR process will face, and expects that the company will continue to work to enhance its capital planning systems and processes to meet supervisory expectations subsequent to its first capital plan submission.[52]

In addition, commenters requested that a large and noncomplex firm that crosses the total consolidated asset or nonbank assets threshold or is identified as a U.S. GSIB and becomes a large and complex firm under the capital plan rule be provided a transition year before becoming subject to the qualitative component of the CCAR assessment and objection. As the thresholds for becoming a large and complex firm are calculated either on a four-quarter average or as of year-end, a firm should be able to anticipate whether it will become a large and complex firm and prepare to meet the heightened expectations set forth in SR Letter 15–18, as implemented by the CCAR qualitative review. Accordingly, the Board is finalizing the modifications to the initial applicability of the capital plan and stress test rules as proposed.

*H. Continued Application of CCAR for LISCC Firms and Large and Complex Firms*

For LISCC firms and large and complex firms, the proposal would have maintained the current comprehensive assessment of capital planning processes, including the qualitative objection to a firm's capital plan.[53] The proposal included a modification to the capital plan rule's qualitative objection criteria for LISCC firms and large and complex firms to better align with the Federal Reserve's focus during the CCAR supervisory assessment. Specifically, the proposal provided that the Board may object to a the capital plan of a LISCC firm or large and complex firm if, among other factors, the *methodologies and practices that support the bank holding company's capital planning process* are not reasonable or appropriate (emphasis added). The current rule instead provided a basis for objection if the bank holding company's *methodologies for reviewing its capital adequacy process* are not reasonable or appropriate (emphasis added). This modification was intended to clarify the current scope of the qualitative component of the CCAR assessment and the areas of focus in the review of the capital plan of a LISCC firm or a large and complex firm. The Board did not receive comments on this aspect of the proposal, and is finalizing as proposed.

## III. Other Amendments to the Capital Plan and Stress Test Rules

*A. Revisions to the Time Period From Which the Market Shock ''as-of'' Date May Be Selected*

The proposal would have allowed the Board to select any date between October 1 of the prior year and March 1 of the year of the stress test cycle for the as-of date of the global market shock. Bank holding companies subject to the trading and counterparty component would be notified within two weeks of the selected as-of date for the global market shock, to enable the bank holding company to preserve trading and counterparty exposure data from the as-of date. Under the proposal, this change would take effect for the 2018 stress test cycle.

Commenters generally agreed with this aspect of the proposal, and the Board is finalizing it as proposed. However, some commenters requested

[50] Providing this extension would also have the effect of allowing firms that cross the $50 billion in the fourth quarter of a given year as much as a year and a half before they are required to submit their first capital plan, and two and a half years before they are subject to the stress tests under subparts E and F. This extended period would allow for the significant investments firms must make to meet these requirements and account for the fact that these firms would continue to be subject to prudential supervision during the transition period.

[51] 79 FR 64026, 64037 (October 27, 2014).

[52] *See id.*

[53] As noted above, a LISCC firm that qualifies as a large and noncomplex firm no longer would be subject to the qualitative component of the CCAR assessment or objection under the final rule. No current LISCC firm qualifies as a large and noncomplex firm at this time.

further clarifications about the proposal. Commenters requested that the Federal Reserve confirm that firms will continue to be permitted to use data from weekly internal risk reporting data for the week of the chosen as-of date. In addition, commenters requested that the Board clarify whether the reporting deadlines for schedules that are related to the market shock will remain the same. Finally, commenters requested that the Federal Reserve provide the market shock scenario at the same time or soon after selecting the market shock date.

In response, the Board is confirming that the final rule will not change the Federal Reserve's practice of allowing firms to use the data from weekly internal risk reporting and does not change the reporting deadlines for the reporting schedules related to the market shock. The Board will continue to provide the scenario to firms as soon as it is finalized, although the Board must strike a balance between providing the firms with enough time to compute their stress test results and producing scenarios that are reflective of salient risks in the market.

*B. Removal of Obsolete Provisions*

In 2014, the Federal Reserve adjusted the capital planning and stress test cycles from an October 1 as-of date to a January 1 as-of date. The capital plan and stress test rules currently include several provisions reflecting the previous October 1 as-of date, as well as obsolete transition provisions for foreign banking organizations that previously relied on SR Letter 01–01,[54] and for the application of the supplementary leverage ratio. The proposal would have removed these provisions, as they are no longer operative. The Board received no comments on these revisions and is finalizing them as proposed.

## IV. Other Comments Received on the Proposal

The Federal Reserve also received comments that were not directly related to the proposal. A commenter requested that the Board consider a change to potential changes to the capital conservation buffer described in a speech by Governor Tarullo on September 26, 2016, that have not yet been formally proposed.[55] The Federal Reserve will consider the comment when developing the upcoming proposal and will invite comments on that proposal when it is published.

A commenter requested that the Board simplify guidance related to the development of the BHC baseline scenario. Commenters requested that the Board allow firms to use the supervisory baseline scenario as their BHC baseline scenario if in the firm's assessment it is a reasonable reflection of the current economic outlook. In addition, commenters requested that the Board simplify the reporting for the BHC baseline scenario to reduce reporting burden. Currently, the Board analyzes the BHC baseline scenario as part of the quantitative and qualitative assessment of the capital plan review. As such, the Board will continue to expect a firm that uses the supervisory baseline scenario as its BHC baseline scenario to produce an assessment as to why the supervisory baseline scenario is an appropriate representation of the firm's view of the most likely outlook for the risk factors salient to it.

A commenter requested that the Board not impose the capital plan and stress test requirements on insurance savings and loan holding companies and nonbank financial companies designated by the Financial Stability Oversight Council for Supervision by the Board without a separate notice and comment process and tailor capital planning and stress test requirement for these firms. The Board has not applied the capital plan and stress test requirements to such firms at this time, and will continue to consider how best to apply capital planning and stress testing to these firms. The Board intends to establish any such requirements through a notice and comment process.

One commenter requested that the Board describe the potential financial implications of the proposed rule changes. Another commenter expressed concerns about the cumulative impacts of the implementation of the Dodd-Frank and Basel III regulatory regimes for all commercial real estate capital sources. The Federal Reserve performed impact analysis regarding these amendments. Board staff concluded that the rule will result in a cost reduction to the public of less than $100 million. The Federal Reserve did not identify any impact of the regulation on commercial real estate capital sources.

## V. Administrative Law Matters

*A. Paperwork Reduction Act*

In accordance with section 3512 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers are 7100–0128, 7100–0341, and 7100–0342 for this information collection. The Board reviewed the final rule under the authority delegated to the Board by OMB. No specific comments related to the PRA were received.

The final rule contains requirements subject to the PRA. The reporting requirements are found in sections 12 CFR 225.8.

The Board has a continuing interest in the public's opinions of this collection of information. At any time, commenters may submit comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing burden sent to: Nuha Elmaghrabi: Federal Reserve Clearance Officer, Office of the Chief Data Officer, Mail Stop K1–148, Board of Governors of the Federal Reserve System, Washington, DC 20551, with copies of such comments sent to the Office of Management and Budget (OMB) desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by facsimile to 202–3955806, Attention, Agency Desk Officer.

*Proposed Revisions, With Extension for Three Years, of the Following Information Collections:*

(1) *Title of Information Collection:* Parent Company Only Financial Statements for Large Holding Companies.

*Agency Form Number:* FR Y–9C; FR Y–9LP; FR Y–9SP; FR Y–9ES; FR Y–9CS.

*OMB Control Number:* 7100–0128.

*Frequency of Response:* Quarterly, semi-annually, and annually.

*Affected Public:* Businesses or other for-profit.

*Respondents:* Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies (SHCs), and U.S. intermediate holding companies (IHCs), (collectively, ''holding companies'').

*Abstract:* The FR Y–9LP serves as standardized financial statements for large parent holding companies. The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. Financial data from these reporting forms are used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and

[54] SR Letter 01–01 (January 5, 2001), *available at: www.federalreserve.gov/boarddocs/srletters/2001/sr0101.htm.*

[55] Tarullo, Daniel K, ''Next Steps in the Evolution of Stress Testing'' (September 26, 2016), *available at: www.federalreserve.gov/newsevents/speech/tarullo20160926a.htm.*

acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations.

*Current Actions:* The final rule amends the FR Y–9LP to include new line item 17 of PC–B Memoranda (Total nonbank assets of a holding company subject to the Federal Reserve Board's capital plan rule) for purposes of identifying large and noncomplex firms subject to the capital plan rule. Under the final rule, a top-tier holding company that is subject to the Board's capital plan rule is required to report on the FR Y–9LP the average dollar amount for the calendar quarter (as calculated on a monthly basis during the calendar quarter) of its total nonbank assets of consolidated nonbank subsidiaries, whether held directly or indirectly or held through lower-tier holding companies, and its direct investments in unconsolidated nonbank subsidiaries, associated nonbank companies, and those nonbank corporate joint ventures over which the bank holding company exercises significant influence (collectively, ''nonbank companies'').[56] This amendment will be effective as of March 31, 2017.

