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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Blended Retirement System; Correction

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule; correction.

SUMMARY: The Federal Retirement Thrift Investment Board (''FRTIB'') is correcting a final rule that appeared in the **Federal Register** on December 19, 2017. The document issued final regulations implementing the new Blended Retirement System. The correction is a technical amendment to a cross-reference.

DATES: This rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Brandon Ford, Attorney-Advisor, Federal Retirement Thrift Investment Board, Office of General Counsel, 77 K Street NE, Suite 1000, Washington, DC 20002, 202–864–8734, *Brandon.Ford@tsp.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 17–27304 appearing on page 60102 in the **Federal Register** of Tuesday, December 19, 2017, the following corrections are made:

§ 1600.19 [Corrected]

■ 1. On page 60102, in the second column, in § 1600.19, in paragraph (a), in the first sentence, ''paragraph (d)'' is corrected to read ''paragraph (c)''.

■ 2. On page 60102, in the second column, in § 1600.19, in the introductory text of paragraph (b)(1), ''paragraph (d)'' is corrected to read ''paragraph (c)''.

Dated: December 21, 2017.

Megan Grumbine,

General Counsel and Liaison Officer.

[FR Doc. 2017–27964 Filed 12–26–17; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–17–0002]

RIN 0563–AC58

Common Crop Insurance Regulations; California Avocado Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to provide California Avocado insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the California Avocado pilot crop insurance program to a regulatory insurance program for the 2020 and succeeding crop years.

DATES:

Effective date: This final rule is effective December 27, 2017.

Applicability date: The changes are applicable for the 2020 and succeeding crop years. California avocado is a two-year policy and the 2020 crop year encompasses all policies earning premium when insurance attaches after the Contract Change Date of August 31, 2018.

Comment due date: FCIC will accept written comments on this final rule until close of business January 26, 2018. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–17–0002, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141–6205.

FCIC will post all comments received, including those received by mail, without change to *http://www.regulations.gov,* including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Ron Lundine, Director, Product Management, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–3854.

SUPPLEMENTARY INFORMATION:

Background

FCIC offered an actual production history pilot crop insurance program for California grown avocados beginning with the 2010 crop year. The pilot program is offered in six California counties. In 2013, the FCIC's Board of Directors approved continuation and expansion until such time the program

could be made permanent. For the 2016 crop year, 1,041 policies were sold and 35,072 acres of avocado orchards were insured in California. This rule will add the California avocado program to the Code of Federal Regulations.

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures.

Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the **Federal Register** on July 24, 1971 (36 FR 13804) stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the **Federal Register** (78 FR 64194) rescinding the prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the **Federal Register**.

However, FCIC is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, California avocado, Reporting and recordkeeping requirements.

Final Rule.

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 applicable for the 2020 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Section 457.175 is added to read as follows:

§ 457.175 California avocado crop insurance provisions.

The California avocado crop provisions for the 2020 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

California Avocado Crop Provisions

1. Definitions

CDFA. The California Department of Food and Agriculture.

Commercial sale. Any transaction in which avocados have been inspected under the rules of the CDFA and to which a marketing assessment payment applies under the Hass Avocado Promotion, Research, and Information Act of 2000.

Crop year. The period of time that begins on December 1 immediately prior to the time the avocado trees normally bloom and that ends on October 31 of the calendar year following such bloom. Crop year is designated by the calendar year following the year in which the avocado trees normally bloom.

Direct marketing. The sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the fields for the purpose of picking all or a portion of the crop.

Harvest. Picking of marketable avocado fruit from the trees or from the ground when permitted as described in section 11(c).

Initially apply. Your application for crop insurance under these Crop Provisions for the first time and following each time you have cancelled the insurance or the insurance has terminated by action of the policy.

Interplanted. Acreage in which two or more crops are planted in any form of an alternating or mixed pattern.

Marketable. An avocado fruit that meets the standards published by the CDFA with respect to maturity, defects, size, and weight.

No. 2 avocado. An avocado fruit that is marketable but that is diverted into processing uses due to visual defects resulting from an insured cause of loss.

Pound. A unit of weight equal to sixteen ounces avoirdupois.

Rootstock. The root and stem portion of a tree to which a scion can be grafted.

Scion. Twig or portion of a twig of one plant that is grafted onto a rootstock.

Set out. Transplanting a tree into the orchard or grafting a scion onto rootstock.

Stumping. A practice whereby the lateral branches of an avocado tree are removed. A portion of the bole also may be removed. The resulting stump is approximately 4 feet or greater in height.

Type. A term used to designate different varieties of avocados, as more fully described in the Special Provisions.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit as defined in section 1 of the Basic Provisions may be divided into optional units if, for each optional unit, you meet the following:

(1) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason);

(2) You have records that are acceptable to us for at least the most recently completed crop year for all optional units that you will report in the current crop year (You may be required to produce the records for all optional units for the most recently completed crop year);

(3) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(b) Each optional unit must meet one or more of the following conditions, unless otherwise specified in the Special Provisions:

(1) Be of a different type; or

(2) Consist of acreage located on non-contiguous land.

(c) Subsections (a) and (c) of section 34 of the Basic Provisions do not apply to these Crop Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for all the avocados in the county insured under this policy.

(b) You must report, on or before the production reporting date designated in section 3 of the Basic Provisions, by unit:

(1) Any damage, stumping (including the year or years that the stumping was performed), or removal of trees; change in orchard practices; or any other circumstance that may reduce the expected yield per acre to less than the approved yield and the number of affected acres and trees;

(2) The number of trees on insurable and uninsurable acreage;

(3) The age of the trees;

(4) Any acreage excluded under section 6 of these Crop Provisions; and

(5) For acreage interplanted with another crop:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information we request to establish your approved yield per acre.

(c) We will reduce the approved yield whenever we determine any one or more of the factors specified in this section are likely to have a negative impact upon that average yield. If you fail to provide complete and accurate information required by this section, and pursuant to the definition of approved yield, we will reduce that yield as necessary at any time we become aware of any such omission.

(d) In the event the avocado trees are damaged to the extent that we determine the APH history you certified no longer is representative of the potential production of the unit, we will reduce your approved yield to a level consistent with that reduced potential. Such reduction will not occur for a crop year for which insurance already has attached if the damage is due to a cause of loss that is insurable for the avocado fruit.

(e) In lieu of that specific provision in section 3(f) of the Basic Provisions, you are required to report the production for the crop year that ended on the October 31 immediately preceding the cancellation date. For example, you must report your production for the 2008 crop year by the production reporting date for the 2010 crop year. All other provisions of section 3(f) apply.

(f) When you initially apply for insurance:

(1) You must certify your production records for at least the most recently completed crop year;

(2) If you do not certify your production records for any one or more of the three crop years immediately prior to the most recently completed crop year, you will be assigned a percentage of the transitional yield included in the actuarial documents for that crop year. The percentages will be those described in 7 CFR part 400 subpart G. All other provisions of 7 CFR part 400 subpart G apply.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is the August 31 that precedes the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are the November 30 immediately prior to the first day of the crop year.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the avocados in the county grown on insurable acreage, and for which premium rates are provided:

(1) In which you have a share;

(2) That is grown for harvest as avocado fruit for commercial sale;

(3) That is a type identified in the actuarial documents;

(4) That is irrigated; and

(5) That is grown on trees that, if inspected, are considered acceptable to us.

(b) In addition to the provisions of section 8 of the Basic Provisions that identify an uninsurable crop, we do not insure any avocados produced on trees that have not reached the sixth growing season after set out unless the unit has produced an average of at least 2,000 pounds of avocados per acre in one of the most recent three crop years or as otherwise specified in the Special Provisions.

(c) Avocado trees that have been stumped are not insurable for three calendar years after the year stumping was performed. The calendar year stumping occurred will be considered to be the actual calendar year if performed between January 1 and June 30 of that year. It will be considered to be the following calendar year if performed between July 1 and December 31.

7. Insurable Acreage

(a) In lieu of that part of section 9 of the Basic Provisions that prohibits insurance attaching to a crop planted with another crop, avocados interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet the requirements of insurability contained in these Crop Provisions.

(b) In addition to the acreage designated as not insurable in section 9 of the Basic Provisions, we will not insure avocados produced on any acreage infected with Phytophthora root rot unless you follow good orchard management practices as recommended by agricultural experts.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on December 1st of the crop year.

(2) The calendar date for the end of the insurance period is the second October 31st of the crop year.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage on or before the acreage reporting date of any crop year, and if we inspect and consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any acreage of avocados on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to such acreage for that crop year unless:

(i) A transfer of right to an indemnity or a similar form approved by us is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

No premium will be due or indemnity paid unless a properly executed transfer of right to an indemnity has been filed with us.

9. Causes of Loss

(a) In accordance with section 12 of the Basic Provisions, insurance is provided against unavoidable loss of production due to the following causes of loss occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects and disease, but not damage due to insufficient or improper application of control measures;

(4) Wildlife;

(5) Earthquake;

(6) Volcanic eruption; or

(7) Failure of the irrigation water supply due to an insured cause of loss specified in sections 9(a)(1) through (6).

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Theft;

(2) Phytophthora root rot, if you do not maintain cultural practices to minimize the potential for damage due to this pathogen; or

(3) Inability to market the avocados for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market any avocado fruit due to quarantine,

boycott, or refusal of any person to accept such fruit.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions:

(a) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an inspection and appraisal, if needed, that will be used to determine your production to count for such production. If damage occurs after this inspection, we will conduct one or more additional inspections as needed. These inspections, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice as required will result in production to count determined as described in section 11(c) if we are not able to determine the amount of such production;

(b) If you intend to claim an indemnity on any unit, you must notify us immediately so we may inspect the unit. You must not sell or otherwise dispose of any damaged production until we have given you written consent to do so, or 15 days, whichever is earlier. If you fail to meet the requirements of this subsection all such production will be considered undamaged and included as production to count;

(c) We will not perform any appraisals of potential production earlier than the July that follows the bloom for the crop year; and

(d) You must notify us immediately if you intend to stump 10 percent or more of the trees on a unit after insurance has attached for the crop year.

11. Settlement of Claim

(a) We will determine your loss separately for each unit you defined on your acreage report or that we find to exist in accordance with section 2 of these Crop Provisions. If you do not or cannot provide acceptable records of production for the crop year for:

(1) Any optional unit, we will combine all optional units for which such records were not provided; or

(2) Any basic unit, we will allocate commingled production to each basic unit in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from the result of section 11(b)(1) the total production to count (see section 11(c);

(3) Multiplying the result in section 11(b)(2) by the price election, by the price election factor, and by your share.

(c) The total production to count from all insurable acreage on the unit will include the value of all appraised and harvested production, as follows:

(1) Appraised production to be counted will include:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold or otherwise disposed by direct marketing if you failed to provide the notice required by section 10 and we were not able to determine the amount of such production;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Potential production lost due to uninsured causes;

(iii) Unharvested marketable production (the quantity of such production may be reduced as described in section 11(d));

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you agree to our appraisal of such production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. The production to count for such acreage will be based on the greater of the harvested production or our appraisal in accordance with Section 15(b) of the Basic Provisions from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the production to count; or

(B) If you elect to continue to care for the crop, the production to count for the acreage will be based on the greater of harvested production or our reappraisal in accordance with section 15(b) of the Basic Provisions if additional damage occurs and the crop is not harvested; and

(2) All marketable harvested production (the quantity of such production may be reduced as described in section 11(d)). Any production that is not marketable due to an insured cause of loss will not be included in the production to count.

(d) The quantity of appraised and harvested marketable production may be reduced if the production is considered to be a No. 2 avocado and the price of such marketable production is less than 75 percent of the maximum price election. The quantity of such production will be multiplied by an adjustment factor equal to the lesser of 1.00 or the price of the damaged avocados divided by the maximum price election.

12. Late and Prevented Planting

Sections 16 and 17 of the Basic Provisions do not apply to these Crop Provisions.

13. Written Agreements

Section 18 of the Basic Provisions does not apply to these Crop Provisions.

14. Example of Your Insurance Protection

You certify production records that support the yields per acre shown below:

Year	Yield/acre
1	4,559
2	2,978
3	10,112
4	2,014
5	2,420

AVERAGE (APPROVED) Yield = 4,417 lbs.

Assume you selected the 65 percent coverage level. The unit contains 10 acres. The production guarantee per acre is:

4,417 × 65% = 2,871 lbs. per acre

The production guarantee for the unit is:

2,871 × 10 acres = 28,710 lbs.

Assume further that the price election is $0.90 per lb. The liability (amount of insurance) for the unit is equal to:

28,710 lbs. × $0.90 = $25,839

Assume the unit produced 15,000 lbs. Your share is 100 percent.

The indemnity is calculated as follows:

2,871 × 10 acres = 28,710 lbs.
28,710 lbs. − 15,000 lbs. = 13,710 lbs.
13,710 lbs. × $0.90 × 1.000 = $12,339.

Signed in Washington, DC, on December 19, 2017.

Heather Manzano,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2017–27895 Filed 12–26–17; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC–17–0003]

RIN 0563–AC59

Common Crop Insurance Regulations; Cultivated Clam Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations to provide Cultivated Clam insurance. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crop programs. The intended effect of this action is to convert the Cultivated Clam pilot crop insurance program to a regulatory insurance program for the 2019 and succeeding crop years.

DATES: *Effective date:* This final rule is effective December 27, 2017.

Applicability date: The changes are applicable for the 2019 and succeeding crop years.

Comment due date: FCIC will accept written comments on this final rule until close of business January 26, 2018. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–17–0003, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Director, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64141–6205.

FCIC will post all comments received, including those received by mail, without change to *http://www.regulations.gov,* including any personal information provided. Once these comments are posted to this website, the public can access all comments at its convenience from this website. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If interested persons are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, FCIC requests that the document attachment be in a text-based format. If interested persons want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of the submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the Risk Management Agency (RMA) Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Ron Lundine, Director, Product Management, Actuarial and Product Design Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–3854.

SUPPLEMENTARY INFORMATION:

Background

FCIC offered a pilot crop insurance program for cultivated clams beginning with the 1999 crop year. The program is offered in nine counties in Massachusetts, South Carolina, and Virginia. After a program evaluation, in 2014 the FCIC's Board of Directors authorized the Cultivated Clam Pilot Crop Insurance Program to be converted from a pilot to a permanent program in Massachusetts, South Carolina, and Virginia. For the 2016 crop year, 42 policies were sold and 352,563,049 clams were insured in Massachusetts, South Carolina, and Virginia. This rule will add the Cultivated Clam Program to the Code of Federal Regulations.

The FCIC is issuing this final rule without opportunity for prior notice and comment. The Administrative Procedure Act (APA) exempts rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' from the statutory requirement for prior notice and opportunity for public comment (5 U.S.C. 553(a)(2)). A Federal crop insurance policy is a contract and is thus exempt from APA notice-and-comment procedures. Previously, changes made to the Federal crop insurance policies codified in the Code of Federal Regulations were required to be implemented through the notice-and-comment rulemaking process. Such action was not required by the APA, which exempts contracts. Rather, the requirement originated with a notice USDA published in the **Federal Register** on July 24, 1971 (36 FR 13804), stating that the Department of Agriculture would, to the maximum extent practicable, use the notice-and-comment rulemaking process when making program changes, including those involving contracts. FCIC complied with this notice over the subsequent years. On October 28, 2013, USDA published a notice in the **Federal Register** (78 FR 64194) rescinding the prior notice, thereby making contracts again exempt from the notice-and-comment rulemaking process. This exemption applies to the 30-day notice prior to implementation of a rule. Therefore, the policy changes made by this final rule are effective upon publication in the **Federal Register**.

However, FCIC is providing a 30-day comment period and invites interested persons to participate in this rulemaking by submitting written comments. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

Executive Orders 12866, 13563, 13771 and 13777

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' established a federal policy to alleviate unnecessary regulatory burdens on the American people. The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore, OMB has not reviewed this rule. The rule is not subject to Executive Order 13771,

''Reducing Regulation and Controlling Regulatory Costs.''

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the collections of information in this rule have been approved by OMB under control number 0563–0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

The Federal Crop Insurance Corporation has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a Tribe requests consultation, the Federal Crop Insurance Corporation will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the indemnity amount for an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act (FCIA) authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See 2 CFR part 415, subpart C.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

List of Subjects in 7 CFR Part 457

Crop insurance, Cultivated clam, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, applicable for the 2019 and succeeding crop years, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Section 457.176 is added to read as follows:

§ 457.176 Cultivated clam crop insurance provisions.

The cultivated clam crop provisions for the 2019 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Cultivated Clam Crop Provisions

1. Definitions.

Amount of insurance. For each basic unit, your inventory value multiplied by the coverage level percentage you elect, and multiplied by your share. However, for catastrophic risk protection policies, amount of insurance is your inventory value multiplied by the coverage level percentage you elect (for CAT coverage the level is limited to 50 percent), multiplied by your share, and multiplied by 55 percent. Your accumulated paid indemnities during the crop year for each basic or optional

unit may not exceed your amount of insurance.

Basic unit value before loss. The stage value of all undamaged insurable clams, in the basic unit or, if elected, all optional units combined, immediately prior to the occurrence of any loss as determined by our appraisal. This allows the amount of insurance under the policy to be prorated among the individual units based on the actual value of the clams in the unit at the time of loss. It is also the basis for determining whether or not an indemnity is due. This value is used to ensure that you have not under-reported your clam inventory value.

Clam. A cultivated *Mercenaria mercenaria* (quahog).

Crop year. The twelve-month period beginning December 1 and extending through November 30 of the next calendar year, designated by the calendar year in which insurance ends.

Crop year deductible. The deductible percentage multiplied by the sum of the inventory values within each basic unit. The crop year deductible will be increased for any increases in the inventory value on the inventory value report. The crop year deductible will be reduced by any previously incurred deductible if you timely report each loss to us.

Deductible percentage. An amount equal to 100 percent minus the percent of coverage you select. The percentage is 50 percent for catastrophic risk protection coverage.

Disease. Any pathogen or group of pathogens, parasitic infestation or plague verified by an aquaculture pathologist and shown to be a primary cause to the death of the insured clams.

Freeze. The formation of ice in the cells of the animal caused by low air temperatures.

Global Positioning System (GPS). A space based radio position, navigation, and time transfer system involving satellites and computers to determine the latitude and longitude of a receiver on Earth by computing the time difference for signals from different satellites to reach the receiver and referenced in the Special Provisions.

Growing location. A lease parcel, permit or licensed area, whose boundaries are readily discernable above the water, and identified on a map that shows enough detail to distinguish seeded areas within the site.

Growout bag. A mesh bag used throughout the growing season to contain clams when placed in the appropriate growing medium and as further defined by the Special Provisions.

Harvest. Removal of marketable clams from the unit. Clams that are removed from the growing location but not of sufficient size to be marketable are not considered harvested if returned to the growing location.

Ice floe. Floating ice formed in sheets on the sea surface.

Inventory value. The total of the stage values from the inventory value report.

Inventory value report. Your report that declares the stage values of insurable clams in accordance with section 6. See the Cultivated Clam Insurance Standards Handbook, Exhibit 5 for the inventory value report completion instructions and form.

Land. The land under a body of water suitable for planting clams and the column of water above the land if designated and controlled by state law.

Lease. A contract that grants use of land in or assigned to a county for a specified term and for a specified payment and provides the lessee with the exclusive use of the land to plant clams.

Lease parcel. A legally identifiable tract or plot of land covered by a lease, permit, or license.

License. Official or legal permission that grants use of land in or assigned to a county for a specified term and provides the licensee with the exclusive use of the land to plant clams.

Non-contiguous. In lieu of the definition in the Basic Provisions, separately-named, high-density aquaculture lease sites or shellfish sites are considered non-contiguous, unless limited by the Special Provisions. Individual land parcels within such sites are not considered non-contiguous.

Occurrence deductible.

(a) This deductible allows a smaller deductible than the crop year deductible to be used when:

(1) Inventory values are less than the reported basic unit value; or

(2) You have elected optional units, if applicable.

(b) The occurrence deductible is the lesser of:

(1) The deductible percentage multiplied by the unit value before loss multiplied by the under-report factor; or

(2) The crop year deductible.

Permit. A document giving official or legal permission to use land in or assigned to a county for a specified term and provides the permittee with the exclusive use of the land to plant clams.

Planting. The placing of seed clams into the appropriate growing medium for the practice specified.

Pollution. The presence in the water of a substance that directly causes death of the clams. The substance shall not be parasitical, bacterial, fungal or viral, or any substance used by you for medicinal purposes. Pollution will also include any increase or decrease in the content of any normal soluble or insoluble constituent of water including mud and silt, feed residues, solid or liquid fish wastes, dissolved gases and any other substance normally present in the water of the lease parcel.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions, unless limited by the Special Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to the causes of loss listed in section 10 of these provisions, that replanting the insured crop will allow the crop to develop normally during the remainder of the crop year. Unavailability of seed clams will not be considered a valid reason for failure to replant.

Practice. The cultural methods of producing clams such as trays, mesh bags, round pens, lantern nets or bottom planting.

Replant. Unless limited by the Special Provisions, performing the cultural practices necessary to prepare for replacement of insurable clams that were destroyed by an insurable cause of loss and then placing living insurable clams into mesh bags or pens, or seeding them into prepared growout beds, bottom culture, bottom trays, or floating trays on insurable acreage.

Salinity. The dissolved solids (typically salts such as chloride, sodium, and potassium) in ocean water expressed as parts per thousand.

Seed clam.

(a) For clams placed in a field nursery or a nursery bag—a clam that is a minimum of 5 millimeters, measured at the longest shell distance that is parallel to the hinge.

(b) For all others—a clam which is a minimum of 10 millimeters, measured at the longest shell distance that is parallel to the hinge.

Separately named high-density aquaculture lease site. The submerged subdivided land under a body of water suitable for the cultivation of clams and identified and named separately by the Division of Marine Resources or similar regulatory agency.

Shellfish harvest ban. A State or Federal order that prohibits harvesting clams for human food in areas where monitoring program data indicates that fecal material, pathogenic microorganisms, poisonous or deleterious substances, marine toxins, or radio nuclides have reached excessive concentrations.

Stage. Clams that have attained the size or age specified for stage 1, 2, 3, or 4 as defined in the Special Provisions.

Stage value. The dollar value of the inventory of all insurable clams at each stage based on the survival factors and the prices shown in the actuarial documents for such stages, in each unit on your inventory value report, including any revision that increases the value of your insurable inventory.

Storm surge. A significant increase or decrease in water depth relative to normal tides that is caused by a strong, continuous and prolonged strong flow of onshore or offshore winds.

Survival factor. A factor shown on the actuarial documents that represents the expected percentage of clams that will normally survive. If you provide production records for three consecutive years, your records will be used in lieu of the factor contained in the actuarial document to determine the survival factor. The survival factor is applied at the time of inventory and is not applied a second time to the same inventory when a loss occurs. Clams that are seeded subsequent to the annual inventory value report must be adjusted by the survival factor.

Tidal wave. A large water wave, wave train, or a series of waves, generated in a body of water by an impulsive disturbance that vertically displaces the water column or a destructive type of wave motion in seas and oceans, associated with either strong winds or underwater earthquakes.

Under-report factor. The factor that adjusts your indemnity for under-reporting of inventory values. The factor is always used in determining any indemnities. The under-report factor is the lesser of: (a) 1.000; or (b) the sum of all stage values reported on all the inventory value reports, minus the total of all previous losses, as adjusted by any previous under-reporting factors, divided by the basic unit value before loss.

Unit value after loss. The value of the remaining insurable clams in each basic or optional unit based on the percentage of the reference maximum dollar amount contained in the actuarial documents, immediately following the occurrence of a loss as determined by our appraisal, plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis, optional or basic, as applicable.

Unit value before loss. The stage value of undamaged insurable clams in the basic or optional unit, as applicable, immediately prior to the loss occurrence. The determined value will include the number of seeded and harvested clams and stages that existed on the date of the inventory value report, adjusted for changes in accordance with subparagraph 22A(2) of the Insurance Standards Handbook, including but not limited to; the reference maximum dollar amount contained in the actuarial documents; and the applicable survival factors. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the value of the clams in the unit at the time of loss for determining whether you are entitled to an indemnity for insured losses in the unit, optional or basic, as applicable. Clams that are seeded subsequent to the annual inventory value report being submitted must be adjusted by the survival factor before they are added to the beginning inventory during the process of establishing the ''Unit value before loss.''

2. Unit Division

(a) In addition to the definition of basic unit contained in section 1 of the Basic

Provisions, a basic unit may be divided into optional units in accordance with section 2(b). Note that even if you elect optional unit coverage, amount of insurance, crop year deductible, under-report factor, premium, and the total amount of indemnity payable under this policy will be controlled by the basic unit value before loss.

(b) If you elect the additional level of coverage, for an additional premium, inventory that would otherwise be a basic unit may, unless limited by the Special Provisions, be divided into optional units by non-contiguous lease parcels. Additional optional units may also be authorized in the Special Provisions. If you elect optional units, you must provide separate inventory reports for each unit and keep all records of seeding, harvest, and uninsured losses separately by unit.

(c) Failure to keep or report separate records will result in all optional unit inventories under a basic unit being combined in a basic unit at loss time.

(d) If you elect optional units, your amount of insurance will be divided among optional units in relation to unit value before loss of clams in each optional unit. If, at the time of loss, the aggregate value of the clams in your optional units exceeds your basic unit inventory value, you will be subject to the under-report factor provisions.

3. Amount of Insurance

(a) In addition to the requirements of section 3 of the Basic Provisions, you may only select one coverage level percentage for all clams, regardless of their stage, insured under this policy.

(b) Your amount of insurance will be reduced by the amount of any indemnity paid under this policy.

(c) For an additional premium, you may increase your amount of insurance in accordance with section 6(d).

(d) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable.

(e) For seeded clams, the amount of insurance is the product of the reference maximum dollar amount of insurance and the fraction of the maximum value associated with the applicable stage multiplied by the coverage level selected multiplied by your share.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 of each year, or as specified in the actuarial documents.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 30, or as specified in the actuarial documents.

6. Clam Inventory Value Report

In lieu of section 6 of the Basic Provisions:

(a) For insurance to attach for the crop year, you must submit an inventory value report to us with your application and for each subsequent crop year, not later than November 30 preceding the crop year, or by the date specified in the Special Provisions.

(b) The inventory value report must be submitted yearly and include, for each basic or optional unit all growing locations, the stages of the clams and the stage values, and your share by growing location.

(1) The inventory value must also reflect the stages as shown in the Special Provisions.

(2) At our option and at any time, you may be required to provide documentation in support of any of your reports, including, but not limited to, a detailed listing of growing locations, unit values, the numbers and the sizes of clams seeded or placed for grow-out; your share, sales of clams and purchases of seed clams for the 3 previous crop years, and of your ability to properly obtain and maintain clams.

(3) For catastrophic level policies only, you must report your clam sales for the previous crop year on the clam inventory value report. You may be

required to provide documentation to support such sales.

(c) Your inventory value report, including any revised report, will be used to determine your premium and amount of insurance.

(d) If allowed for in the Special Provisions you may revise your inventory value report to increase the reported inventory value. We may inspect the inventory. Your revised inventory value report, if allowed by the Special Provisions, will be considered accepted by us and coverage will begin on any proposed increase in inventory value at the later of December 1, the date shown in the Special Provisions, or 30 days after your written request is received by us, unless we reject the proposed increase in your inventory value in writing. We will reject any requested increase if a loss occurs before the later of December 1, the date shown in the Special Provisions, or within 30 days of the date the request is made.

(e) Failure to report the full value of your stage value will result in the reduction of any claim in accordance with section 14(d).

(f) For catastrophic insurance coverage only: Your inventory value report for all clams cannot exceed the lesser of the value from section 6(b) or the percent shown on the actuarial documents of your previous year's sales of clams unless you provide acceptable records to prove your actual inventory value.

(g) Your inventory value report must reflect your insurable clam inventory according to the prices contained in the actuarial documents. In no instance will we be liable for values greater than those contained in the actuarial documents.

(h) You must report all clams on the unit including any clams owned or subleased by other individuals or entities.

(i) No application or inventory value reports, except revisions, will be accepted after November 30, unless otherwise provided in the Special Provisions.

7. Premium

(a) In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate and by the premium adjustment factors listed on the actuarial documents.