Nonbank companies, for purposes of this measure, exclude (i) all national banks, state member banks, state nonmember insured banks (including insured industrial banks), federal savings associations, federal savings banks, thrift institutions (collectively for purposes of this proposed item 17, ''depository institutions'') and (ii) except for an Edge or Agreement Corporation designated as ''Nonbanking'' in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b), any subsidiary of a depository institution (for purposes of this proposed item 17, ''depository institution subsidiary'').

All intercompany assets and operating revenue among the nonbank companies should be eliminated, but assets and operating revenue with the reporting holding company; any depository institution; any depository institution subsidiary; and for a reporting holding company that is a subsidiary of a foreign banking organization, any branch or agency of the foreign banking organization or any non-U.S. subsidiary, non-U.S. associated company, or non-U.S. corporate joint venture of the foreign banking organization that is not held through the reporting holding company, should be included. For example, eliminate the loans made by one nonbank company to a second nonbank company, but do not eliminate loans made by one nonbank company to the parent holding company; depository institution; depository institution subsidiary; or for a reporting holding company that is a subsidiary of a foreign banking organization, any branch or agency of the foreign banking organization or any non-U.S. subsidiary, non-U.S. associated company, or non-U.S. corporate joint venture of the foreign banking organization that is not held through the reporting holding company.

While the FR Y–9LP collects another measure of nonbank assets (line item 15 of PC–B Memoranda (Total combined nonbank assets of nonbank subsidiaries)), the new nonbank assets measure differs in several important ways. Specifically, new line item 17 excludes assets of an insured industrial bank, federal savings association, federal savings bank, or thrift institution and includes assets of an Edge or Agreement Corporation designated as ''Nonbanking'' in the box on the front page of the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b). It also includes the value of an investment in an unconsolidated nonbank company that is held directly by the holding company. While these elements may be sourced from other reporting forms, the new line item is necessary to reflect the elimination of intercompany transactions among these nonbank companies, as described above.

*Number of Respondents:* The revision applies to top-tier holding companies subject to the Board's capital plan rule (BHCs and IHCs with total consolidated assets of $50 billion or more), for a total of 38 of the existing 792 FR Y–9LP respondents. FR Y–9C (non-Advanced Approaches holding companies or other respondents): 654; FR Y–9C (Advanced Approaches holding companies or other respondents): 13; FR Y–9SP: 4,122; FR Y–9ES: 88; FR Y–9CS: 236.

*Estimated Average Hours per Response:* FR Y–9C (non-Advanced Approaches holding companies or other respondents): 50.17 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 51.42 hours; FR Y–9LP: 5.25 hours; FR Y–9SP: 5.4 hours; FR Y–9ES: 0.5 hours; FR Y–9CS: 0.5 hours.

*Current Estimated Annual Burden Hours:* FR Y–9C (non-Advanced Approaches holding companies or other respondents): 131,245 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 2,674 hours; FR Y–9LP: 16,632 hours; FR Y–9SP: 44,518; FR Y–9ES: 44; FR Y–9CS: 472.

*Approved Revisions only change in Estimated Annual Burden Hours:* FR Y–9LP: 76 hours (0.5 hours per quarter for the 38 impacted FR Y–9LP respondents).

*Approved Total Estimated Annual Burden Hours:* FR Y–9C (non-Advanced Approaches holding companies or other respondents): 131,245 hours; FR Y–9C (Advanced Approaches holding companies or other respondents): 2,674 hours; FR Y–9LP: 16,708 hours; FR Y–9SP: 44,518; FR Y–9ES: 44; FR Y–9CS: 472.

(2) *Title of Information Collection:* Capital Assessments and Stress Testing information collection.

*Agency Form Number:* FR Y–14A/Q/M.

*OMB Control Number:* 7100–0341.

*Frequency of Response:* Annually, semi-annually, quarterly, and monthly.

*Affected Public:* Businesses or other for-profit.

*Respondents:* The respondent panel consists of any top-tier bank holding company (BHC) or intermediate holding company (IHC) that has $50 billion or more in total consolidated assets, as determined based on: (i) The average of the firm's total consolidated assets in the four most recent quarters as reported quarterly on the firm's Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128); or (ii) the average of the firm's total consolidated assets in the most recent consecutive quarters as reported quarterly on the firm's FR Y–9Cs, if the firm has not filed an FR Y–9C for each of the most recent four quarters. Reporting is required as of the first day of the quarter immediately following the quarter in which it meets this asset threshold, unless otherwise directed by the Board.

*Abstract:* The data collected through the FR Y–14A/Q/M schedules provide the Board with the additional information and perspective needed to help ensure that large BHCs and IHCs have strong, firm-wide risk measurement and management processes supporting their internal assessments of capital adequacy and that their capital resources are sufficient given their business focus, activities,

[56] For purposes of the FR Y–9LP, (i) a subsidiary is a company in which the reporting bank holding company directly or indirectly owns more than 50 percent of the outstanding voting stock; (ii) an associated company is a corporation in which the reporting bank holding company, directly or indirectly, owns 20 to 50 percent of the outstanding voting stock and over which the reporting bank holding company exercises significant influence; and (iii) a corporate joint venture is a corporation owned and operated by a group of companies, no one of which has a majority interest, as a separate and specific business or project for the mutual benefit of that group of companies.

and resulting risk exposures. The annual CCAR exercise is also complemented by other Board supervisory efforts aimed at enhancing the continued viability of large firms, including continuous monitoring of firms' planning and management of liquidity and funding resources and regular assessments of credit, market, and operational risks, and associated risk management practices. Information gathered in this data collection is also used in the supervision and regulation of these financial institutions. In order to fully evaluate the data submissions, the Board may conduct follow-up discussions with or request responses to follow-up questions from respondents, as needed.

The Capital Assessments and Stress Testing information collection consists of the FR Y–14A, Q, and M reports. The semi-annual FR Y–14A collects quantitative projections of balance sheet, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios.[57] The quarterly FR Y–14Q collects granular data on various asset classes, including loans, securities, and trading assets, and pre-provision net revenue (PPNR) for the reporting period. The monthly FR Y–14M comprises three retail portfolio- and loan-level collections, and one detailed address matching collection to supplement two of the portfolio and loan-level collections.

*Current Actions:* The Capital Assessments and Stress Testing Report (FR Y–14 series of reports; OMB No. 7100–0341) collects data used to support supervisory stress testing models and continuous monitoring efforts for bank holding companies with total consolidated assets of $50 billion or more. The FR Y–14 consists of three reports, the semi-annual FR Y–14A, the quarterly FR Y–14Q, and monthly FR Y–14M. Each report contains multiple schedules, several of which are reported only by bank holding companies that meet specified materiality thresholds. In discussions on CCAR, several large and noncomplex firms recommended that the Board revise the FR Y–14 series of reports to reduce reporting burdens for these firms. For instance, these large and noncomplex firms suggested that the Board raise the materiality threshold for the FR Y–14 reports and reduce the detail required in the supporting documentation requirements. The final rule reduces burden associated with reporting the FR Y–14 schedules for large and noncomplex firms by raising the materiality threshold, reducing supporting documentation requirements, removing several sub-schedules from the FR Y–14A Summary Schedule, and using the median loss rate for immaterial portfolios.

The final rule increases the materiality thresholds for filing schedules on the FR Y–14Q report and the FR Y–14M report for large and noncomplex firms. The FR Y–14 instructions currently define material portfolios as those with asset balances greater than $5 billion or asset balances greater than five percent of tier 1 capital, each measured as an average for the four quarters preceding the reporting quarter.[58] The final rule revises the FR Y–14's definition of a ''material portfolio'' for large and noncomplex firms to mean a portfolio with asset balances greater than either (1) $5 billion or (2) 10 percent of tier 1 capital, each measure as an average for the four quarters preceding the reporting quarter.[59] As a result of this change, respondents will be able to exclude certain portfolios from reporting and in some cases may not be required to report certain schedules at all.

In addition, the final rule reduces the supporting documentation a large and noncomplex firm will be required to be submit with its capital plan. Appendix A of the FR Y–14A report outlines qualitative information that a bank holding company should submit in support of its projections, including descriptions of the methodologies used to develop the internal projections of capital across scenarios and other analyses that support the bank holding company's comprehensive capital plans. The final rule revises the instructions to Appendix A of the FR Y–14A to remove the requirement that a large and noncomplex firm include in its capital plan submission certain documentation regarding its models, including any model inventory mapping document, methodology documentation, model technical documents, and model validation documentation. Large and noncomplex firms will still be required to be able to produce these materials upon request by the Federal Reserve, and all or a subset of these firms may be required to provide this documentation depending on the focus of the supervisory review of large and noncomplex firm capital plans. Removing the requirement that a large and noncomplex firm submit this information in connection with its capital plan should reduce the resources needed to prepare the plan for submission and alleviate concerns of an adverse supervisory finding that a capital plan is incomplete based on the failure to provide documentation.