(b) Additional premium from an increase in the inventory value report is due and payable when we accept the revised inventory value report.

(c) In addition to the provisions in section 7 of the Basic Provisions, the premium will be adjusted for partial crop years for the year of seeding and for clam leases you acquire. Premium will be charged for the entire month, as shown in the actuarial documents, for any month during which any amount of coverage is provided.

8. Insured Crop

In lieu of the provisions of section 8 and section 9 of the Basic Provisions, the insured crop is all the clams in the county that:

(a) Meet all the requirements for insurability and for which prices are provided in the actuarial documents;

(b) Are acceptable to us;

(c) Are grown by a person, who in at least three of the five previous crop years:

(1) Grew clams for commercial sale; and

(2) Participated in the management of a clam farming operation by at least exercising decision-making authority over all operational aspects of the farm.

(d) Are grown in a county for which a premium rate is provided in the actuarial documents;

(e) Are in a growing location acceptable to us and for which you provided GPS coordinates with your clam inventory value report in accordance with the Special Provisions; and

(f) Use a practice that fixes the insurable clams to the land within the growing location.

9. Insurance Period

(a) In accordance with section 11 of the Basic Provisions, coverage begins the later of:

(1) The date the pre-acceptance inspection, if applicable, is complete unless we notify you that your inventory is not insurable; or

(2) If your inventory is insurable:

(i) On December 1 for new applications, when the application and the inventory value report are submitted by October 30;

(ii) On the 31st day following the date of submission for new applications, when the application and the inventory value report are submitted between November 1 and 30;

(iii) On December 1 for policies continued from the prior year if the inventory value report is submitted by October 30;

(iv) On the 31st day following the date of submission of the inventory value report for policies continued from the prior year when the inventory value report is submitted between November 1 and 30; and

(v) However, you acquire a financial interest in any insurable clams after coverage begins, but after December 1 of the crop year, and our inspection determines that the clams are acceptable, insurance will be considered to have attached to such clams 30 days after a revised inventory report is accepted by us indicating the stage value of the acquired clams; or

(vi) On the date contained in the Special Provisions.

(b) Insurance ends at the earliest of:

(1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance;

(2) November 30; or

(3) A date specified in the Special Provisions. (c) Insurance ceases immediately on any clams removed from the unit.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided for the death of clams caused only by the following causes of loss that occur within the insurance period unless otherwise limited by the Special Provisions:

(1) Oxygen depletion due to vegetation, microbial activity, harmful algae bloom, or high water temperature unless otherwise limited by the Special Provisions;

(2) Disease, if medication does not exist for control of the disease;

(3) Freeze;

(4) Hurricane;

(5) Decrease in salinity associated with a weather event verified by National Oceanic & Atmospheric Administration (NOAA) or United States Geologic Survey (USGS) or as otherwise defined in the Special Provisions;

(6) Tidal wave;

(7) Storm surge that is associated with a local weather event and verified by NOAA or USGS; or

(8) Ice floe.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we do not insure against any loss caused by:

(1) Your inability to market clams as a direct result of quarantine, shellfish harvest ban, boycott, or refusal of a buyer to accept production;

(2) Collapse or failure of buildings or structures;

(3) Loss of market value;

(4) Vandalism;

(5) Theft;

(6) Pollution;

(7) Predation (unless allowed by the Special Provisions);

(8) Dredging;

(9) Any cause of loss that occurred prior to or after the insurance period;

(10) Any unexplained shortages or disappearance of inventory; or

(11) Failure of the clam to grow to a marketable size.

11. Replanting Payments

Unless otherwise stated in the Special Provisions:

(a) In accordance with the provisions contained in section 13 of the Basic Provisions, a replanting payment is allowed for insurable clams if death of the clams was due to an insurable cause of loss.

(b) The maximum amount of the replanting payment will be the lesser of your actual cost of replanting or the result obtained by multiplying the replanting payment amount contained in the Special Provisions by your insured share.

(c) Notwithstanding the provisions of section 13 of the Basic Provisions, only one replanting payment will be made per lease parcel planted within the crop year.

(d) You may not collect a replant payment and an indemnity for the same loss.

12. Duties in the Event of Damage or Loss

In addition to your duties contained in section 14 of the Basic Provisions,

(a) You must obtain our written consent prior to changing or discontinuing your normal practices with respect to care and maintenance of the insured clams. Failure to obtain our written consent will result in the denial of your claim.

(b) If you are claiming disease as the cause of loss, you must prove at your own expense that the death of the clams was due to disease by isolating a sample of the clams and identifying the disease following histological or pathological examination conducted by a veterinarian who is a certified fish pathologist or a person approved by us.

13. Access to Insured Crop and Records, and Records Retention

In addition to the requirements of section 21 of the Basic Provisions, you must permit us to inspect the insurable clams at any time and take samples of damaged and undamaged clams for inspection, testing, and analysis, and examine and make copies of your records.

14. Settlement of Claim

We will determine indemnities for any unit as follows:

(a) Determine the under-report factor for the basic unit;

(b) Determine the occurrence deductible;

(c) Subtract unit value after loss from unit value before loss;

(d) Multiply the result of 14(c) by the under-report factor;

(e) Subtract the occurrence deductible from the result in section 14(d); and

(f) If the result of section 14(e) is greater than zero, and subject to the limit of section 14(g);

(1) For other than catastrophic risk protection coverage, your indemnity equals the result of section 14(e), multiplied by your share.

(2) For catastrophic risk protection coverage, your indemnity equals the result of section 14(e) multiplied by 55 percent, multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance.

15. Written Agreements

The written agreement provisions in the Basic Provisions do not apply.

16. Late Planting

Provisions of section 16 of the Basic Provisions do not apply.

17. Prevented Planting

Provisions of section 17 of the Basic Provisions do not apply.

18. Loss Examples

Single Unit Loss Example

Assume you have a 100 percent share, the inventory value reported by you is $100,000, and your coverage level is 75 percent. Your amount of insurance is $75,000 ($100,000 × .75). At the time of loss, unit value before loss is $95,000, unit value after loss is $30,000 and basic unit value before loss is $100,000. The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor; $100,000 ÷ $95,000 = 1.000;

Step (2) Determine the occurrence deductible; .25 × $95,000 × 1.000 = $23,750;

Step (3) Calculate the difference between unit value before loss and unit value after loss; $95,000 − $30,000 = $65,000;

Step (4) Result of step 3 multiplied by the underreport factor (step 1); $65,000 × 1.000 = $65,000;

Step (5) Result of step 4 minus the occurrence deductible; $65,000 − $23,750 = $41,250;

Step (6) Result of step 5 multiplied by your share; $41,250 × 1.000 = $41,250 indemnity payment.

Multiple Unit Multiple Loss Example

Assume you have a 100 percent share, the inventory value reported by you is $100,000, and your coverage level is 75 percent. You have two optional units, unit 1 and unit 2. Your amount of insurance is $75,000 ($100,000 × .75). You have a loss on unit 1 and no loss on unit 2. At the time of loss, unit value before loss on unit 1 is $60,000, unit value after loss on unit 1 is $18,000 and basic unit value before loss is $125,000. The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor; $100,000 ÷ $125,000 = .80;

Step (2) Determine the occurrence deductible; .25 × $60,000 × .80 = $12,000;

Step (3) Calculate the difference between unit value before loss and unit value after loss; $60,000 − $18,000 = $42,000;

Step (4) Result of step 3 multiplied by the underreport factor (step 1); $42,000 × .80 = $33,600;

Step (5) Result of step 4 minus the occurrence deductible; $33,600 − $12,000 = $21,600;

Step (6) Result of step 5 multiplied by your share; $21,600 × 1.000 = $21,600 indemnity payment.

Your crop year deductible is reduced to $13,000 ($25,000 − $12,000). Your amount of insurance is reduced to $53,400 ($75,000 − $21,600). You do not restock unit 1 after the first loss. Values on unit 2 do not change from those measured at the time of the loss on unit 1. Assume you have a loss later in the crop year on unit 2. Unit value before loss on unit 2 is $65,000, unit value after loss on unit 2 is $0.00 and basic unit value before loss on the basic unit is $83,000. Your loss would be determined as follows:

Step (1) Determine the remaining amount of insurance; $100,000 − $33,600 = $66,400;

Step (2) Determine the under-report factor; $66,400 ÷ $83,000 = .800;

Step (3) Determine the occurrence deductible; $25,000 − $12,000 = $13,000;

Step (4) Calculate the difference between unit value before loss and unit value after loss; $65,000 − $0.00 = $65,000;

Step (5) Result of step 4 multiplied by the underreport factor (step 2); $65,000 × .800 = $52,000;

Step (6) Result of step 5 minus the occurrence deductible; $52,000 − $13,000 = $39,000;

Step (7) Result of step 6 multiplied by your share; $39,000 × 1.000 = $39,000 indemnity payment.

Signed in Washington, DC, on December 19, 2017.

Heather Manzano,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 2017–27894 Filed 12–26–17; 8:45 am]

BILLING CODE 3410–08–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2017–18]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: This final rule is effective on December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Neven F. Stipanovic, Acting Assistant General Counsel, or Mr. Eugene J. Lynch, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–46 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2018.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the House of Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'') [11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2018 is 0.02041, or 2.041%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.02041.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

[2] Public Law 114–74, 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act § 3(2).

[4] Inflation Adjustment Act § 4(a).

[5] *See* Inflation Adjustment Act § 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Mick Mulvaney, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–18–03 (Dec. 15, 2017), *https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act § 5.

[7] Inflation Adjustment Act § 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act § 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, § 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, sec. 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, § 5(b)(1).

[13] Inflation Adjustment Act, § 5(a), (b)(1).

[14] OMB Memorandum at 1.

CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$19,057	1.02041	$19,446
11 CFR 111.24(a)(2)(i)	40,654	1.02041	41,484
11 CFR 111.24(a)(2)(ii)	66,666	1.02041	68,027
11 CFR 111.24(b)	5,701	1.02041	5,817
11 CFR 111.24(b)	14,252	1.02041	14,543

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two such schedules: The schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended as follows:

In the table below, for each section indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Section	Remove	Add
111.24(a)(1)	$19,057	$19,446
111.24(a)(2)(i)	40,654	41,484
111.24(a)(2)(ii)	66,666	68,027
111.24(b)	5,701	5,817
111.24(b)	14,252	14,543

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [a]	[$34 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$333 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$66 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$400 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$142 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$667 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$283 + ($27 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1200 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$426 + ($107 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3828 × [1 + (.25 × Number of previous violations)].

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$75,000–99,999.99	[$567 + ($142 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4961 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$850 + ($178 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6380 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1135 + ($212 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7797 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1417 + ($248 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9214 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2127 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,341 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2836 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,758 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3544 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,466 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4253 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,177 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$4961 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,885 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$5670 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,594 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$6380 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,302 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$7088 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,011 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$66 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$667 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$134 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$800 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$200 + ($13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1200 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$426 + ($34 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1866 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$638 + ($107 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4253 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$850 + ($142 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5670 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1276 + ($178 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7088 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1701 + ($212 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8505 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2127 + ($248 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,633 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3190 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,758 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$4253 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,177 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$5316 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,594 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$6380 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,011 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$7442 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,430 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$8505 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,846 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$9569 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$21,263 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$10,633 + ($283 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,682 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $7,797.

* * * * *

§ 111.44 [Amended]

■ 4. In § 111.44, amend paragraph (a)(1) by removing ''$139'' and adding in its place ''$142''.

Dated: December 19, 2017.

On behalf of the Commission.

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. 2017–27808 Filed 12–26–17; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 25 and 195

[Docket ID OCC–2017–0025]

RIN 1557–AE30

FEDERAL RESERVE SYSTEM

12 CFR Part 228

[Regulation BB; Docket No. R–1574]

RIN 7100–AE84

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 345

RIN 3064–AE58

Community Reinvestment Act Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint final rule; technical amendment.

SUMMARY: The OCC, the Board, and the FDIC (collectively, the Agencies) are amending their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define ''small bank'' or ''small savings association'' and ''intermediate small bank'' or ''intermediate small savings association.'' As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). The FDIC is also amending its definition of ''consumer loan'' to correct a typographical error included in a CRA final rule issued on November 24, 2017.

DATES: *Effective Date:* January 1, 2018.

FOR FURTHER INFORMATION CONTACT:

OCC: Emily Boyes, Attorney, Community and Consumer Law Division, (202) 649–6350; Christopher Rafferty, Law Clerk, Legislative and Regulatory Activities Division, (202) 649–5490; for persons who are deaf or hearing impaired, TTY, (202) 649–5597; or Vonda Eanes, Director, Compliance Risk Policy Division, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Amal S. Patel, Senior Supervisory Consumer Financial Services Analyst, (202) 912–7879; or Cathy Gates, Senior Project Manager, (202) 452–2099, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

FDIC: Patience R. Singleton, Senior Policy Analyst, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; or Richard M. Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background and Description of the Joint Final Rule

The Agencies' CRA regulations establish CRA performance standards for small and intermediate small banks and savings associations. The CRA regulations define small and intermediate small banks and savings associations by reference to asset-size criteria expressed in dollar amounts, and they further require the Agencies to publish annual adjustments to these dollar figures based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million. 12 CFR 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2). This adjustment formula was first adopted for CRA purposes by the OCC, the Board, and the FDIC on August 2, 2005, effective September 1, 2005. 70 FR 44256 (Aug. 2, 2005). The Agencies noted that the CPI–W is also used in connection with other federal laws, such as the Home Mortgage Disclosure Act. *See* 12 U.S.C. 2808; 12 CFR 1003.2. On March 22, 2007, and effective July 1, 2007, the former Office of Thrift Supervision (OTS), the agency then responsible for regulating savings associations, adopted an annual adjustment formula consistent with that of the other federal banking agencies in its CRA rule previously set forth at 12 CFR part 563e. 72 FR 13429 (Mar. 22, 2007).

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act),[1] effective July 21, 2011, CRA rulemaking authority for federal and state savings associations was transferred from the OTS to the OCC, and the OCC subsequently republished, at 12 CFR part 195, the CRA regulations applicable to those institutions.[2] In addition, the Dodd-Frank Act transferred responsibility for supervision of savings and loan holding companies and their non-depository subsidiaries from the OTS to the Board, and the Board subsequently amended its CRA regulation to reflect this transfer of supervisory authority.[3]

The threshold for small banks and small savings associations was revised most recently in December 2016 and became effective January 18, 2017. 82 FR 5354 (Jan. 18, 2017). The current CRA regulations provide that banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.226 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $307 million as of December 31 of both of the prior two calendar years and less than $1.226 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings associations. 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1). This joint final rule revises these thresholds.

During the 12-month period ending November 2017, the CPI–W increased by 2.11 percent. As a result, the Agencies are revising 12 CFR 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) to make this annual adjustment. Beginning January 1, 2018, banks and savings associations that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion are small banks or small savings associations. Small banks and small savings associations with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years are intermediate small banks or intermediate small savings

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] *See* OCC interim final rule, 76 FR 48950 (Aug. 9, 2011).

[3] *See* Board interim final rule, 76 FR 56508 (Sept. 13, 2011).

associations. The Agencies also publish current and historical asset-size thresholds on the website of the Federal Financial Institutions Examination Council at *http://www.ffiec.gov/cra/.*

Additionally, on November 24, 2017, the Agencies amended their collective CRA regulations (82 FR 55734) to be consistent with prior amendments to Regulation C by the Consumer Financial Protection Bureau. Section 345.12(j) of the FDIC's CRA regulation, which provides for the definition of ''consumer loan,'' contained a typographical error in the **Federal Register** publication: § 345.12(j)(4) was reserved in error. To correct this error, § 345.12(j)(5) is redesignated as § 345.12(j)(4) and § 345.12(j)(5) is removed.

Administrative Procedure Act and Effective Date

Under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA), an agency may, for good cause, find (and incorporate the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The amendments to the regulations to adjust the asset-size thresholds for small and intermediate small banks and savings associations result from the application of a formula established by a provision in the respective CRA regulations that the Agencies previously published for comment. *See* 70 FR 12148 (Mar. 11, 2005), 70 FR 44256 (Aug. 2, 2005), 71 FR 67826 (Nov. 24, 2006), and 72 FR 13429 (Mar. 22, 2007). As a result, §§ 25.12(u)(1), 195.12(u)(1), 228.12(u)(1), and 345.12(u)(1) of the Agencies' respective CRA regulations are amended by adjusting the asset-size thresholds as provided for in §§ 25.12(u)(2), 195.12(u)(2), 228.12(u)(2), and 345.12(u)(2).

Accordingly, the Agencies' rules provide no discretion as to the computation or timing of the revisions to the asset-size criteria. Furthermore, amending the FDIC's definition of ''consumer loan'' to correct a typographical error is a technical and non-substantive revision. For these reasons, the Agencies have determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary.

The effective date of this joint final rule is January 1, 2018. Under 5 U.S.C. 553(d)(3) of the APA, the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except, among other things, as provided by the agency for good cause found and published with the rule. Because this rule adjusts asset-size thresholds consistent with the procedural requirements of the CRA rules, the Agencies conclude that it is not substantive within the meaning of the APA's delayed effective date provision. Moreover, the Agencies find that there is good cause for dispensing with the delayed effective date requirement, even if it applied, because their current rules already provide notice that the small and intermediate small asset-size thresholds will be adjusted as of December 31 based on 12-month data as of the end of November each year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) does not apply to a rulemaking when a general notice of proposed rulemaking is not required. 5 U.S.C. 603 and 604. As noted previously, the Agencies have determined that it is unnecessary to publish a general notice of proposed rulemaking for this joint final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Agencies have determined that this final rule does not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), 2 U.S.C. 1532, requires the OCC to prepare a budgetary impact statement before promulgating any final rule for which a general notice of proposed rulemaking was published. As discussed above, the OCC has determined that the publication of a general notice of proposed rulemaking is unnecessary. Accordingly, this joint final rule is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

For the reasons discussed in the SUPPLEMENTARY INFORMATION section, 12 CFR parts 25 and 195 are amended as follows:

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2908, and 3101 through 3111.

■ 2. Section 25.12 is amended by revising paragraph (u)(1) to read as follows:

§ 25.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion. *Intermediate small bank* means a small bank with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 195—COMMUNITY REINVESTMENT

■ 3. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 4. Section 195.12 is amended by revising paragraph (u)(1) to read as follows:

§ 195.12 Definitions.

* * * * *

(u) *Small savings association*—(1) *Definition. Small savings association* means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion. *Intermediate small savings association* means a small savings association with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years.

* * * * *

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

For the reasons set forth in the SUPPLEMENTARY INFORMATION section, the Board of Governors of the Federal Reserve System amends part 228 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 5. The authority citation for part 228 is revised to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

■ 6. Section 228.12 is amended by revising paragraph (u)(1) to read as follows:

§ 228.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion. *Intermediate small bank* means a small bank with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the SUPPLEMENTARY INFORMATION section, the Board of Directors of the Federal Deposit Insurance Corporation amends part 345 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 345—COMMUNITY REINVESTMENT

■ 7. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

■ 8. Section 345.12 is amended by redesignating paragraph (j)(5) as paragraph (j)(4) and revising paragraph (u)(1) to read as follows:

§ 345.12 Definitions.

* * * * *

(u) *Small bank*—(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.252 billion. *Intermediate small bank* means a small bank with assets of at least $313 million as of December 31 of both of the prior two calendar years and less than $1.252 billion as of December 31 of either of the prior two calendar years.

* * * * *

Dated: December 19, 2017.

Karen Solomon,

Acting Senior Deputy Comptroller and Chief Counsel.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Ann E. Misback,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of December 2017.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2017–27813 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

RIN 3133–AE81

Agency Reorganization; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; correction.

SUMMARY: The NCUA is correcting a final rule that appeared in the **Federal Register** on December 20, 2017. The document implemented certain features of the NCUA reorganization that the NCUA Board announced earlier this year. This correction amends one reference within the document.

DATES: This correction is effective January 6, 2018.

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: In FR Doc. 2017–27411, appearing on page 60290 in the **Federal Register** of Wednesday, December 20, 2017, the following corrections are made:

§ 790.2 [Corrected]

■ On page 60292, in the second column, in part 790, in amendment 10, the instruction ''In § 790.2, revise the second sentence of paragraph (b)(6), paragraph (b)(12), the third sentence of paragraph (b)(13), and paragraph (b)(15) to read as follows:'' is corrected to read ''In § 790.2, revise the second sentence of paragraph (b)(6), paragraph (b)(12), the fourth sentence of paragraph (b)(13), and paragraph (b)(15) to read as follows:''

By the National Credit Union Administration Board on December 21, 2017.

Gerard Poliquin,

Secretary of the Board

[FR Doc. 2017–27962 Filed 12–26–17; 8:45 am]

BILLING CODE 7535–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1003

Home Mortgage Disclosure (Regulation C) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official commentary.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is issuing a final rule amending the official commentary that interprets the requirements of the Bureau's Regulation C (Home Mortgage Disclosure) to reflect the asset-size exemption threshold for banks, savings associations, and credit unions based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W). Based on the 2.1 percent increase in the average of the CPI–W for the 12-month period ending in November 2017, the exemption threshold is adjusted to increase to $45 million from $44 million. Therefore, banks, savings associations, and credit unions with assets of $45 million or less as of December 31, 2017, are exempt from collecting data in 2018.

DATES: This final rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Monique Chenault, Paralegal Specialist, Office of Regulations, Consumer Financial Protection Bureau, 1700 G

Street NW, Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan areas to collect data about their housing related lending activity. Annually, lenders must report their data to the appropriate Federal agencies and make the data available to the public. The Bureau's Regulation C (12 CFR part 1003) implements HMDA.

Prior to 1997, HMDA exempted certain depository institutions as defined in HMDA (*i.e.,* banks, savings associations, and credit unions) with assets totaling $10 million or less as of the preceding year-end. In 1996, HMDA was amended to expand the asset-size exemption for these depository institutions. 12 U.S.C. 2808(b). The amendment increased the dollar amount of the asset-size exemption threshold by requiring a one-time adjustment of the $10 million figure based on the percentage by which the CPI–W for 1996 exceeded the CPI–W for 1975, and it provided for annual adjustments thereafter based on the annual percentage increase in the CPI–W, rounded to the nearest multiple of $1 million.

The definition of ''financial institution'' in § 1003.2(g) provides that the Bureau will adjust the asset threshold based on the year-to-year change in the average of the CPI–W, not seasonally adjusted, for each 12-month period ending in November, rounded to the nearest $1 million. For 2017, the threshold was $44 million. During the 12-month period ending in November 2017, the average of the CPI–W increased by 2.1 percent. As a result, the exemption threshold is increased to $45 million. Thus, banks, savings associations, and credit unions with assets of $45 million or less as of December 31, 2017, are exempt from collecting data in 2018. An institution's exemption from collecting data in 2018 does not affect its responsibility to report data it was required to collect in 2017.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 2(g)–2 in Regulation C, supplement I, is amended to update the exemption threshold. The amendment in this final rule is technical and non-discretionary, and it merely applies the formula established by Regulation C for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2018. The amendment in this final rule is technical and non-discretionary, and it applies the method previously established in the agency's regulations for determining adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320), the agency reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), CFPB will submit a report containing this rule 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 the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 1003

Banking, Banks, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation C, 12 CFR part 1003, as set forth below:

PART 1003—HOME MORTGAGE DISCLOSURE (REGULATION C)

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 12 U.S.C. 2803, 2804, 2805, 5512, 5581.

■ 2. In Supplement I to Part 1003, under *Section 1003.2—Definitions, 2(g) Financial Institution* is revised to read as follows:

Supplement I to Part 1003—Official Interpretations

* * * * *

Section 1003.2—Definitions

* * * * *

2(g) Financial Institution

1. *Preceding calendar year and preceding December 31.* The definition of financial institution refers both to the preceding calendar year and the preceding December 31. These terms refer to the calendar year and the December 31 preceding the current calendar year. For example, in 2019, the preceding calendar year is 2018 and the preceding December 31 is December 31, 2018. Accordingly, in 2019, Financial Institution A satisfies the asset-size threshold described in § 1003.2(g)(1)(i) if its assets exceeded the threshold specified in comment 2(g)–2 on December 31, 2018. Likewise, in 2020, Financial Institution A does not meet the loan-volume test described in § 1003.2(g)(1)(v)(A) if it originated fewer than 25 closed-end mortgage loans during either 2018 or 2019.

2. *Adjustment of exemption threshold for banks, savings associations, and credit unions.* For data collection in 2018, the asset-size exemption threshold is $45 million. Banks, savings associations, and credit unions with assets at or below $45 million as of December 31, 2017, are exempt from collecting data for 2018.

3. *Merger or acquisition—coverage of surviving or newly formed institution.* After a merger or acquisition, the surviving or newly formed institution is a financial institution under § 1003.2(g) if it, considering the combined assets, location, and lending activity of the surviving or newly formed institution and the merged or acquired institutions or acquired branches, satisfies the criteria included in § 1003.2(g). For

example, A and B merge. The surviving or newly formed institution meets the loan threshold described in § 1003.2(g)(1)(v)(B) if the surviving or newly formed institution, A, and B originated a combined total of at least 500 open-end lines of credit in each of the two preceding calendar years. Likewise, the surviving or newly formed institution meets the asset-size threshold in § 1003.2(g)(1)(i) if its assets and the combined assets of A and B on December 31 of the preceding calendar year exceeded the threshold described in § 1003.2(g)(1)(i). Comment 2(g)–4 discusses a financial institution's responsibilities during the calendar year of a merger.

4. *Merger or acquisition—coverage for calendar year of merger or acquisition.* The scenarios described below illustrate a financial institution's responsibilities for the calendar year of a merger or acquisition. For purposes of these illustrations, a ''covered institution'' means a financial institution, as defined in § 1003.2(g), that is not exempt from reporting under § 1003.3(a), and ''an institution that is not covered'' means either an institution that is not a financial institution, as defined in § 1003.2(g), or an institution that is exempt from reporting under § 1003.3(a).

i. Two institutions that are not covered merge. The surviving or newly formed institution meets all of the requirements necessary to be a covered institution. No data collection is required for the calendar year of the merger (even though the merger creates an institution that meets all of the requirements necessary to be a covered institution). When a branch office of an institution that is not covered is acquired by another institution that is not covered, and the acquisition results in a covered institution, no data collection is required for the calendar year of the acquisition.

ii. A covered institution and an institution that is not covered merge. The covered institution is the surviving institution, or a new covered institution is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in the offices of the merged institution that was previously covered and is optional for covered loans and applications handled in offices of the merged institution that was previously not covered. When a covered institution acquires a branch office of an institution that is not covered, data collection is optional for covered loans and applications handled by the acquired branch office for the calendar year of the acquisition.

iii. A covered institution and an institution that is not covered merge. The institution that is not covered is the surviving institution, or a new institution that is not covered is formed. For the calendar year of the merger, data collection is required for covered loans and applications handled in offices of the previously covered institution that took place prior to the merger. After the merger date, data collection is optional for covered loans and applications handled in the offices of the institution that was previously covered. When an institution remains not covered after acquiring a branch office of a covered institution, data collection is required for transactions of the acquired branch office that take place prior to the acquisition. Data collection by the acquired branch office is optional for transactions taking place in the remainder of the calendar year after the acquisition.

iv. Two covered institutions merge. The surviving or newly formed institution is a covered institution. Data collection is required for the entire calendar year of the merger. The surviving or newly formed institution files either a consolidated submission or separate submissions for that calendar year. When a covered institution acquires a branch office of a covered institution, data collection is required for the entire calendar year of the merger. Data for the acquired branch office may be submitted by either institution.

5. *Originations.* Whether an institution is a financial institution depends in part on whether the institution originated at least 25 closed-end mortgage loans in each of the two preceding calendar years or at least 500 open-end lines of credit in each of the two preceding calendar years. Comments 4(a)–2 through –4 discuss whether activities with respect to a particular closed-end mortgage loan or open-end line of credit constitute an origination for purposes of § 1003.2(g).

6. *Branches of foreign banks—treated as banks.* A Federal branch or a State-licensed or insured branch of a foreign bank that meets the definition of a ''bank'' under section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)) is a bank for the purposes of § 1003.2(g).