Under the final rule, large and noncomplex firms will no longer be required to complete several elements of the FR Y–14A Schedule A (Summary), including the Securities OTTI methodology sub-schedule, Securities Market Value source sub-schedule, Securities OTTI by security sub-schedule, the Retail repurchase sub-schedule, the Trading sub-schedule, Counterparty sub-schedule, and Advanced RWA sub-schedule.[60] The revised instructions for the FR Y–14A Summary schedule reporting form are available on the Board's public Web site. Removing these elements should reduce burdens associated with collecting and validating this data, responding to follow-up inquiries, and implementing and maintaining technical systems. Under the final rule, a large and noncomplex firm may adopt these changes for the FR Y–14A report as of December 31, 2016, or as of June 30, 2017. The Federal Reserve continues to review the details required to be reported in the FR Y–14 series of reports, and may propose additional changes in the future to further reduce burdens associated with these reporting requirements.

These changes are expected to decrease burden for the information collection by 56,454 hours. This includes a decrease in the average hours per response for the FR Y–14A due to the elimination of the requirement for large and noncomplex firms to file four Summary sub-schedules and a reduction in the supporting documentation requirements, resulting in a decrease of 6,346 hours. The modification to the materiality threshold for the FR Y–14Q and FR Y–14M reports would be anticipated to reduce the number of firms filing certain schedules on the FR Y–14Q and FR Y–14M reports. Specifically, this would result in a decrease of 1,088 hours on the FR Y–14Q report and 49,020 hours for the FR Y–14M report.

*Number of Respondents:* 38.

[57] A BHC that must re-submit its capital plan generally also must provide a revised FR Y–14A in connection with its resubmission.

[58] Respondents have the option to complete the data schedules for immaterial portfolios.

[59] The four quarter average percent of tier 1 capital is calculated as the sum of the firm's preceding four quarters of balances subject to the particular materiality threshold divided by the sum of the firm's proceeding four quarters of tier 1 capital.

[60] A large and noncomplex firm would be required to report line item 138 of the income statement, as that line item is currently derived from the retail repurchase sub-schedule.

*Estimated Average Hours per Response:* FR Y–14A: Summary, 993 hours; Macro scenario, 31 hours; Operational Risk, 18 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 21 hours; Retail repurchase, 20 hours; and Business plan changes, 10 hours; Adjusted Capital Submission, 100 hours. FR Y–14Q: Securities risk, 14 hours; Retail risk, 16 hours; PPNR, 711 hours; Wholesale, 152 hours; Trading, 1,926 hours; Regulatory capital transitions, 23 hours; Regulatory capital instruments, 52 hours; Operational risk, 50 hours; MSR Valuation, 24 hours; Supplemental, 4 hours; Retail FVO/HFS, 16 hours; CCR, 508 hours; and Balances, 16 hours. FR Y–14M: 1st lien mortgage, 515 hours; Home equity, 515 hours; and Credit card, 510 hours. FR Y–14 On-Going automation revisions, 480 hours; and implementation, 7,200 hours. FR Y–14 Attestation: Implementation, 4,800 hours; and on-going, 2,560 hours.

*Current Estimated Annual Burden Hours:* FR Y–14A: Summary, 75,468 hours; Macro scenario, 2,356 hours; Operational Risk, 684 hours; Regulatory capital transitions, 874 hours; Regulatory capital instruments, 798 hours; Retail repurchase, 1520 hours; Business plan changes, 380 hours; and Adjusted Capital Submission, 500 hours. FR Y–14Q: Securities risk, 2,128 hours; Retail risk, 2,432 hours, Pre-provision net revenue (PPNR), 108,072 hours; Wholesale, 23,104 hours; Trading, 46,224 hours; Regulatory capital transitions, 3,496 hours; Regulatory capital instruments, 7,904 hours; Operational risk, 7,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,632 hours; Supplemental, 608 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,728 hours; Counterparty, 12,192 hours; and Balances, 2,432 hours. FR Y–14M: 1st lien mortgage, 222,480hours; Home equity, 191,580 hours; and Credit card, 146,880 hours. FR Y–14 On-going automation revisions, 18,240 hours; and implementation, 0 hours. FR Y–14 Attestation: Implementation, 0 hours; and on-going, 33,280 hours.

*Approved Revisions only change in Estimated Annual Burden Hours:* FR Y–14A: −6,346 Hours, FR Y–14Q: −1,088 FR Y–14M: −49,020 Hours.

*Approved Total Estimated Annual Burden Hours:* FR Y–14A: Summary, 69,236 hours; Macro scenario, 2,356 hours; Operational Risk, 684 hours; Regulatory capital transitions, 760 hours; Regulatory capital instruments, 798 hours; Retail repurchase, 1,520 hours; Business plan changes, 380; and Adjusted Capital Submissions, 500 hours. FR Y–14Q: Securities risk, 1,976 hours; Retail risk, 2,280 hours, Pre-provision net revenue (PPNR), 108,072 hours; Wholesale, 22,952 hours; Trading, 46,224 hours; Regulatory capital transitions, 3,496 hours; Regulatory capital instruments, 7,904 hours; Operational risk, 7,600 hours; Mortgage Servicing Rights (MSR) Valuation, 1,288 hours; Supplemental, 608 hours; and Retail Fair Value Option/Held for Sale (Retail FVO/HFS), 1,440 hours; Counterparty, 12,192 hours; and Balances, 2,432 hours. FR Y–14M: 1st lien mortgage, 222,480 hours; Home equity, 185,400 hours; and Credit card, 104,040 hours. FR Y–14 On-going automation revisions, 18,240 hours; and implementation, 0 hours. FR Y–14 Attestation: Implementation, 0 hours; and on-going, 33,280 hours.

(3) *Title of Information Collection:* Recordkeeping and Reporting Requirements Associated with Regulation Y (Capital Plans).

*Agency Form Number:* Reg Y–13.

*OMB Control Number:* 7100–0342.

*Frequency of Response:* Annually.

*Affected Public:* Businesses or other for-profit.

*Respondents:* BHCs and IHCs.

*Abstract:* Regulation Y (12 CFR part 225) requires large bank holding companies (BHCs) to submit capital plans to the Federal Reserve on an annual basis and to require such BHCs to request prior approval from the Federal Reserve under certain circumstances before making a capital distribution.

*Current Actions:* The final rule contains requirements subject to the PRA. The collection of information revised by this final rule is found in section 225.8 of Regulation Y (12 CFR part 225). Under section 225.8(f)(2) of the final rule, large and noncomplex firms will no longer be subject to the provisions of the Board's capital plan rule whereby the Board can object to a capital plan on the basis of qualitative deficiencies in the firm's capital planning process. In feedback meetings that the Board held on CCAR, participants from large and noncomplex firms expressed the view that the provision of the rule permitting the Board to object to a capital plan on the basis of qualitative deficiencies, in their view, required a large and noncomplex firm to develop a large amount of documentation and stress test models to the same degree as the largest firms in order to avoid risk of a public objection to its capital plan. Accordingly, this revision to section 225.8(f)(2) is expected to reduce the recordkeeping requirements for large and noncomplex firms by approximately 25 percent, or 3,000 hours for large and noncomplex firms.

The final rule defines a large and noncomplex bank holding company as a bank holding company with average total consolidated assets of $50 billion or more but less than $250 billion, average total nonbank assets of less than $75 billion, and that is not a bank holding company identified as a U.S. GSIB. While the total consolidated assets measure is calculated for purposes of other regulatory requirements, the new average total nonbank assets threshold is not otherwise calculated for purposes of a regulatory requirement.

For the first calculation date (December 31, 2016), firms will be required to calculate nonbank assets by aggregating items reported on other reporting forms. Specifically, nonbank assets will be calculated as (A) total combined nonbank assets of nonbank subsidiaries, as reported on line 15a of Schedule PC–B of the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP) as of December 31, 2016; plus (B) the total amount of equity investments in nonbank subsidiaries and associated companies as reported on line 2a of Schedule PC–A of the FR Y–9LP as of December 31, 2016; plus (C) assets of each Edge and Agreement Corporation, as reported on the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b) as of December 31, 2016, to the extent such corporation is designated as ''Nonbanking'' in the box on the front page of the FR 2886b; minus (D) assets of a federal savings association, federal savings bank, or thrift subsidiary, as reported on the Report of Condition and Income (Call Report) as of December 31, 2016. Performing this calculation is expected to require 1 hour per firm.

As noted above, for calculation dates following the initial calculation date, the Federal Reserve is adding a new line item to the FR Y–9LP (Parent Company Only Financial Statements for Large Holding Companies) to collect average total nonbank assets; however, for the December 31, 2016 calculation date, a firm will be required to calculate the line item based on existing line items. The burden associated with this line item will be reflected in that collection.

*Number of Respondents:* 38.