7. *Branches and offices of foreign banks and other entities—treated as nondepository financial institutions.* A Federal agency, State-licensed agency, State-licensed uninsured branch of a foreign bank, commercial lending company owned or controlled by a foreign bank, or entity operating under section 25 or 25A of the Federal Reserve Act, 12 U.S.C. 601 and 611 (Edge Act and agreement corporations) may not meet the definition of ''bank'' under the Federal Deposit Insurance Act and may thereby fail to satisfy the definition of a depository financial institution under § 1003.2(g)(1). An entity is nonetheless a financial institution if it meets the definition of nondepository financial institution under § 1003.2(g)(2).

* * * * *

Dated: December 14, 2017.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–27879 Filed 12–21–17; 4:15 pm]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

Truth in Lending Act (Regulation Z) Adjustment to Asset-Size Exemption Threshold

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau is amending the official commentary that interprets the requirements of the Bureau's Regulation Z (Truth in Lending) to reflect a change in the asset-size threshold for certain creditors to qualify for an exemption to the requirement to establish an escrow account for a higher-priced mortgage loan based on the annual percentage change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) for the 12-month period ending in November. The exemption threshold is adjusted to increase to $2.112 billion from $2.069 billion. The adjustment is based on the 2.1 percent increase in the average of the CPI–W for the 12-month period ending in November 2017. Therefore, creditors with assets of less than $2.112 billion (including assets of certain affiliates) as of December 31, 2017, are exempt, if other requirements of Regulation Z also are met, from establishing escrow accounts for higher-priced mortgage loans in 2018. This asset limit will also apply during a grace period, in certain circumstances, with respect to transactions with applications received before April 1 of 2019. The adjustment to the escrows asset-size exemption threshold will also increase a similar threshold for small-creditor portfolio and balloon-payment qualified mortgages. Balloon-payment qualified mortgages that satisfy all applicable

criteria, including being made by creditors that have (together with certain affiliates) total assets below the threshold, are also excepted from the prohibition on balloon payments for high-cost mortgages.

DATES: This final rule is effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Monique Chenault, Paralegal Specialist, Office of Regulations, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended TILA to add section 129D(a), which contains a general requirement that an escrow account be established by a creditor to pay for property taxes and insurance premiums for certain first-lien higher-priced mortgage loan transactions. TILA section 129D also generally permits an exemption from the higher-priced mortgage loan escrow requirement for a creditor that meets certain requirements, including any asset-size threshold the Bureau may establish.

In the 2013 Escrows Final Rule,[1] the Bureau established such an asset-size threshold of $2 billion, which would adjust automatically each year, based on the year-to-year change in the average of the CPI–W for each 12-month period ending in November, with rounding to the nearest million dollars.[2] In 2015, the Bureau revised the criteria for small creditors, and rural and underserved areas, for purposes of certain special provisions and exemptions from various requirements provided to certain small creditors under the Bureau's mortgage rules.[3] As part of this revision the Bureau made certain changes that affect how the asset-size threshold applies. The Bureau revised § 1026.35(b)(2)(iii)(C) and its accompanying commentary to include in the calculation of the asset-size threshold the assets of the creditor's affiliates that regularly extended covered transactions secured by first liens during the applicable period. The Bureau also added a grace period from calendar year to calendar year to allow an otherwise eligible creditor that exceeded the asset limit in the preceding calendar year (but not in the calendar year before the preceding year) to continue to operate as a small creditor with respect to transactions with applications received before April 1 of the current calendar year.[4] [5] For 2017, the threshold was $2.069 billion.

During the 12-month period ending in November 2017, the average of the CPI–W increased by 2.1 percent. As a result, the exemption threshold is increased to $2.112 billion for 2018. Thus, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 are less than $2.112 billion on December 31, 2017, and it meets the other requirements of § 1026.35(b)(2)(iii), it will be exempt in 2018 from the escrow-accounts requirement for higher-priced mortgage loans and will also be exempt from the escrow-accounts requirement for higher-priced mortgage loans for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019. The adjustment to the escrows asset-size exemption threshold will also increase the threshold for small-creditor portfolio and balloon-payment qualified mortgages under Regulation Z. The requirements for small-creditor portfolio qualified mortgages at § 1026.43(e)(5)(i)(D) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Likewise, the requirements for balloon-payment qualified mortgages at § 1026.43(f)(1)(vi) reference the asset threshold in § 1026.35(b)(2)(iii)(C). Under § 1026.32(d)(1)(ii)(C), balloon-payment qualified mortgages that satisfy all applicable criteria in § 1026.43(f)(1)(i) through (vi) and (f)(2), including being made by creditors that have (together with certain affiliates) total assets below the threshold in § 1026.35(b)(2)(iii)(C), are also excepted from the prohibition on balloon payments for high-cost mortgages.

II. Procedural Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (APA), notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Pursuant to this final rule, comment 35(b)(2)(iii)–1 in Regulation Z is amended to update the exemption threshold. The amendment in this final rule is technical and merely applies the formula previously established in Regulation Z for determining any adjustments to the exemption threshold. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Therefore, the amendment is adopted in final form.

Section 553(d) of the APA generally requires publication of a final rule not less than 30 days before its effective date, except (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). At a minimum, the Bureau believes the amendments fall under the third exception to section 553(d). The Bureau finds that there is good cause to make the amendments effective on January 1, 2018. The amendment in this document is technical and applies the method previously established in the agency's regulations for automatic adjustments to the threshold.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis. 5 U.S.C. 603(a), 604(a).

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320), the agency reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), CFPB will submit a report containing this rule 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 the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 1026

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages,

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[1] 78 FR 4726 (Jan. 22, 2013).

[2] *See* 12 CFR 1026.35(b)(2)(iii)(C).

[3] *See* 80 FR 59944 (Oct. 2, 2015).

[4] *See* 80 FR 59943, 59951 (Oct. 2, 2015).

[5] The Bureau also issued an interim final rule in March 2016 to revise certain provisions in Regulation Z to effectuate the Helping Expand Lending Practices in Rural Communities Act's amendments to TILA (Pub. L. 114–94, section 89003, 129 Stat. 1312, 1800–01 (2015)). The rule broadened the cohort of creditors that may be eligible under TILA for the special provisions allowing origination of balloon-payment qualified mortgages and balloon-payment high-cost mortgages, as well as for the escrow exemption. *See* 81 FR 16074 (Mar. 25, 2016).

National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons set forth above, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. In Supplement I to Part 1026—Official Interpretations, under *Section 1026.35—Requirements for Higher-Priced Mortgage Loans, 35(b)(2) Exemptions, Paragraph 35(b)(2)(iii)* is revised to read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

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35(b)(2) Exemptions.

* * * * *

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under § 1026.35(b)(2)(iii), except as provided in § 1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in § 1026.43(b)(1), secured by a property located in an area that is either ''rural'' or ''underserved,'' as set forth in § 1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in § 1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in § 1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of § 1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to ''another person'' includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of § 1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as ''affiliate'' is defined in § 1026.32(b)(5), are counted toward the threshold in this section. ''Affiliate'' is defined in § 1026.32(b)(5) as ''any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).'' Under the Bank Holding Company Act, a company has control over a bank or another company if it ''directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company''; it ''controls in any manner the election of a majority of the directors

or trustees of the bank or company''; or the Federal Reserve Board ''determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.'' 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of § 1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's ''affiliate'' (as defined by § 1026.32(b)(5)) that regularly extended covered transactions (as defined by § 1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of definition of ''affiliate.''

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of ''regularly extended'' is based on the number of times a person extends consumer credit for purposes of the definition of ''creditor'' in § 1026.2(a)(17). Because covered transactions are ''transactions secured by a dwelling,'' consistent with § 1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with § 1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to § 1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of § 1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an ''affiliate,'' as defined in § 1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, ''as set forth in the Bank Holding Company Act.'' If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of the definition of ''affiliate.''

D. A creditor satisfies the criterion in § 1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015 satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016 and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under § 1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2018, the asset threshold is $2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 has total assets of less than $2,112,000,000 on December 31, 2017, satisfies this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019. For historical purposes:

1. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than $2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as

provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Thus, the exemption applies, provided the other conditions of § 1026.35(b)(2)(iii) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), however, the creditor and its affiliate become ineligible for the exemption in § 1026.35(b)(2)(iii) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in § 1026.35(b)(2)(iii)(D)(*1*) and (*2*), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of § 1026.35(b)(2)(iii), a creditor or its affiliate ''maintains'' an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

* * * * *

Dated: December 14, 2017.

Mick Mulvaney,

Acting Director, Bureau of Consumer Financial Protection.

[FR Doc. 2017–27897 Filed 12–21–17; 4:15 pm]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0750; Product Identifier 2017–NE–24–AD; Amendment 39–19137; AD 2017–26–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) AE 3007A and AE 3007C model turbofan engines. This AD was prompted by an updated analysis that lowered the life limit of fan wheels installed on the affected engines. This AD requires removal of the affected fan wheel at new, lower life limits. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 31, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 31, 2018.

ADDRESSES: For service information identified in this final rule, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–02–05, Indianapolis, IN 46225; phone: 317–230–3774; email: *indy.pubs.services@rolls-royce.com;* internet: *www.rolls-royce.com.* You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0750; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain RRC AE 3007A and AE 3007C model turbofan engines. The NPRM published in the **Federal Register** on September 22, 2017 (82 FR 44357). The NPRM was prompted by an updated stress analysis that showed higher stress than previously calculated in the aft retainer flange scallop of the fan wheel, part number (P/N) 23061670. As a result, RRC reduced the published life of the affected fan wheel. The NPRM proposed to require removal of the affected fan wheel at new, lower life limits. We are issuing this AD to correct the unsafe condition on these products.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. The Air Line Pilots Association supported the NPRM.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed except for minor editorial changes. We have determined that these minor changes:

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

Related Service Information Under 1 CFR Part 51

We reviewed RRC Alert Service Bulletin (ASB) AE 3007A–A–72–424/ASB AE 3007C–A–72–327 (one document), Revision 1, dated April 20, 2017. The ASB provides updated life limits for the affected fan wheels. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 341 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace fan wheel (P/N 23061670) at reduced life	0 work-hours x $85 per hour = $0.	$12,357 (pro-rated cost of part).	$12,357	$4,213,737

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2017–26–06 Roll-Royce Corporation (Type Certificate previously held by Allison Engine Company): Amendment 39–19137; Docket No. FAA–2017–0750; Product Identifier 2017–NE–24–AD.

(a) Effective Date

This AD is effective January 30, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Corporation (RRC) AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1P, AE 3007A1E, AE 3007A3, AE 3007C and 3007C1 turbofan engines with a fan wheel, part number (P/N) 23061670, installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by an updated analysis that lowered the life limit of fan wheels installed on the affected engines. We are issuing this AD to prevent failure of the fan wheel. The unsafe condition, if not corrected, could result in failure of the fan wheel, uncontained release of the fan wheel, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For all AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1P, AE 3007A1E, AE 3007A3, AE 3007C and 3007C1 engines with an installed fan wheel, P/N 23061670, after the effective date of this AD, remove the affected fan wheel before exceeding the new life limits identified in Planning Information, paragraph 1.F., of RRC Alert Service Bulletin (ASB) AE 3007A–A–72–424/ASB AE 3007C–A–72–327 (one document), Revision 1, dated April 20, 2017.

(2) After the effective date of this AD, do not return to service any engine with a fan wheel, P/N 23061670, with a fan wheel life that exceeds the new life limits identified in Planning Information, paragraph 1.C., of RRC ASB AE 3007A–A–72–424/ASB AE 3007C–A–72–327 (one document), Revision 1, dated April 20, 2017.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Chicago ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the Chicago ACO Branch, send it to the attention of the person identified in paragraph (i) of this AD.

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

(i) Related Information

For more information about this AD, contact Kyri Zaroyiannis, Aerospace Engineer, Chicago ACO Branch, FAA, 2300 E. Devon Ave. Des Plaines, IL 60018; phone: 847–294–7836; fax: 847–294–7834; email: *kyri.zaroyiannis@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Rolls-Royce Corporation (RRC) Alert Service Bulletin AE 3007A–A–72–424/ASB AE 3007C–A–72–327 (one document), Revision 1, dated April 20, 2017.

(ii) Reserved.

(3) For RRC service information identified in this AD, contact Rolls-Royce Corporation, 450 South Meridian Street, Mail Code NB–02–05, Indianapolis, IN 46225; phone: 317–230–3774; email: *indy.pubs.services@rolls-royce.com;* internet: *www.rolls-royce.com.*

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

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

Issued in Burlington, Massachusetts, on December 18, 2017.

Robert J. Ganley,

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

[FR Doc. 2017–27778 Filed 12–26–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 734, 738, 740, 746, and 774

[170207157–7157–01]

RIN 0694–AH31

Revisions, Clarifications, and Technical Corrections to the Export Administration Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: In this final rule, the Bureau of Industry and Security corrects certain provisions in the Export Administration Regulations (EAR) to provide accurate references and fix typographical errors, and amend several Export Control Classification Numbers (ECCNs) to enhance consistency with the other ECCNs on the Commerce Control List (CCL). The corrections are editorial in nature and do not affect license requirements.

DATES: This rule is effective December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Ivan Mogensen, Office of Exporter Services, Bureau of Industry and Security, by telephone: (202) 482–2440 or email: *Ivan.Mogensen@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Overview

This final rule updates six parts of the EAR to correct typographical errors, clarify inaccurate or unclear internal references, and correct inconsistencies in certain entries on the Commerce Control List (CCL).

Part 732

Section 732.4(b) discusses steps to be taken when reviewing license exceptions for exports and reexports. In § 732.4(b)(7)(ii), there is a reference to § 740.20(g) listing ECCNs that may be eligible for subsequent export or reexport under license exception STA, following submission of a license application. However, only ECCN 9A610.a is listed in § 732.4(b)(7)(ii), while ECCNs 0A606.a, 8A609.a, 8A620.a, 8A620.b, ''spacecraft'' in ECCN subparagraphs 9A515.a.1, a.2, a.3, a.4, 9A515.g, and 9E515.b, .d, .e, and .f (which also now appear in § 740.20(g)), are inadvertently omitted. This correction adds the omitted items listed in § 740.20(g) to § 732.4(b)(7)(ii). Additionally, because these items include both commodities and technology, the term ''aircraft'' in the reference to 9A610.a is replaced with ''item.''