*Estimated Average Hours per Response:* Annual capital planning recordkeeping (225.8(e)(1)(i)), 11,920 hours; annual capital planning reporting (225.8(e)(1)(ii)), 80 hours; annual capital planning recordkeeping (225.8(e)(1)(iii)), 100 hours; data collections reporting ((225.8(e)(3)(i)–

(vi)), 1,005 hours; data collections reporting (225.8(e)(4)), 100 hours; review of capital plans by the Federal Reserve reporting (225.8(f)(3)(i)), 16 hours; prior approval request requirements reporting (225.8(g)(1), (3), & (4)), 100 hours; prior approval request requirements exceptions (225.8(g)(3)(iii)(A)), 16 hours; prior approval request requirements reports (225.8(g)(6)), 16 hours.

*Current Estimated Annual Burden Hours:* Annual capital planning recordkeeping (225.8(e)(1)(i)), 452,960 hours; annual capital planning reporting (225.8(e)(1)(ii)), 2,240 hours; annual capital planning recordkeeping (225.8(e)(1)(iii)), 2,800 hours; data collections reporting ((225.8(e)(3)(i)–(vi)), 38,190 hours; data collections reporting (225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (225.8(f)(3)(i)), 32 hours; prior approval request requirements reporting (225.8(g)(1), (3), & (4)), 2,600 hours; prior approval request requirements exceptions (225.8(g)(3)(iii)(A)), 32 hours; prior approval request requirements reports (225.8(g)(6)), 32 hours.

*Approved Revisions only change in Estimated Average Hours per Response:* For large and noncomplex firms: Annual capital planning recordkeeping (225.8(e)(1)(i)), 8,920 hours.

*Approved Revisions only change in Estimated Annual Burden Hours:* Annual capital planning reporting (225.8(e)(1)(ii)): −54,000 hours.

*Approved Total Estimated Annual Burden Hours:* Annual capital planning recordkeeping (225.8(e)(1)(i)) (LISCC and large and complex firms), 238,400 hours; Annual capital planning recordkeeping (225.8(e)(1)(i) (large and noncomplex firms), 160,560 hours; annual capital planning reporting (225.8(e)(1)(ii)), 2,240 hours; annual capital planning recordkeeping (225.8(e)(1)(iii)), 2,800 hours; data collections reporting ((225.8(e)(3)(i)–(vi)), 38,190 hours; data collections reporting (225.8(e)(4)), 1,000 hours; review of capital plans by the Federal Reserve reporting (225.8(f)(3)(i)), 32 hours; prior approval request requirements reporting (225.8(g)(1), (3), & (4)), 2,600 hours; prior approval request requirements exceptions (225.8(g)(3)(iii)(A)), 32 hours; prior approval request requirements reports (225.8(g)(6)), 32 hours.

Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* generally requires that an agency prepare and make available an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.

Under regulations issued by the Small Business Administration (''SBA''), a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less (a small banking organization).[61] As of June 30, 2016, there were approximately 594 small state member banks, 3,203 small bank holding companies and 162 small savings and loan holding companies. The proposed rule would apply only to bank holding companies with total consolidated asset of $50 billion or more. Companies that would be subject to the proposed rule therefore substantially exceed the $550 million total asset threshold at which a company is considered a small company under SBA regulations. Therefore, there are no significant alternatives to the proposed rule that would have less economic impact on small banking organizations. As discussed above, the projected reporting, recordkeeping, and other compliance requirements of the rule are expected to be small. The Board does not believe that the rule duplicates, overlaps, or conflicts with any other Federal rules. In light of the foregoing, the Board does not believe that the final rule would have a significant economic impact on a substantial number of small entities.

The Board welcomes comment on all aspects of its analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

Solicitation of Comments of Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board sought to present the proposed rule in a simple and straightforward manner and solicited comment on how to make the proposed rule easier to understand. No comments were received on the use of plain language.

[61] *See* 13 CFR 121.201. Effective July 14, 2014, the Small Business Administration revised the size standards for banking organizations to $550 million in assets from $500 million in assets. 79 FR 33647 (June 12, 2014).

**List of Subjects**

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Capital planning, Holding companies, Reporting and recordkeeping requirements Securities, Stress testing.

*12 CFR Part 252*

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

**Authority and Issuance**

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System amends 12 CFR chapter II as follows:

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

### Subpart A—General Provisions

■ 2. Section 225.8 is revised to read as follows:

**§ 225.8 Capital planning.**

(a) *Purpose.* This section establishes capital planning and prior notice and approval requirements for capital distributions by certain bank holding companies.

(b) *Scope and reservation of authority*—(1) *Applicability.* Except as provided in paragraph (c) of this section, this section applies to:

(i) Any top-tier bank holding company domiciled in the United States with average total consolidated assets of $50 billion or more ($50 billion asset threshold);

(ii) Any other bank holding company domiciled in the United States that is made subject to this section, in whole or in part, by order of the Board;

(iii) Any U.S. intermediate holding company subject to this section pursuant to 12 CFR 252.153; and

(iv) Any nonbank financial company supervised by the Board that is made subject to this section pursuant to a rule or order of the Board.

(2) *Average total consolidated assets.* For purposes of this section, average total consolidated assets means the

average of the total consolidated assets as reported by a bank holding company on its Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) for the four most recent consecutive quarters. If the bank holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, average total consolidated assets means the average of the company's total consolidated assets, as reported on the company's FR Y–9C, for the most recent quarter or consecutive quarters, as applicable. Average total consolidated assets are measured on the as-of date of the most recent FR Y–9C used in the calculation of the average.

(3) *Ongoing applicability.* A bank holding company (including any successor bank holding company) that is subject to any requirement in this section shall remain subject to such requirements unless and until its total consolidated assets fall below $50 billion for each of four consecutive quarters, as reported on the FR Y–9C and effective on the as-of date of the fourth consecutive FR Y–9C.

(4) *Reservation of authority.* Nothing in this section shall limit the authority of the Federal Reserve to issue a capital directive or take any other supervisory or enforcement action, including an action to address unsafe or unsound practices or conditions or violations of law.

(5) *Rule of construction.* Unless the context otherwise requires, any reference to bank holding company in this section shall include a U.S. intermediate holding company and shall include a nonbank financial company supervised by the Board to the extent this section is made applicable pursuant to a rule or order of the Board.

(c) *Transitional arrangements*—(1) *Transition periods for certain bank holding companies.* (i) A bank holding company that meets the $50 billion asset threshold (as measured under paragraph (b) of this section) on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing.

(ii) A bank holding company that meets the $50 billion asset threshold after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the bank holding company meets the $50 billion asset threshold, unless that time is extended by the Board in writing.

(iii) The Board or the appropriate Reserve Bank with the concurrence of the Board, may require a bank holding company described in paragraph (c)(1)(i) or (ii) of this section to comply with any or all of the requirements in paragraphs (e)(1), (e)(3), (f), or (g) of this section if the Board or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(2) *Transition periods for subsidiaries of certain foreign banking organizations*—(i) *U.S. intermediate holding companies.* (A) A U.S. intermediate holding company required to be established or designated pursuant to 12 CFR 252.153 on or before September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the next calendar year, unless that time is extended by the Board in writing.

(B) A U.S. intermediate holding company required to be established or designated pursuant to 12 CFR 252.153 after September 30 of a calendar year must comply with the requirements of this section beginning on January 1 of the second calendar year after the U.S. intermediate holding company is required to be established, unless that time is extended by the Board in writing.

(C) The Board or the appropriate Reserve Bank with the concurrence of the Board, may require a U.S. intermediate holding company described in paragraph (c)(2)(i)(A) or (B) of this section to comply with any or all of the requirements in paragraphs (e)(1), (e)(3), (f), or (g) of this section if the Board or appropriate Reserve Bank with concurrence of the Board, determines that the requirement is appropriate on a different date based on the company's risk profile, scope of operation, or financial condition and provides prior notice to the company of the determination.

(ii) *Bank holding company subsidiaries of U.S. intermediate holding companies required to be established by July 1, 2016.* (A) Notwithstanding any other requirement in this section, a bank holding company that is a subsidiary of a U.S. intermediate holding company (or, with the mutual consent of the company and Board, another bank holding company domiciled in the United States) shall remain subject to paragraph (e) of this section until December 31, 2017, and shall remain subject to the requirements of paragraphs (f) and (g) of this section until the Board issues an objection or non-objection to the capital plan of the relevant U.S. intermediate holding company.

(B) After the time periods set forth in paragraph (c)(2)(ii)(A) of this section, this section will cease to apply to a bank holding company that is a subsidiary of a U.S. intermediate holding company, unless otherwise determined by the Board in writing.

(d) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Advanced approaches* means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable, and any successor regulation.

(2) *Average total nonbank assets* means:

(i) For purposes of the capital plan cycle beginning January 1, 2017:

(A) Total combined nonbank assets of nonbank subsidiaries, as reported on line 15a of Schedule PC–B of the Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP) as of December 31, 2016; plus

(B) The total amount of equity investments in nonbank subsidiaries and associated companies as reported on line 2a of Schedule PC–A of the FR Y–9LP as of December 31, 2016 (except that any investments reflected in paragraph (d)(2)(i)(A) of this section may be eliminated); plus

(C) Assets of each Edge and Agreement Corporation, as reported on the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b) as of December 31, 2016, to the extent such corporation is designated as ''Nonbanking'' in the box on the front page of the FR 2886b; minus

(D) Assets of each federal savings association, federal savings bank, or thrift subsidiary, as reported on the Report of Condition and Income (Call Report) as of December 31, 2016.

(ii) For purposes of any capital plan cycles beginning on or after January 1, 2018, the average of the total nonbank assets of a holding company subject to the Federal Reserve Board's capital plan rule, calculated in accordance with the instructions to the FR Y–9LP, for the four most recent consecutive quarters or, if the bank holding company has not filed the FR Y–9LP for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters, as applicable.

(3) *BHC stress scenario* means a scenario designed by a bank holding company that stresses the specific vulnerabilities of the bank holding company's risk profile and operations, including those related to the company's capital adequacy and financial condition.

(4) *Capital action* means any issuance or redemption of a debt or equity capital instrument, any capital distribution, and any similar action that the Federal Reserve determines could impact a bank holding company's consolidated capital.

(5) *Capital distribution* means a redemption or repurchase of any debt or equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum regulatory capital ratio, and any similar transaction that the Federal Reserve determines to be in substance a distribution of capital.

(6) *Capital plan* means a written presentation of a bank holding company's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (e)(2) of this section.

(7) *Capital plan cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

(8) *Capital policy* means a bank holding company's written assessment of the principles and guidelines used for capital planning, capital issuance, capital usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for capital distributions; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

(9) *Large and noncomplex bank holding company* means any bank holding company subject to this section that, as of December 31 of the calendar year prior to the capital plan cycle:

(i) Has average total consolidated assets of less than $250 billion;

(ii) Has average total nonbank assets of less than $75 billion; and

(iii) Is not a bank holding company that is identified as a global systemically important BHC pursuant to § 217.402.

(10) *Minimum regulatory capital ratio* means any minimum regulatory capital ratio that the Federal Reserve may require of a bank holding company, by regulation or order, including the bank holding company's tier 1 and supplementary leverage ratios as calculated under 12 CFR part 217, including the deductions required under 12 CFR 248.12, as applicable, and the bank holding company's common equity tier 1, tier 1, and total risk-based capital ratios as calculated under 12 CFR part 217, including the deductions required under 12 CFR 248.12 and the transition provisions at 12 CFR 217.1(f)(4) and 217.300; except that the bank holding company shall not use the advanced approaches to calculate its regulatory capital ratios.

(11) *Nonbank financial company supervised by the Board* means a company that the Financial Stability Oversight Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

(12) *Planning horizon* means the period of at least nine consecutive quarters, beginning with the quarter preceding the quarter in which the bank holding company submits its capital plan, over which the relevant projections extend.

(13) *Tier 1 capital* has the same meaning as under 12 CFR part 217.

(14) *U.S. intermediate holding company* means the top-tier U.S. company that is required to be established pursuant to 12 CFR 252.153.

(e) *General requirements*—(1) *Annual capital planning.* (i) A bank holding company must develop and maintain a capital plan.

(ii) A bank holding company must submit its complete capital plan to the Board and the appropriate Reserve Bank by April 5 of each calendar year, or such later date as directed by the Board or by the appropriate Reserve Bank with concurrence of the Board.

(iii) The bank holding company's board of directors or a designated committee thereof must at least annually and prior to submission of the capital plan under paragraph (e)(1)(ii) of this section:

(A) Review the robustness of the bank holding company's process for assessing capital adequacy,

(B) Ensure that any deficiencies in the bank holding company's process for assessing capital adequacy are appropriately remedied; and

(C) Approve the bank holding company's capital plan.

(2) *Mandatory elements of capital plan.* A capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects the bank holding company's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Estimates of projected revenues, losses, reserves, and pro forma capital levels, including any minimum regulatory capital ratios (for example, leverage, tier 1 risk-based, and total risk-based capital ratios) and any additional capital measures deemed relevant by the bank holding company, over the planning horizon under expected conditions and under a range of scenarios, including any scenarios provided by the Federal Reserve and at least one BHC stress scenario;

(B) A discussion of the results of any stress test required by law or regulation, and an explanation of how the capital plan takes these results into account; and

(C) A description of all planned capital actions over the planning horizon.

(ii) A detailed description of the bank holding company's process for assessing capital adequacy, including:

(A) A discussion of how the bank holding company will, under expected and stressful conditions, maintain capital commensurate with its risks, maintain capital above the minimum regulatory capital ratios, and serve as a source of strength to its subsidiary depository institutions;

(B) A discussion of how the bank holding company will, under expected and stressful conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary;

(iii) The bank holding company's capital policy; and

(iv) A discussion of any expected changes to the bank holding company's business plan that are likely to have a material impact on the bank holding company's capital adequacy or liquidity.

(3) *Data collection.* Upon the request of the Board or appropriate Reserve Bank, the bank holding company shall provide the Federal Reserve with information regarding:

(i) The bank holding company's financial condition, including its capital;

(ii) The bank holding company's structure;

(iii) Amount and risk characteristics of the bank holding company's on- and off-balance sheet exposures, including exposures within the bank holding company's trading account, other trading-related exposures (such as counterparty-credit risk exposures) or other items sensitive to changes in market factors, including, as appropriate, information about the sensitivity of positions to changes in market rates and prices;

(iv) The bank holding company's relevant policies and procedures, including risk management policies and procedures;

(v) The bank holding company's liquidity profile and management;

(vi) The loss, revenue, and expense estimation models used by the bank holding company for stress scenario analysis, including supporting documentation regarding each model's development and validation; and

(vii) Any other relevant qualitative or quantitative information requested by the Board or by the appropriate Reserve Bank to facilitate review of the bank holding company's capital plan under this section.

(4) *Re-submission of a capital plan.* (i) A bank holding company must update and re-submit its capital plan to the appropriate Reserve Bank within 30 calendar days of the occurrence of one of the following events:

(A) The bank holding company determines there has been or will be a material change in the bank holding company's risk profile, financial condition, or corporate structure since the bank holding company last submitted the capital plan to the Board and the appropriate Reserve Bank under this section; or

(B) The Board or the appropriate Reserve Bank with concurrence of the Board, directs the bank holding company in writing to revise and resubmit its capital plan for any of the following reasons:

(*1*) The capital plan is incomplete or the capital plan, or the bank holding company's internal capital adequacy process, contains material weaknesses;

(*2*) There has been, or will likely be, a material change in the bank holding company's risk profile (including a material change in its business strategy or any risk exposure), financial condition, or corporate structure;

(*3*) The BHC stress scenario(s) are not appropriate for the bank holding company's business model and portfolios, or changes in financial markets or the macro-economic outlook that could have a material impact on a bank holding company's risk profile and financial condition require the use of updated scenarios; or

(*4*) The capital plan or the condition of the bank holding company raise any of the issues described in paragraph (f)(2)(ii) of this section.

(ii) A bank holding company may resubmit its capital plan to the Federal Reserve if the Board or the appropriate Reserve Bank objects to the capital plan.

(iii) The Board or the appropriate Reserve Bank with concurrence of the Board, may extend the 30-day period in paragraph (e)(4)(i) of this section for up to an additional 60 calendar days, or such longer period as the Board or the appropriate Reserve Bank, with concurrence of the Board, determines, in its discretion, appropriate.

(iv) Any updated capital plan must satisfy all the requirements of this section; however, a bank holding company may continue to rely on information submitted as part of a previously submitted capital plan to the extent that the information remains accurate and appropriate.

(5) *Confidential treatment of information submitted.* The confidentiality of information submitted to the Board under this section and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

(f) *Review of capital plans by the Federal Reserve; publication of summary results*—(1) *Considerations and inputs.* (i) The Board or the appropriate Reserve Bank with concurrence of the Board, will consider the following factors in reviewing a bank holding company's capital plan:

(A) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses potential risks stemming from activities across the firm and the company's capital policy;

(B) The reasonableness of the bank holding company's capital plan, the assumptions and analysis underlying the capital plan, and the robustness of its capital adequacy process; and

(C) The bank holding company's ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon, including but not limited to any scenarios required under paragraphs (e)(2)(i)(A) and (e)(2)(ii) of this section.

(ii) The Board or the appropriate Reserve Bank with concurrence of the Board, will also consider the following information in reviewing a bank holding company's capital plan:

(A) Relevant supervisory information about the bank holding company and its subsidiaries;

(B) The bank holding company's regulatory and financial reports, as well as supporting data that would allow for an analysis of the bank holding company's loss, revenue, and reserve projections;

(C) As applicable, the Federal Reserve's own pro forma estimates of the firm's potential losses, revenues, reserves, and resulting capital adequacy under expected and stressful conditions, including but not limited to any scenarios required under paragraphs (e)(2)(i)(A) and (e)(2)(ii) of this section, as well as the results of any stress tests conducted by the bank holding company or the Federal Reserve; and

(D) Other information requested or required by the Board or the appropriate Reserve Bank, as well as any other information relevant, or related, to the bank holding company's capital adequacy.