This rule also clarifies and corrects the *Export Control Decision Tree* diagram in supplement No. 1 to part 732 that was last revised in a final rule published February 6, 2004 (69 FR 5686 (Feb. 6, 2004)). Several of the decision ''blocks'' in the flowchart contain references that are unclear or incorrect. This rule provides clarity by changing references to the general prohibitions to citations of specific sections of the EAR, and correcting improper citations to ensure that the citations contained in all decision blocks coincide with the appropriate sections of the EAR. Specifically, the changes are as follows: In the block which begins ''Is your item classified under an ECCN on the CCL,'' a direct citation to § 736.2(b)(1) through (3) replaces a reference to General Prohibitions 1 through 3, which did not inform the reader where the prohibitions could be found in the EAR; in the block which begins ''Is there an 'X' in the box,'' the EAR citations now directly follow references to the Commerce Country Chart and the CCL, respectively; and, in the block which begins ''Use License Exception,'' the citation to § 740.1, which is an introduction, is replaced with a reference to the whole of part 740. Additionally, several grammatical errors are addressed, and the section symbol (''§ '') is added wherever a section of the EAR is referenced in the decision blocks for clarity. Finally, this final rule changes the supplement's name from ''*Decision Tree*'' to ''*Export Control Decision Tree*'' to match the title of the diagram, and the duplicative parenthetical in the graphic title reading ''(Supp. No. 1 to Part 732)'' is deleted.

Part 734

Section 734.18 was created in the rule *Revisions to Definitions in the Export Administration Regulations* (81 FR 35586 (June 3, 2016)) and discusses activities that are not exports, reexports, or transfers. The note following the end of § 734.18(a)(5)(iv) discusses data in transit via the internet, but the note is incorrectly described as the note to paragraph (a)(4)(iv). This rule changes the note to refer to § 734.18(a)(5)(iv).

Part 738

In § 738.2(d)(1), *Composition of an entry,* there is a description of the meaning attached to each alphanumeric character making up an Export Control Classification Number. This paragraph currently explains that the second ''digit'' in an ECCN indicates the ''Reason for Control.'' However, in paragraph (d)(1)(i) of this section, the paragraph refers to the Reason for Control as the third ''digit.'' This final rule amends § 738.2(d)(1)(i) to replace the word ''digit'' with ''alphanumeric character'' in order to maintain consistency and prevent confusion.

Additionally, in § 738.2, this final rule makes a correction in § 738.2(d)(2)(iv)(C)(*2*). The text of this paragraph uses ECCN 2B992 as an example when providing an overview of how to read an ECCN heading on the Commerce Control List (CCL). However, in the latter part of the section, the text erroneously references ECCN 2B999 instead of 2B992. This rule replaces the reference to ECCN 2B999 with 2B992 in this section to correct the ECCN reference.

Part 740

Section 740.20(g)(1) lists 9x515 and ''600 series'' ECCNs that are eligible for license exception Strategic Trade Authorization. This includes ECCNs 9A515.a.1, .a.2, .a.3, .a.4, and .g, 9A610.a, and technology ECCNs 9E515.b, .d, .e, and .f. In the final rule *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control under the United States Munitions List (USML)* (82 FR 2875 (Jan. 10, 2017)), the phrase ''that provide space-based logistics, assembly or servicing of any spacecraft (*e.g.,* refueling)'' following the list of ECCN

9A515 items paragraphs was intended to be removed since it is only applicable to 9A515.a.4 and not to the other ECCNs. Since the phrase was not removed, this rule removes the phrase to prevent confusion by users.

Part 746

This rule amends § 746.9(a) by removing an outdated reference to § 734.2(b) for the definitions of ''deemed export'' and ''deemed reexport,'' as that section is currently reserved, and replacing it with references to §§ 734.13(b) and 734.14(b), because the relevant definitions for deemed ''export'' and deemed ''reexport'' has been found in those two sections of the EAR since the publication of the final rule *Revisions to Definitions in the Export Administration Regulations* (81 FR 35586). Additionally, consistent with the guidance in § 774.1(d), the double quotes around deemed export and deemed reexport in § 746.9 are removed as these terms do not appear in § 772.1.

Part 774

This rule makes corrections to six ECCNs in supplement No. 1 to part 774, ''Commerce Control List,'' by correcting misspellings and creating conforming changes. The corrections are as follows:

ECCNs 0A606, 8A609, and 9A610: This final rule amends these ECCNs to correct the title of § 740.20(g) that is referenced in paragraph (1) in the Special Conditions for STA section of the ECCN entries. Currently, these sections refer to § 740.20(g) as *License Exception STA eligibility requests for ''600 series'' end items,* when the current title for this section is *License Exception STA eligibility requests for 9x515 and ''600 series'' items.* The title of § 740.20(g) was changed in the rule *Revisions to the Export Administration Regulations (EAR): Control of Spacecraft Systems and Related Items the President Determines No Longer Warrant Control Under the United States Munitions List (USML);* (79 FR 27417 (May 13, 2014)), but the change was not made to the corresponding ECCNs. This rule amends the title reference in these ECCNs to match the current title of § 740.20(g).

ECCNs 0D606.a and 0E606.a: This final rule amends ECCN subparagraphs 0D606.a and 0E606.a to include references to ECCNs 0B606 and 0C606. The headings of both 0D606 and 0E606 refer to 0B606 and 0C606 but these references do not appear in Items paragraph .a of the List of Items Controlled section. This inconsistency has generated confusion as to whether 0D606.a software ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of the items controlled under ECCNs 0B606 and 0C606 or 0E606.a technology required for the ''development,'' ''production,'' operation or maintenance of the items controlled under ECCNs 0B606 and 0C606 is controlled or not. This edit removes this confusion by clarifying that such software is controlled under ECCN 0D606.a and such technology is controlled under ECCN 0E606.a.

ECCN 2B352: This final rule corrects ECCN 2B352 by revising, in the List of Items Controlled section, Items paragraphs g.1, i.1, i.2 and i.3 and the Technical Notes at the end of the Items paragraphs. The corrections are as follows: The word ''dependant'' is replaced with the American spelling of the word ''dependent'' in Items paragraph g.1; double quotes are added around the term ''aircraft'' in Items paragraphs i.1 and i.2, and in Technical Notes 1 and 3 because ''aircraft'' is a defined term in the EAR; double quotes are added around the term ''laser'' in Technical Notes 3.a and .b for the same reason; double quotes are replaced with single quotes around the term 'VMD' in Items paragraphs i.1 and i.2 and the term is clarified in Technical Note 3; single quotes are added to the term 'aerosol generating units' in Items paragraphs i.2 and i.3 and Technical Note 1.

ECCN 8A609: This final rule revises Related Control paragraph (3) under the List of Items Controlled section in ECCN 8A609 to add a reference to Category VI of the International Traffic in Arms Regulations (ITAR). This is done to indicate that certain diesel engines and electric motors for both EAR surface vessels of war and ITAR surface vessels of war are controlled under ECCN 8A992.g. Additionally, double quotes are added around the term ''subject to the EAR'' because it is a defined term in the EAR.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 15, 2017, 82 FR 39005 (August 16, 2017) has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule does not impose any regulatory burden on the public and is consistent with the goals of Executive Order 13563. This rule has been designated not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. This final rule does not contain information collections subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The Department of Commerce finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act otherwise requiring prior notice and the opportunity for public comment because they are unnecessary. The revisions made by this rule are administrative in nature and do not affect the privileges and obligations of the public. Additionally, it is important that the edits and clarifications are added as soon as possible to prevent improper interpretation of the EAR. The Department also finds that there is good cause under 5 U.S.C. 553(b)(A) to waive the provisions of the Administrative Procedure Act requiring notice and comment because these changes are limited to providing guidance on existing interpretations of current EAR provisions. Because these revisions are not substantive changes to the EAR, the

30-day delay in effectiveness otherwise required by 5 U.S.C. 553(d) is not applicable. No other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable because no general notice of proposed rulemaking was required for this rule by 5 U.S.C. 553, or by any other law. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 732

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology

15 CFR Part 738

Exports

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 746 and 774

Exports, Reporting and recordkeeping requirements.

Accordingly, parts 732, 734, 738, 740, 746, and 774 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for 15 CFR part 732 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 2. Section 732.4 is amended by revising paragraph (b)(7)(ii) to read as follows:

§ 732.4 Steps regarding License Exceptions.

* * * * *

(b) * * *

(7) * * *

(ii) If you are going to file a license application with BIS for the export, reexport, or in-country transfer for aircraft or military vessels controlled under ECCNs 0A606.a, 8A609.a, 8A620.a, 8A620.b, certain ‘‘spacecraft’’ controlled under ECCN subparagraphs 9A515.a.1, a.2, a.3, a.4 or 9A515.g, ECCN 9A610.a, or technology under ECCNs 9E515.b, .d, .e, or .f, § 740.20(g) permits you to request in the application that subsequent exports of the type of aircraft, spacecraft, military vessels, or technology at issue be eligible for export under License Exception STA. The types of ‘‘items’’ controlled under ECCNs 0A606.a, 8A609.a, 8A620.a, 8A620.b, certain spacecraft controlled under ECCN subparagraphs 9A515.a.1, a.2, a.3, a.4 or 9A515.g, ECCN 9A610.a, and technology ECCNs 9E515.b, .d, .e, or .f, that have been determined to be eligible for License Exception STA pursuant to § 740.20(g) are identified in the License Exceptions paragraphs of ECCNs 0A606, 8A609, 8A620, 9A610, 9A515, and 9E515. Supplement No. 2 to part 748, paragraph (w) (License Exception STA eligibility requests), contains the instructions for such applications.

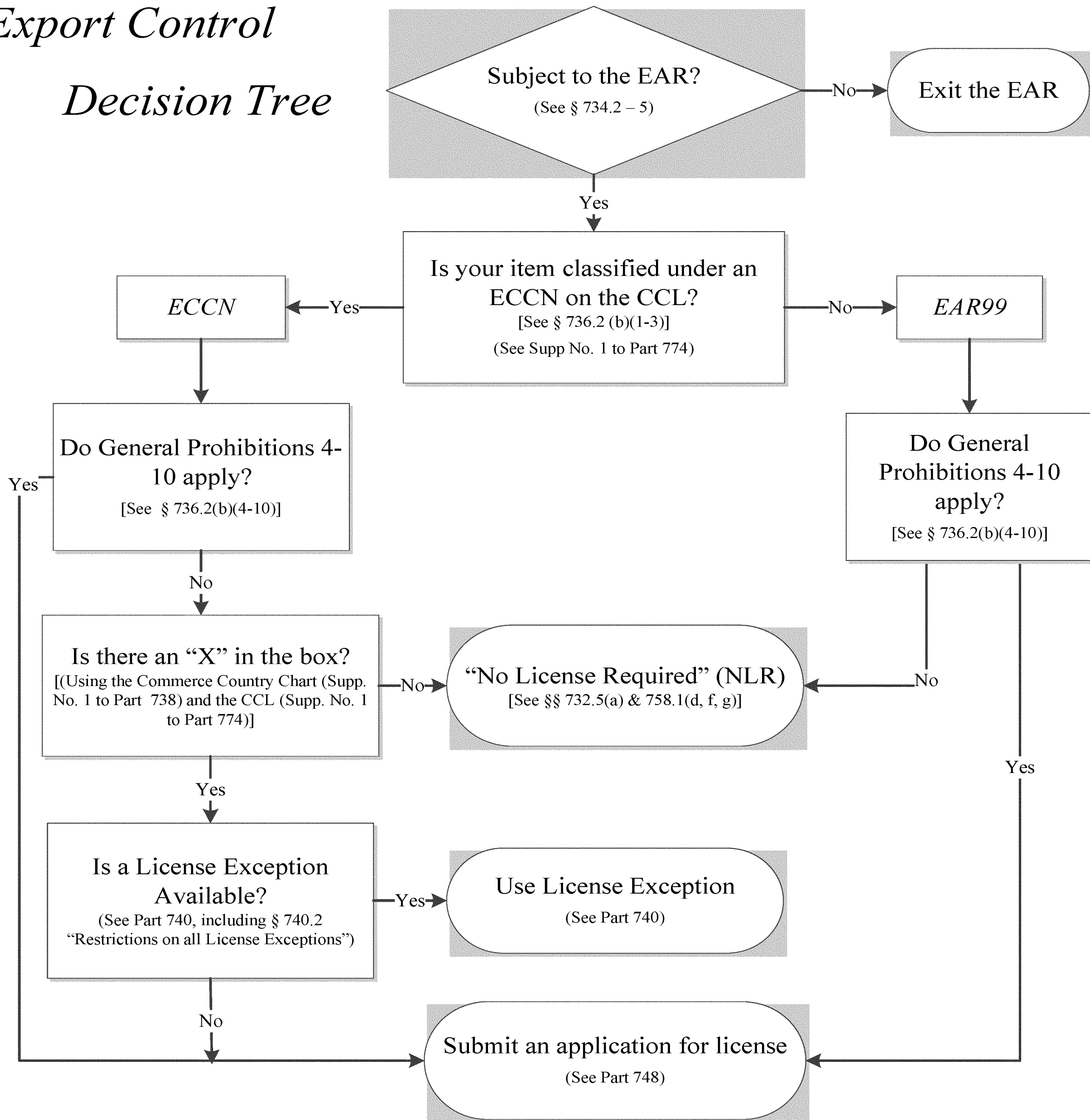
Note 1 to paragraph (b)(7)(ii): If you intend to use License Exception STA, return to paragraphs (a) and then (b) of this section to review the Steps regarding the use of license exceptions.

* * * * *

■ 3. Supplement No. 1 to part 732 is revised to read as follows:

BILLING CODE 3510–33–P

SUPPLEMENT NO. 1 TO PART 732 – EXPORT CONTROL DECISION TREE



BILLING CODE 3510–33–C

PART 734—[AMENDED]

■ 4. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 8, 2016, 81 FR 79379 (November 10, 2016); Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

§ 734.18 [Amended]

■ 5. Section 734.18 is amended by redesignating the note to paragraph (a)(4)(iv) as note 1 to paragraph (a)(5)(iv).