(2) *Federal Reserve action on a capital plan*—(i) *Timing of action.* The Board or the appropriate Reserve Bank with concurrence of the Board, will object, in whole or in part, to the capital plan or provide the bank holding company with a notice of non-objection to the capital plan:

(A) By June 30 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section; and

(B) For a capital plan resubmitted pursuant to paragraph (e)(4) of this section, within 75 calendar days after the date on which a capital plan is resubmitted, unless the Board provides notice to the company that it is extending the time period.

(ii) *Objection.* (A) *Large and noncomplex bank holding companies.* The Board, or the appropriate Reserve Bank with concurrence of the Board, may object to a capital plan submitted by a large and noncomplex bank holding company if it determines that the bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon.

(B) *Bank holding companies that are not large and noncomplex bank holding companies.* The Board or the appropriate Reserve Bank with concurrence of the Board, may object to a capital plan submitted by a bank holding company that is not a large and noncomplex bank holding company if it determines that:

(*1*) The bank holding company has not demonstrated an ability to maintain capital above each minimum regulatory capital ratio on a pro forma basis under expected and stressful conditions throughout the planning horizon;

(*2*) The bank holding company has material unresolved supervisory issues, including but not limited to issues associated with its capital adequacy process;

(*3*) The assumptions and analysis underlying the bank holding company's capital plan, or the bank holding company's methodologies and practices that support its capital planning process, are not reasonable or appropriate; or

(*4*) The bank holding company's capital planning process or proposed capital distributions otherwise constitute an unsafe or unsound practice, or would violate any law, regulation, Board order, directive, or condition imposed by, or written agreement with, the Board or the appropriate Reserve Bank. In determining whether a capital plan or any proposed capital distribution would constitute an unsafe or unsound practice, the Board or the appropriate Reserve Bank would consider whether the bank holding company is and would remain in sound financial condition after giving effect to the capital plan and all proposed capital distributions.

(iii) *Notification of decision.* The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to object to a capital plan.

(iv) *General distribution limitation.* If the Board or the appropriate Reserve Bank objects to a capital plan and until such time as the Board or the appropriate Reserve Bank with concurrence of the Board, issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than capital distributions arising from the issuance of a regulatory capital instrument eligible for inclusion in the numerator of a minimum regulatory capital ratio or capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(v) *Publication of summary results.* The Board may disclose publicly its decision to object or not object to a bank holding company's capital plan under this section, along with a summary of the Board's analyses of that company. Any disclosure under this paragraph will occur by June 30 of the calendar year in which a capital plan was submitted pursuant to paragraph (e)(1)(ii) of this section, unless the Board determines that a later disclosure date is appropriate.

(3) *Request for reconsideration or hearing*—(i) *General.* Within 15 calendar days of receipt of a notice of objection to a capital plan by the Board or the appropriate Reserve Bank:

(A) A bank holding company may submit a written request to the Board requesting reconsideration of the objection, including an explanation of why reconsideration should be granted. Within 15 calendar days of receipt of the bank holding company's request, the Board will notify the company of its decision to affirm or withdraw the objection to the bank holding company's capital plan or a specific capital distribution; or

(B) As an alternative to paragraph (f)(3)(i)(A) of this section, a bank holding company may request an informal hearing on the objection.

(ii) *Request for an informal hearing.* (A) A request for an informal hearing shall be in writing and shall be submitted within 15 calendar days of a notice of an objection. The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(B) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(C) Written notice of the final decision of the Board shall be given to the bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(D) While the Board's final decision is pending and until such time as the Board or the appropriate Reserve Bank with concurrence of the Board issues a non-objection to the bank holding company's capital plan, the bank holding company may not make any capital distribution, other than those capital distributions with respect to which the Board or the appropriate Reserve Bank has indicated in writing its non-objection.

(4) *Application of this section to other bank holding companies.* The Board may apply this section, in whole or in part, to any other bank holding company by order based on the institution's size, level of complexity, risk profile, scope of operations, or financial condition.

(g) *Approval requirements for certain capital actions*—(1) *Circumstances requiring approval.* Notwithstanding a notice of non-objection under paragraph (f)(2)(i) of this section, a bank holding company may not make a capital distribution (excluding any capital distribution arising from the issuance of a regulatory capital instrument eligible for inclusion in the numerator of a minimum regulatory capital ratio) under the following circumstances, unless it receives prior approval from the Board or appropriate Reserve Bank pursuant to paragraph (g)(5) of this section:

(i) After giving effect to the capital distribution, the bank holding company would not meet a minimum regulatory capital ratio;

(ii) The Board or the appropriate Reserve Bank with concurrence of the Board, notifies the company in writing that the Federal Reserve has determined that the capital distribution would result in a material adverse change to the organization's capital or liquidity structure or that the company's earnings were materially underperforming projections;

(iii) Except as provided in paragraph (g)(2) of this section, the dollar amount of the capital distribution will exceed the amount described in the capital plan for which a non-objection was issued under this section, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the quarter at issue; or

(iv) The capital distribution would occur after the occurrence of an event requiring resubmission under paragraphs (e)(4)(i)(A) or (B) of this section and before the Federal Reserve has acted on the resubmitted capital plan.

(2) *Exception for well capitalized bank holding companies.* (i) A bank holding company may make a capital distribution for which the dollar amount exceeds the amount described in the capital plan for which a non-objection was issued under paragraph (f)(2)(i) of this section if the following conditions are satisfied:

(A) The bank holding company is, and after the capital distribution would remain, well capitalized as defined in § 225.2(r);

(B) The bank holding company's performance and capital levels are, and after the capital distribution would remain, consistent with its projections under expected conditions as set forth in its capital plan under paragraph (f)(2)(i) of this section;

(C) Until March 31, 2017, the annual aggregate dollar amount of all capital distributions in the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 1.00 percent multiplied by the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C;

(D) Beginning April 1, 2017, the annual aggregate dollar amount of all capital distributions in the period beginning on July 1 of a calendar year and ending on June 30 of the following calendar year would not exceed the total amounts described in the company's capital plan for which the bank holding company received a notice of non-objection by more than 0.25 percent multiplied by the bank holding

company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C;

(E) Between July 1 of a calendar year and March 15 of the following calendar year, the bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to a capital distribution that includes the elements described in paragraph (g)(4) of this section; and

(F) The Board or the appropriate Reserve Bank with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank shall apply the criteria described in paragraph (g)(5)(ii) of this section.

(ii) The exception in this paragraph (g)(2) shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it is ineligible for this exception.

(3) *Net distribution limitation*—(i) *General.* Notwithstanding a notice of non-objection under paragraph (f)(2)(i) of this section, a bank holding company must reduce its capital distributions in accordance with paragraph (g)(3)(ii) of this section if the bank holding company raises a smaller dollar amount of capital of a given category of regulatory capital instruments than it had included in its capital plan, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter.

(ii) *Reduction of distributions*—(A) *Common equity tier 1 capital.* If the bank holding company raises a smaller dollar amount of common equity tier 1 capital (as defined in 12 CFR 217.2), the bank holding company must reduce its capital distributions relating to common equity tier 1 capital such that the dollar amount of the bank holding company's capital distributions, net of the dollar amount of its capital raises, (''net distributions'') relating to common equity tier 1 capital is no greater than the dollar amount of net distributions relating to common equity tier 1 capital included in its capital plan, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter.

(B) *Additional tier 1 capital.* If the bank holding company raises a smaller dollar amount of additional tier 1 capital (as defined in 12 CFR 217.2), the bank holding company must reduce its capital distributions relating to additional tier 1 capital (other than scheduled payments on additional tier 1 capital instruments) such that the dollar amount of the bank holding company's net distributions relating to additional tier 1 capital is no greater than the dollar amount of net distributions relating to additional tier 1 capital included in its capital plan, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter.

(C) *Tier 2 capital.* If the bank holding company raises a smaller dollar amount of tier 2 capital (as defined in 12 CFR 217.2), the bank holding company must reduce its capital distributions relating to tier 2 capital (other than scheduled payments on tier 2 capital instruments) such that the dollar amount of the bank holding company's net distributions relating to tier 2 capital is no greater than the dollar amount of net distributions relating to tier 2 capital included in its capital plan, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter.

(iii) *Exceptions.* Paragraphs (g)(3)(i) and (ii) of this section shall not apply:

(A) To the extent that the Board or appropriate Reserve Bank indicates in writing its non-objection pursuant to paragraph (g)(5) of this section, following a request for non-objection from the bank holding company that includes all of the information required to be submitted under paragraph (g)(4) of this section;

(B) To capital distributions arising from the issuance of a regulatory capital instrument eligible for inclusion in the numerator of a minimum regulatory capital ratio that the bank holding company had not included in its capital plan;

(C) To the extent that the bank holding company raised a smaller dollar amount of capital in the category of regulatory capital instruments described in paragraph (g)(3)(i) of this section due to employee-directed capital issuances related to an employee stock ownership plan;

(D) To the extent that the bank holding company raised a smaller dollar amount of capital in the category of regulatory capital instruments described in paragraph (g)(3)(i) of this section due to a planned merger or acquisition that is no longer expected to be consummated or for which the consideration paid is lower than the projected price in the capital plan;

(E) Until March 31, 2017, to the extent that the dollar amount by which the bank holding company's net distributions exceed the dollar amount of net distributions included in its capital plan in the category of regulatory capital instruments described in paragraph (g)(3)(i) of this section, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter, is less than 1.00 percent of the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C; between July 1 of a calendar year and March 15 of the following calendar year, the bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to any capital distribution in that category of regulatory capital instruments that includes the elements described in paragraph (g)(4) of this section; and the Board or the appropriate Reserve Bank with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank shall apply the criteria described in paragraph (g)(5)(ii) of this section; or

(F) Beginning April 1, 2017, to the extent that the dollar amount by which the bank holding company's net distributions exceed the dollar amount of net distributions included in its capital plan in the category of regulatory capital instruments described in paragraph (g)(3)(i) of this section, as measured on an aggregate basis beginning in the third quarter of the planning horizon through the end of the current quarter, is less than 0.25 percent of the bank holding company's tier 1 capital, as reported to the Federal Reserve on the bank holding company's most recent first-quarter FR Y–9C; between July 1 of a calendar year and March 15 of the following calendar year, the bank holding company provides the appropriate Reserve Bank with notice 15 calendar days prior to any capital distribution in that category of regulatory capital instruments that includes the elements described in paragraph (g)(4) of this section; and the Board or the appropriate Reserve Bank with concurrence of the Board, does not object to the transaction proposed in the notice. In determining whether to object to the proposed transaction, the Board or the appropriate Reserve Bank shall apply the criteria described in paragraph (g)(5)(ii) of this section.

(iv) The exceptions in paragraph (g)(3)(iii) of this section shall not apply if the Board or the appropriate Reserve Bank notifies the bank holding company in writing that it is ineligible for this exception.

(4) *Contents of request.* (i) A request for a capital distribution under this section shall be filed between July 1 of a calendar year and March 1 of the following calendar year with the

appropriate Reserve Bank and the Board and shall contain the following information:

(A) The bank holding company's current capital plan or an attestation that there have been no changes to the capital plan since it was last submitted to the Federal Reserve;

(B) The purpose of the transaction;

(C) A description of the capital distribution, including for redemptions or repurchases of securities, the gross consideration to be paid and the terms and sources of funding for the transaction, and for dividends, the amount of the dividend(s); and

(D) Any additional information requested by the Board or the appropriate Reserve Bank (which may include, among other things, an assessment of the bank holding company's capital adequacy under a revised stress scenario provided by the Federal Reserve, a revised capital plan, and supporting data).

(ii) Any request submitted with respect to a capital distribution described in paragraph (g)(1)(i) of this section shall also include a plan for restoring the bank holding company's capital to an amount above a minimum level within 30 calendar days and a rationale for why the capital distribution would be appropriate.

(5) *Approval of certain capital distributions.* (i) The Board or the appropriate Reserve Bank with concurrence of the Board, will act on a request under this paragraph (g)(5) within 30 calendar days after the receipt of all the information required under paragraph (g)(4) of this section.

(ii) In acting on a request under this paragraph, the Board or appropriate Reserve Bank will apply the considerations and principles in paragraph (f) of this section. In addition, the Board or the appropriate Reserve Bank may disapprove the transaction if the bank holding company does not provide all of the information required to be submitted under paragraph (g)(4) of this section.

(6) *Disapproval and hearing.* (i) The Board or the appropriate Reserve Bank will notify the bank holding company in writing of the reasons for a decision to disapprove any proposed capital distribution. Within 15 calendar days after receipt of a disapproval by the Board, the bank holding company may submit a written request for a hearing.

(A) The Board may, in its sole discretion, order an informal hearing if the Board finds that a hearing is appropriate or necessary to resolve disputes regarding material issues of fact.

(B) An informal hearing shall be held within 30 calendar days of a request, if granted, provided that the Board may extend this period upon notice to the requesting party.

(C) Written notice of the final decision of the Board shall be given to the bank holding company within 60 calendar days of the conclusion of any informal hearing ordered by the Board, provided that the Board may extend this period upon notice to the requesting party.

(D) While the Board's final decision is pending and until such time as the Board or the appropriate Reserve Bank with concurrence of the Board, approves the capital distribution at issue, the bank holding company may not make such capital distribution.

## PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 3. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

■ 4. Section 252.42 is amended by revising paragraph (p) to read as follows:

**§ 252.42 Definitions.**

* * * * *

(p) *Stress test cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

* * * * *

■ 5. Section 252.43 is amended by
■ a. Revising paragraph (b); and
■ b. Removing paragraph (c).

The revision reads as follows:

**§ 252.43 Applicability.**

* * * * *

(b) *Transitional arrangements.* (1) A bank holding company that becomes a covered company on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the second calendar year after the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) A bank holding company that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

■ 6. Section 252.44 is amended by revising paragraph (b) to read as follows:

**§ 252.44 Annual analysis conducted by the Board.**

* * * * *

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis under this section using a minimum of three different scenarios, including a baseline scenario, adverse scenario, and severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle by no later than February 15 of each year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than March 1 of that year.

■ 7. Section 252.46 is amended by revising paragraph (b)(1) to read as follows:

**§ 252.46 Review of the Board's analysis; publication of summary results.**

* * * * *

(b) *Publication of results by the Board.* (1) The Board will publicly disclose a summary of the results of the Board's analyses of a covered company by June 30 of the calendar year in which the stress test was conducted pursuant to § 252.44.

* * * * *

■ 8. Section 252.52 is amended by revising paragraphs (k) and (r) to read as follows:

**§ 252.52 Definitions.**

* * * * *

(k) *Planning horizon* means the period of at least nine consecutive quarters, beginning on the first day of a stress test cycle over which the relevant projections extend.

* * * * *

(r) *Stress test cycle* means the period beginning on January 1 of a calendar year and ending on December 31 of that year.

* * * * *

■ 9. Section 252.53 is amended by revising paragraph (b) to read as follows:

**§ 252.53 Applicability.**

* * * * *

(b) *Transitional arrangements.* (1) A bank holding company that becomes a covered company on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the second calendar year after the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) A bank holding company that becomes a covered company after

September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year after the bank holding company becomes a covered company, unless that time is extended by the Board in writing.

■ 10. Section 252.54 is amended by revising paragraphs (a), (b)(1), (b)(2)(i), (b)(4)(i), and (b)(4)(iii) to read as follows:

**§ 252.54 Annual stress test.**

(a) *In general.* A covered company must conduct an annual stress test. The stress test must be conducted by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) *Scenarios provided by the Board*—(1) *In general.* In conducting a stress test under this section, a covered company must, at a minimum, use the scenarios provided by the Board. Except as provided in paragraphs (b)(2) and (3) of this section, the Board will provide a description of the scenarios to each covered company no later than February 15 of the calendar year in which the stress test is performed pursuant to this section.

(2) *Additional components.* (i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its adverse and severely adverse scenarios in the stress test required by this section:

(A) For the stress test cycle beginning on January 1, 2017, the data used in this component must be as of a date selected by the Board between January 1, 2017 and March 1, 2017, and the Board will communicate the as-of date and a description of the component to the company no later than March 1, 2017; and

(B) For the stress test cycle beginning on January 1, 2018, and for each stress test cycle beginning thereafter, the data used in this component must be as of a date selected by the Board between October 1 of the previous calendar year and March 1 of the calendar year in which the stress test is performed pursuant to this section, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed pursuant to this section.

* * * * *

(4) *Notice and response*—(i) *Notification of additional component.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing. The Board will provide such notification no later than December 31 of the preceding calendar year. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s).

* * * * *

(iii) *Description of component.* The Board will respond in writing within 14 calendar days of receipt of the company's request. The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by March 1 of the calendar year in which the stress test is performed pursuant to this section.

■ 11. Section 252.55 is amended by revising paragraphs (a), (b)(4)(i), and (b)(4)(iii) to read as follows:

**§ 252.55 Mid-cycle stress test.**

(a) *Mid-cycle stress test requirement.* In addition to the stress test required under § 252.54, a covered company must conduct a mid-cycle stress test. The stress test must be conducted by September 30 of each calendar year based on data as of June 30 of that calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) * * *

(4) *Notice and response*—(i) *Notification of additional component.* If the Board requires a covered company to include one or more additional components in its adverse and severely adverse scenarios under paragraph (b)(2) of this section or one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing. The Board will provide such notification no later than June 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s).