PART 738—[AMENDED]

■ 6. The authority citation for 15 CFR part 738 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 7. Section 738.2 is amended by revising paragraphs (d)(1)(i) and (d)(2)(iv)(C)(*2*) to read as follows:

§ 738.2 Commerce Control List (CCL) structure.

* * * * *

(d) * * *

(1) * * *

(i) Since Reasons for Control are not mutually exclusive, numbers are assigned in order of precedence. As an

example, if an item is controlled for both National Security and Missile Technology reasons, the entry's third alphanumeric character will be a ''0''. If the item is controlled only for Missile Technology the third alphanumeric character will be ''1''.

(2) * * *

(iv) * * *

(C) * * *

(*2*) ''(See List of Items Controlled)'' is in the middle of the ECCN heading. If the phrase ''(see List of Items Controlled)'' appears in the middle of the ECCN heading, then all portions of the heading that follow the phrase ''(see List of Items Controlled)'' will list items controlled in addition to the list in the ''items'' paragraph. An example of such a heading is ECCN 2B992 Non-''numerically controlled'' machine tools for generating optical quality surfaces, (see List of Items Controlled) and ''specially designed'' ''parts'' and ''components'' therefor. Under the ECCN 2B992 example, the ''items'' paragraph must be reviewed to determine whether your item is contained within the first part of the heading (''non-'numerically controlled' machine tools for generating optical quality surfaces'') and classified under 2B992. The second part of the ECCN 2B992 heading (''and 'specially designed' 'parts' and 'components' therefor'') contains the exclusive list described in the heading. ECCNs 1A006, 3B992, 4A001, 6A006 and 7A001 are other examples where the phrase ''(see List of Items Controlled)'' appears in the middle of the ECCN heading.

* * * * *

PART 740—[AMENDED]

■ 8. The authority citation for 15 CFR part 740 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 9. Section 740.20 is amended by revising paragraph (g)(1) to read as follows:

§ 740.20 License Exception Strategic Trade Authorization (STA).

* * * * *

(g) * * *

(1) *Applicability.* Any person may request License Exception STA eligibility for end items described in ECCN 0A606.a, ECCN 8A609.a, ECCNs 8A620.a or .b, ''spacecraft'' in ECCNs 9A515.a.1, .a.2, .a.3, .a.4, or .g, 9A610.a, or technology ECCNs 9E515.b, .d, .e, or .f.

* * * * *

PART 746—[AMENDED]

■ 10. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017); Notice of May 9, 2017, 82 FR 21909 (May 10, 2017).

■ 9. Section 746.9 is amended by revising paragraph (a) to read as follows:

§ 746.9 Syria.

* * * * *

(a) *License requirements.* A license is required for the export or reexport to Syria of all items subject to the EAR, except food and medicine classified as EAR99 (food and medicine are defined in part 772 of the EAR). A license is required for the deemed export and deemed reexport, as described in §§ 734.13(b) and 734.14(b) of the EAR, respectively, of any technology or source code on the Commerce Control List (CCL) to a Syrian foreign national. Deemed exports and deemed reexports to Syrian foreign nationals involving technology or source code subject to the EAR but not listed on the CCL do not require a license.

* * * * *

PART 774—[AMENDED]

■ 11. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2017, 82 FR 39005 (August 16, 2017).

■ 12. In supplement No. 1 to part 774, Category 0, ECCN 0A606 is revised to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

0A606 Ground vehicles and related commodities, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except 0A606.b and .y.	NS Column 1
NS applies to 0A606.b.	NS Column 2
RS applies to entire entry, except 0A606.b and .y.	RS Column 1
RS applies to 0A606.b.	RS Column 2
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 0A606.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 0A606.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 0A606.

List of Items Controlled

Related Controls: (1) The ground vehicles, other articles, technical data (including software) and services described in 22 CFR part 121, Category VII are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a de minimis amount of U.S.-origin ''600 series'' controlled content.
Related Definitions: N/A
Items: a. Ground vehicles, whether manned or unmanned, ''specially designed'' for a military use and not enumerated or otherwise described in USML Category VII.

Note 1 to paragraph .a: For purposes of paragraph .a, ''ground vehicles'' include (i) tanks and armored vehicles manufactured prior to 1956 that have not been modified since 1955 and that do not contain a functional weapon or a weapon capable of becoming functional through repair; (ii) military railway trains except those that are armed or are ''specially designed'' to launch missiles; (iii) unarmored military recovery and other support vehicles; (iv) unarmored, unarmed vehicles with mounts or hard points for firearms of .50 caliber or less; and (v) trailers ''specially designed'' for use with other ground vehicles enumerated in USML Category VII or ECCN 0A606.a, and not

separately enumerated or otherwise described in USML Category VII. For purposes of this note, the term ''modified'' does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint or repositioning of bolt holes) or addition of ''parts'' or ''components'' available prior to 1956.

Note 2 to paragraph .a: A ground vehicle's being ''specially designed'' for military use for purposes of determining controls under paragraph .a. entails a structural, electrical or mechanical feature involving one or more ''components'' that are ''specially designed'' for military use. Such ''components'' include:

a. Pneumatic tire casings of a kind ''specially designed'' to be bullet-proof;

b. Armored protection of vital ''parts'' (e.g., fuel tanks or vehicle cabs);

c. Special reinforcements or mountings for weapons;

d. Black-out lighting.

b. Other ground vehicles, ''parts'' and ''components,'' as follows:

b.1. Unarmed vehicles that are derived from civilian vehicles and that have all of the following:

b.1.a. Manufactured or fitted with materials or ''components'' other than reactive or electromagnetic armor to provide ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better;

b.1.b. A transmission to provide drive to both front and rear wheels simultaneously, including those vehicles having additional wheels for load bearing purposes whether driven or not;

b.1.c. Gross vehicle weight rating (GVWR) greater than 4,500 kg; and

b.1.d. Designed or modified for off-road use.

b.2. ''Parts'' and ''components'' having all of the following:

b.2.a. ''Specially designed'' for vehicles specified in paragraph .b.1 of this entry; and

b.2.b. Providing ballistic protection to level III (National Institute of Justice standard 0108.01, September 1985) or better.

Note 1 to paragraph b: Ground vehicles otherwise controlled by 0A606.b.1 that contain reactive or electromagnetic armor are subject to the controls of USML Category VII.

Note 2 to paragraph b: ECCN 0A606.b.1 does not control civilian vehicles ''specially designed'' for transporting money or valuables.

Note 3 to paragraph b: ''Unarmed'' means not having installed weapons, installed mountings for weapons, or special reinforcements for mounts for weapons.

c. Air-cooled diesel engines and engine blocks for armored vehicles that weigh more than 40 tons.

d. Fully automatic continuously variable transmissions for tracked combat vehicles.

e. Deep water fording kits ''specially designed'' for ground vehicles controlled by ECCN 0A606.a or USML Category VII.

f. Self-launching bridge ''components'' not enumerated in USML Category VII(g) ''specially designed'' for deployment by ground vehicles enumerated in USML Category VII or this ECCN.

g. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 0A606 (other than 0A606.b or 0A606.y) or a defense article enumerated in USML Category VII and not elsewhere specified on the USML or in 0A606.y.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacture where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 0A606.x are controlled by ECCN 0A606.x.

Note 2: ''Parts,'' ''components,'' ''accessories'' and ''attachments'' enumerated in USML paragraph VII(g) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' described in ECCN 0A606.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity enumerated or otherwise described in this ECCN (other than ECCN 0A606.b) or for a defense article in USML Category VII and not elsewhere specified on the USML or the CCL, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Brake discs, rotors, drums, calipers, cylinders, pads, shoes, lines, hoses, vacuum boosters, and parts therefor;

y.2. Alternators and generators;

y.3. Axles;

y.4. Batteries;

y.5. Bearings (*e.g.,* ball, roller, wheel);

y.6. Cables, cable assembles, and connectors;

y.7. Cooling system hoses;

y.8. Hydraulic, fuel, oil, and air filters, other than those controlled by ECCN 1A004;

y.9. Gaskets and o-rings;

y.10. Hydraulic system hoses, fittings, couplings, adapters, and valves;

y.11. Latches and hinges;

y.12. Lighting systems, fuses, and ''components;''

y.13. Pneumatic hoses, fittings, adapters, couplings, and valves;

y.14. Seats, seat assemblies, seat supports, and harnesses;

y.15. Tires, except run flat; and

y.16. Windows, except those for armored vehicles.

■ 13. In supplement No. 1 to part 774, Category 0, ECCN 0D606 is revised to read as follows:

0D606 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of ground vehicles and related commodities controlled by 0A606, 0B606, or 0C606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any ''software'' in 0D614.

List of Items Controlled

Related Controls: (1) ''Software'' directly related to articles enumerated in USML Category IX is subject to the control of USML paragraph IX(e). (2) See ECCN 0A919 for foreign made ''military commodities'' that incorporate more than a de minimis amount of US-origin ''600 series'' items.
Related Definitions: N/A
Items:

a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCNs 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. [RESERVED]

■ 14. In supplement No. 1 to part 774, Category 0, ECCN 0E606 is revised to read as follows:

0E606 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of ground vehicles and related commodities in 0A606, 0B606, 0C606, or software in 0D606 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry.	NS Column 1
RS applies to entire entry.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any technology in 0E614.

List of Items Controlled

Related Controls: ''Technical data'' directly related to articles enumerated in USML Category IX is subject to the control of USML paragraph IX(e).
Related Definitions: N/A
Items:

a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of commodities enumerated or otherwise described in ECCN 0A606 (except for ECCNs 0A606.b or 0A606.y), 0B606, or 0C606.

b. [RESERVED]

■ 15. In supplement No. 1 to part 774, Category 2, ECCN 2B352 is revised to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

License Requirements

Reason for Control: CB, AT

Control(s)	Country Chart (See Supp. No. 1 to part 738).
CB applies to entire entry.	CB Column 2
AT applies to entire entry.	AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: See ECCNs 1A004 and 1A995 for protective equipment that is not covered by this entry. Also see ECCN 9A120 for controls on certain ''UAV'' systems designed or modified to dispense an aerosol and capable of carrying elements of a payload in the form of a particulate or liquid, other than fuel ''parts'' or ''components'' of such vehicles, of a volume greater than 20 liters.
Related Definitions: (1) ''Lighter than air vehicles''—balloons and airships that rely on hot air or on lighter-than-air gases, such as helium or hydrogen, for their lift. (2) ''UAVs''—Unmanned Aerial Vehicles. (3) ''VMD''—Volume Median Diameter.
Items:

a. Containment facilities and related equipment, as follows:

a.1. Complete containment facilities at P3 or P4 containment level.

Technical Note: P3 or P4 (BL3, BL4, L3, L4) containment levels are as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004).

a.2. Equipment designed for fixed installation in containment facilities specified in paragraph a.1 of this ECCN, as follows:

a.2.a. Double-door pass-through decontamination autoclaves;

a.2.b. Breathing air suit decontamination showers;

a.2.c. Mechanical-seal or inflatable-seal walkthrough doors.

b. Fermenters and components as follows:

b.1. Fermenters capable of cultivation of micro-organisms or of live cells for the production of viruses or toxins, without the propagation of aerosols, having a capacity of 20 liters or greater.

b.2. Components designed for such fermenters, as follows:

b.2.a. Cultivation chambers designed to be sterilized or disinfected in situ;

b.2.b. Cultivation chamber holding devices; *or*

b.2.c. Process control units capable of simultaneously monitoring and controlling two or more fermentation system parameters (*e.g.,* temperature, pH, nutrients, agitation, dissolved oxygen, air flow, foam control).

Technical Note: Fermenters include bioreactors (including single-use (disposable) bioreactors), chemostats and continuous-flow systems.

c. Centrifugal separators capable of the continuous separation of pathogenic microorganisms, without the propagation of aerosols, and having all of the following characteristics:

c.1. One or more sealing joints within the steam containment area;

c.2. A flow rate greater than 100 liters per hour;

c.3. ''Parts'' or ''components'' of polished stainless steel or titanium; and

c.4. Capable of in-situ steam sterilization in a closed state.

Technical Note: Centrifugal separators include decanters.

d. Cross (tangential) flow filtration equipment and ''accessories,'' as follows:

d.1. Cross (tangential) flow filtration equipment capable of separation of microorganisms, viruses, toxins or cell cultures having all of the following characteristics:

d.1.a. A total filtration area equal to or greater than 1 square meter (1 m2); and

d.1.b. Having any of the following characteristics:

d.1.b.1. Capable of being sterilized or disinfected in-situ; or

d.1.b.2. Using disposable or single-use filtration ''parts'' or ''components''.

N.B.: 2B352.d.1 does not control reverse osmosis and hemodialysis equipment, as specified by the manufacturer.

d.2. Cross (tangential) flow filtration ''parts'' or ''components'' (*e.g.,* modules, elements, cassettes, cartridges, units or plates) with filtration area equal to or greater than 0.2 square meters (0.2 m2) for each component and designed for use in cross (tangential) flow filtration equipment controlled by 2B352.d.1.

TECHNICAL NOTE: In this ECCN, ''sterilized'' denotes the elimination of all viable microbes from the equipment through the use of either physical (e.g., steam) or chemical agents. ''Disinfected'' denotes the destruction of potential microbial infectivity in the equipment through the use of chemical agents with a germicidal effect. ''Disinfection'' and ''sterilization'' are distinct from ''sanitization'', the latter referring to cleaning procedures designed to lower the microbial content of equipment without necessarily achieving elimination of all microbial infectivity or viability.

e. Steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours).

f. Spray-drying equipment capable of drying toxins or pathogenic microorganisms having all of the following characteristics:

f.1. A water evaporation capacity of $\geq$ 0.4 kg/h and $\leq$ 400 kg/h;

f.2. The ability to generate a typical mean product particle size of $\leq$ 10 micrometers with existing fittings or by minimal modification of the spray-dryer with atomization nozzles enabling generation of the required particle size; *and*

f.3. Capable of being sterilized or disinfected in situ.

g. Protective and containment equipment, as follows:

g.1. Protective full or half suits, or hoods dependent upon a tethered external air supply and operating under positive pressure;

Technical Note: This entry does not control suits designed to be worn with self-contained breathing apparatus.

g.2. Biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation:

g.2.a. Fully enclosed workspace where the operator is separated from the work by a physical barrier;

g.2.b. Able to operate at negative pressure;

g.2.c. Means to safely manipulate items in the workspace; and

g.2.d. Supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

Note 1 to 2B352.g.2: 2B352.g.2 controls class III biosafety cabinets, as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance.