* * * * *

(iii) *Description of component.* The Board will provide the covered company with a description of any additional component(s) or additional scenario(s) by September 1 of the calendar year prior to the year in which the stress test is performed pursuant to this section.

■ 12. Section 252.57 is amended by revising paragraph (a) to read as follows:

**§ 252.57 Reports of stress test results.**

(a) *Reports to the Board of stress test results.* (1) A covered company must report the results of the stress test required under § 252.54 to the Board in the manner and form prescribed by the Board. Such results must be submitted by April 5 of the calendar year in which the stress test is performed pursuant to § 252.54, unless that time is extended by the Board in writing.

(2) A covered company must report the results of the stress test required under § 252.55 to the Board in the manner and form prescribed by the Board. Such results must be submitted by October 5 of the calendar year in which the stress test is performed pursuant to § 252.55, unless that time is extended by the Board in writing.

* * * * *

■ 13. Section 252.58 is amended by revising paragraph (a)(1)(ii) to read as follows:

**§ 252.58 Disclosure of stress test results.**

(a) * * *

(1) * * *

(ii) A covered company must publicly disclose a summary of the results of the stress test required under § 252.55. This disclosure must occur in the period beginning on October 5 and ending on November 4 of the calendar year in which the stress test is performed pursuant to § 252.55, unless that time is extended by the Board in writing.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 30, 2017.

**Robert deV. Frierson,**

*Secretary of the Board.*

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Part IV

## The President

Executive Order 13770—Ethics Commitments by Executive Branch Appointees
Executive Order 13771—Reducing Regulation and Controlling Regulatory Costs

Federal Register
Vol. 82, No. 22
Friday, February 3, 2017

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13770 of January 28, 2017**

## Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1**. *Ethics Pledge.* Every appointee in every executive agency appointed on or after January 20, 2017, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

''As a condition, and in consideration, of my employment in the United States Government in an appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

''1. I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.

''2. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, I agree that I will abide by those restrictions.

''3. In addition to abiding by the limitations of paragraphs 1 and 2, I also agree, upon leaving Government service, not to engage in lobbying activities with respect to any covered executive branch official or noncareer Senior Executive Service appointee for the remainder of the Administration.

''4. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2017, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

''5. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

''6. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

''7. If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

''8. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

''9. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 28, 2017, which I have read before signing this document, defines certain terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a

part of this agreement and as binding on me. I understand that the obligations of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Government service.''

**Sec. 2**. *Definitions.* As used herein and in the pledge set forth in section 1 of this order:

(a) ''Administration'' means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(b) ''Appointee'' means every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policy-making character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) ''Covered executive branch official'' shall have the definition set forth in the Lobbying Disclosure Act.

(d) ''Directly and substantially related to my former employer or former clients'' shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(e) ''Executive agency'' and ''agency'' mean ''executive agency'' as defined in section 105 of title 5, United States Code, except that the terms shall include the Executive Office of the President, the United States Postal Service, and the Postal Regulatory Commission, and excludes the Government Accountability Office. As used in paragraph 1 of the pledge, ''executive agency'' means the entire agency in which the appointee is appointed to serve, except that:

(1) with respect to those appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the appointee ceased to serve in that department or agency; and

(2) an appointee who is detailed from one executive agency to another for more than 60 days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(f) ''Foreign Agents Registration Act of 1938, as amended'' means sections 611 through 621 of title 22, United States Code.

(g) ''Foreign government'' means the ''government of a foreign country,'' as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611(e).

(h) ''Foreign political party'' has the same meaning as that term has in section 1(f) of the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. 611(f).

(i) ''Former client'' is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to a speech or similar appearance. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(j) ''Former employer'' is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that ''former employer'' does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, or any United States territory or possession.

(k) ''Gift''

(1) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(2) shall include gifts that are solicited or accepted indirectly as defined at section 2635.203(f) of title 5, Code of Federal Regulations; and

(3) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) & (3), (j), (k), and (l) of title 5, Code of Federal Regulations.

(l) ''Government official'' means any employee of the executive branch.

(m) ''Lobbied'' shall mean to have acted as a registered lobbyist.

(n) ''Lobbying activities'' has the same meaning as that term has in the Lobbying Disclosure Act, except that the term does not include communicating or appearing with regard to: a judicial proceeding; a criminal or civil law enforcement inquiry, investigation, or proceeding; or any agency process for rulemaking, adjudication, or licensing, as defined in and governed by the Administrative Procedure Act, as amended, 5 U.S.C. 551 *et seq.*

(o) ''Lobbying Disclosure Act'' means sections 1601 *et seq.* of title 2, United States Code.

(p) ''Lobbyist'' shall have the definition set forth in the Lobbying Disclosure Act.

(q) ''On behalf of another'' means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child, or parent.

(r) ''Particular matter'' shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(s) ''Particular matter involving specific parties'' shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(t) ''Participate'' means to participate personally and substantially.

(u) ''Pledge'' means the ethics pledge set forth in section 1 of this order.

(v) ''Post-employment restrictions'' shall include the provisions and exceptions in section 207(c) of title 18, United States Code, and the implementing regulations.

(w) ''Registered lobbyist or lobbying organization'' shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, ''registered lobbyist'' shall include each of the lobbyists identified therein.

(x) Terms that are used herein and in the pledge, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

(y) All references to provisions of law and regulations shall refer to such provisions as in effect on January 20, 2017.

**Sec. 3**. *Waiver.* (a) The President or his designee may grant to any person a waiver of any restrictions contained in the pledge signed by such person.

(b) A waiver shall take effect when the certification is signed by the President or his designee.

(c) A copy of the waiver certification shall be furnished to the person covered by the waiver and provided to the head of the agency in which that person is or was appointed to serve.

**Sec. 4**. *Administration.* (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee; and

(2) to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) shall be the responsibility of the Counsel to the President or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) ensure that the pledge and a copy of this Executive Order are made available for use by agencies in fulfilling their duties under section 4(a);

(2) in consultation with the Attorney General or Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(3) adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate:

(i) to carry out the foregoing responsibilities;

(ii) to apply the lobbyist gift ban set forth in paragraph 5 of the pledge to all executive branch employees;

(iii) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(iv) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(v) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by their official actions do not affect the integrity of the Government's programs and operations; and

(vi) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 8 of the pledge is honored by every employee of the executive branch;

(d) An appointee who has signed the pledge is not required to sign the pledge again upon appointment or detail to a different office, except that a person who has ceased to be an appointee, due to termination of employment in the executive branch or otherwise, shall sign the pledge prior to thereafter assuming office as an appointee.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

**Sec. 5**. *Enforcement.* (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or civil judicial proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from engaging in lobbying activities with respect to that agency for up to 5 years in addition to the 5-year time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish

procedures to implement this subsection, which shall include (but not be limited to) providing for factfinding and investigation of possible violations of this order and for referrals to the Attorney General for his or her consideration pursuant to subsection (c).

(c) The Attorney General or his or her designee is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action on behalf of the United States against the former officer or employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General or his or her designee is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former officer or employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former officer or employee arising out of any breach or attempted breach of the pledge signed by the former officer or employee.

**Sec. 6**. *General Provisions.* (a) This order supersedes Executive Order 13490 of January 21, 2009 (Ethics Commitments by Executive Branch Personnel), and therefore Executive Order 13490 is hereby revoked. No other prior Executive Orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive Order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) The pledge and this order are not intended to, and do not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party (other than by the United States) against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

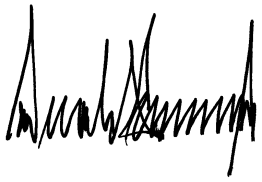
(d) The definitions set forth in this order are solely applicable to the terms of this order, and are not otherwise intended to impair or affect existing law.

(e) Nothing in this order shall be construed to impair or otherwise affect:

(1) the authority granted by law to an executive department, agency, or the head thereof; or

(2) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.



THE WHITE HOUSE,
*January 28, 2017.*

[FR Doc. 2017–02450
Filed 2–2–17; 11:15 am]
Billing code 3295–F7–P

# Presidential Documents

**Executive Order 13771 of January 30, 2017**

## Reducing Regulation and Controlling Regulatory Costs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 *et seq.*), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1**. *Purpose.* It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

**Sec. 2**. *Regulatory Cap for Fiscal Year 2017.* (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

**Sec. 3**. *Annual Regulatory Cost Submissions to the Office of Management and Budget.* (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

**Sec. 4**. *Definition.* For purposes of this order the term ''regulation'' or ''rule'' means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.

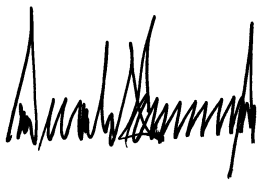
**Sec. 5**. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director 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,
*January 30, 2017.*

[FR Doc. 2017–02451
Filed 2–2–17; 11:15 am]
Billing code 3295–F7–P

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Vol. 82, No. 22

Friday, February 3, 2017

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