Note 2 to 2B352.g.2: 2B352.g.2 does not control isolators ''specially designed'' for barrier nursing or transportation of infected patients.

h. Aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins, as follows:

h.1. Whole-body exposure chambers having a capacity of 1 cubic meter or greater.

h.2. Nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or two or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

i. Spraying or fogging systems and ''parts'' and ''components'' therefor, as follows:

i.1. Complete spraying or fogging systems, ''specially designed'' or modified for fitting to ''aircraft,'' ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet 'VMD' of less than 50 microns at a flow rate of greater than 2 liters per minute;

i.2. Spray booms or arrays of 'aerosol generating units', ''specially designed'' or

modified for fitting to ''aircraft,'' ''lighter than air vehicles,'' or ''UAVs,'' capable of delivering, from a liquid suspension, an initial droplet 'VMD' of less than 50 microns at a flow rate of greater than 2 liters per minute;

i.3. 'Aerosol generating units' ''specially designed'' for fitting to the systems specified in paragraphs i.1 or i.2 of this ECCN.

Technical Notes:

1. 'Aerosol generating units' are devices ''specially designed'' or modified for fitting to ''aircraft'' and include nozzles, rotary drum atomizers and similar devices.

2. This ECCN does not control spraying or fogging systems, ''parts'' and ''components,'' as specified in 2B352.i, that are demonstrated not to be capable of delivering biological agents in the form of infectious aerosols.

3. Volume Median Diameter 'VMD' for droplets produced by spray equipment or nozzles ''specially designed'' for use on ''aircraft'' or ''UAVs'' should be measured using either of the following methods (pending the adoption of internationally accepted standards):

a. Doppler ''laser'' method,

b. Forward ''laser'' diffraction method.

■ 16. In supplement No. 1 to part 774, Category 8, ECCN 8A609 is revised to read as follows:

8A609 Surface vessels of war and related commodities (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except 8A609.y.	NS Column 1
RS applies to entire entry, except 8A609.y.	RS Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry, except 8A609.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 8A609.a, unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items).

List of Items Controlled

Related Controls: (1) Surface vessels of war and special naval equipment, and technical data (including software), and services directly related thereto, described in 22 CFR part 121, Category VI, Surface Vessels of War and Special Naval Equipment, are subject to the jurisdiction of the International Traffic in Arms Regulations. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a de minimis amount of U.S.-origin ''600 series'' controlled content. (3) For controls on diesel engines and electric motors that are ''subject to the EAR'' for surface vessels of war ''subject to the EAR'' or ''subject to the ITAR,'' see ECCN 8A992.g. For diesel engines and electric motors for surface vessels of war ''subject to the ITAR,'' see 22 CFR part 121, Category VI(c) for parts, components, accessories, and attachments, ''specially designed'' for developmental vessels funded by the Department of Defense via contract or other funding authorization. (4) For controls on military gas turbine engines and related items for vessels of war, see ECCN 9A619.
Related Definitions: N/A
Items:

a. Surface vessels of war ''specially designed'' for a military use and not enumerated or otherwise described in the USML.

Note 1: 8A609.a includes: (i) Underway replenishment ships; (ii) surface vessel and submarine tender and repair ships, except vessels that are ''specially designed'' to support naval nuclear propulsion plants; (iii) non-submersible submarine rescue ships; (iv) other auxiliaries (e.g., AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, and AVT); (v) amphibious warfare craft, except those that are armed; and (vi) unarmored and unarmed coastal, patrol, roadstead, and Coast Guard and other patrol craft with mounts or hard points for firearms of .50 caliber or less.

Note 2: For purposes of paragraph .a, surface vessels of war includes vessels ''specially designed'' for military use that are not identified in paragraph (a) of ITAR § 121.15, including any demilitarized vessels, regardless of origin or designation, manufactured prior to 1950 and that have not been modified since 1949. For purposes of this note, the term modified does not include incorporation of safety features required by law, cosmetic changes (e.g., different paint), or the addition of ''parts'' or ''components'' available prior to 1950.

b. Non-magnetic diesel engines with a power output of 50 hp or more and either of the following:

b.1. Non-magnetic content exceeding 25% of total weight; or

b.2. Non-magnetic parts other than crankcase, block, head, pistons, covers, end plates, valve facings, gaskets, and fuel, lubrication and other supply lines.

c. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 8A609 (except for 8A609.y) or a defense article enumerated or otherwise described in USML Category VI and not specified elsewhere on the USML, in 8A609.y or 3A611.y.

Note 1: Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as commodities controlled by ECCN 8A609.x are controlled by ECCN 8A609.x.

Note 2: ''Parts,'' ''components,'' ''accessories'' and ''attachments'' specified in USML subcategory VI(f) are subject to the controls of that paragraph. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' specified in ECCN 8A609.y are subject to the controls of that paragraph.

y. Specific ''parts,'' ''components,'' ''accessories'' and ''attachments'' ''specially designed'' for a commodity subject to control in this ECCN or for a defense article in USML Category VI and not elsewhere specified in the USML, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Public address (PA) systems;

y.2. Filters and filter assemblies, hoses, lines, fittings, couplings, and brackets for pneumatic, hydraulic, oil and fuel systems;

y.3. Galleys;

y.4. Lavatories;

y.5. Magnetic compass, magnetic azimuth detector;

y.6. Medical facilities;

y.7. Potable water tanks, filters, valves, hoses, lines, fittings, couplings, and brackets;

y.8. Panel knobs, indicators, switches, buttons, and dials whether unfiltered or filtered for use with night vision imaging systems;

y.9. Emergency lighting;

y.10. Gauges and indicators;

y.11. Audio selector panels.

■ 17. In supplement No. 1 to part 774, Category 9, ECCN 9A610 is revised to read as follows.

9A610 Military aircraft and related commodities, other than those enumerated in 9A991.a (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, MT, AT, UN

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	NS Column 1
RS applies to entire entry except: 9A610.b; parts and components controlled in 9A610.x if being exported or reexported for use in an aircraft controlled in 9A610.b; and 9A610.y.	RS Column 1

Control(s)	Country Chart (See Supp. No. 1 to part 738)
MT applies to 9A610.t, .u, .v, and .w.	MT Column 1
AT applies to entire entry.	AT Column 1
UN applies to entire entry except 9A610.y.	See § 746.1(b) for UN controls

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions For STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1) of the EAR) may not be used for any item in 9A610.a (*i.e.,* ''end item'' military aircraft), unless determined by BIS to be eligible for License Exception STA in accordance with § 740.20(g) (License Exception STA eligibility requests for 9x515 and ''600 series'' items). (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 9A610.

List of Items Controlled

Related Controls: (1) Military aircraft and related articles that are enumerated in USML Category VIII, and technical data (including software) directly related thereto, are subject to the ITAR. (2) See ECCN 0A919 for controls on foreign-made ''military commodities'' that incorporate more than a de minimis amount of U.S.-origin ''600 series'' controlled content. (3) See USML Category XIX and ECCN 9A619 for controls on military aircraft gas turbine engines and related items.
Related Definitions: In paragraph .y of this entry, the term 'fluid' includes liquids and gases.
Items:

a. 'Military Aircraft' ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a).

Note 1: For purposes of paragraph .a the term 'military aircraft' means the LM–100J aircraft and any aircraft ''specially designed'' for a military use that are not enumerated in USML paragraph VIII(a). The term includes: Trainer aircraft; cargo aircraft; utility fixed wing aircraft; military helicopters; observation aircraft; military non-expansive balloons and other lighter than air aircraft; and unarmed military aircraft, regardless of origin or designation. Aircraft with modifications made to incorporate safety of flight features or other FAA or NTSB modifications such as transponders and air data recorders are ''unmodified'' for the purposes of this paragraph .a.

Note 2: *9A610.a does not control 'military aircraft' that:*

a. Were first manufactured before 1946;

b. Do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and

c. Do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation.

b. L–100 aircraft manufactured prior to 2013.

c.–d. [Reserved]

e. Mobile aircraft arresting and engagement runway systems for aircraft controlled by either USML Category VIII(a) or ECCN 9A610.a.

f. Pressure refueling equipment and equipment that facilitates operations in confined areas, ''specially designed'' for aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

g. Aircrew life support equipment, aircrew safety equipment and other devices for emergency escape from aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a.

h. Parachutes, paragliders, complete parachute canopies, harnesses, platforms, electronic release mechanisms, ''specially designed'' for use with aircraft controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and ''equipment'' ''specially designed'' for military high altitude parachutists, such as suits, special helmets, breathing systems, and navigation equipment.

i. Controlled opening equipment or automatic piloting systems, designed for parachuted loads.

j. Ground effect machines (GEMS), including surface effect machines and air cushion vehicles, ''specially designed'' for use by a military.

k. through s. [Reserved]

t. Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a range equal to or greater than 300 km.

Note to paragraph .t: Composite structures, laminates, and manufactures thereof ''specially designed'' for unmanned aerial vehicles controlled under USML Category VIII(a) with a maximum range less than 300 km are controlled in paragraph .x of this entry.

u. Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a, and capable of a range equal to or greater than 300 km.

Note to paragraph .u: Apparatus and devices ''specially designed'' for the handling, control, activation and non-ship-based launching of UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a with a maximum range less than 300 km are controlled in paragraph .x of this entry.

v. Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .v: Radar altimeters designed or modified for use in UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a. that are not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

w. Pneumatic hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., and capable of delivering at least 500 kilograms payload to a range of at least 300 km.

Note to paragraph .w: Pneumatic, hydraulic, mechanical, electro-optical, or electromechanical flight control systems (including fly-by-wire and fly-by-light systems) and attitude control equipment designed or modified for UAVs or drones controlled by either USML paragraph VIII(a) or ECCN 9A610.a., not capable of delivering at least 500 kilograms payload to a range of at least 300 km are controlled in paragraph .x of this entry.

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity enumerated or otherwise described in ECCN 9A610 (except for 9A610.y) or a defense article enumerated or otherwise described in USML Category VIII and not elsewhere specified on the USML or in 9A610.y, 9A619.y, or 3A611.y.

y. Specific ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control in this entry, ECCN 9A619, or for a defense article in USML Categories VIII or XIX and not elsewhere specified in the USML or the CCL, and other aircraft commodities ''specially designed'' for a military use, as follows, and ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' therefor:

y.1. Aircraft tires;

y.2. Analog gauges and indicators;

y.3. Audio selector panels;

y.4. Check valves for hydraulic and pneumatic systems;

y.5. Crew rest equipment;

y.6. Ejection seat mounted survival aids;

y.7. Energy dissipating pads for cargo (for pads made from paper or cardboard);

y.8. Fluid filters and filter assemblies;

y.9. Galleys;

y.10. Fluid hoses, straight and unbent lines (for a commodity subject to control in this entry or defense article in USML Category VIII), and fittings, couplings, clamps (for a commodity subject to control in this entry or defense article in USML Category VIII) and brackets therefor;

y.11. Lavatories;

y.12. Life rafts;

y.13. Magnetic compass, magnetic azimuth detector;

y.14. Medical litter provisions;

y.15. Cockpit or cabin mirrors;

y.16. Passenger seats including palletized seats;

y.17. Potable water storage systems;

y.18. Public address (PA) systems;

y.19. Steel brake wear pads (does not include sintered mix or carbon/carbon materials);

y.20. Underwater locator beacons;

y.21. Urine collection bags/pads/cups/pumps;

y.22. Windshield washer and wiper systems;

y.23. Filtered and unfiltered panel knobs, indicators, switches, buttons, and dials;

y.24. Lead-acid and Nickel-Cadmium batteries;

y.25. Propellers, propeller systems, and propeller blades used with reciprocating engines;

y.26. Fire extinguishers;

y.27. Flame and smoke/CO2 detectors;

y.28. Map cases;

y.29. 'Military Aircraft' that were first manufactured from 1946 to 1955 that do not incorporate defense articles enumerated or otherwise described on the U.S. Munitions List, unless the items are required to meet safety or airworthiness standards of a Wassenaar Arrangement Participating State; and do not incorporate weapons enumerated or otherwise described on the U.S. Munitions List, unless inoperable and incapable of being returned to operation;

y.30. ''Parts,'' ''components,'' ''accessories,'' and ''attachments,'' other than electronic items or navigation equipment, for use in or with a commodity controlled by ECCN 9A610.h;

y.31. Identification plates and nameplates; and

y.32. Fluid manifolds.

Dated: December 18, 2017.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2017–27616 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA–2017–N–6593]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Reagents for Molecular Diagnostic Instrument Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the reagents for molecular diagnostic instrument test systems into class I (general controls). We are taking this action because we have determined that classifying the device into class I (general controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective December 27, 2017. The classification was applicable on November 19, 2013.

FOR FURTHER INFORMATION CONTACT: Steven Tjoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4550, Silver Spring, MD 20993–0002, 301–796–5866, *steven.tjoe@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the reagents for molecular diagnostic instrument test systems as class I (general controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 4, 2013, Illumina, Inc., submitted a request for De Novo classification of the MiSeqDx Universal Kit 1.0. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class I if general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(A)). After review of the information submitted in the request, we determined that the device can be classified into class I. FDA has determined that general controls will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on November 19, 2013, FDA issued an order to the requestor classifying the device into class I. FDA is codifying the classification of the device by adding 21 CFR 862.3800. We have named the generic type of device reagents for molecular diagnostic instrument test systems, and it is identified as reagents other than analyte specific reagents used as part of molecular diagnostic test systems, such as polymerases, nucleotides and nucleotide mixes, master mixes in which individual reagents are optimized to be used together, and labeled nucleic acid molecules.

FDA has identified the following risks to health associated specifically with this type of device in table 1.

TABLE 1—REAGENTS FOR MOLECULAR DIAGNOSTIC INSTRUMENT TEST SYSTEMS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Inaccurate test results due to inconsistently manufactured test system reagents.	General controls, including current good manufacturing practices.

Section 510(*l*)(1) of the FD&C Act provides that a device within a type that has been classified into class I under section 513 of the FD&C Act is exempt from premarket notification under section 510(k), unless the device is of substantial importance in preventing impairment of human health or presents a potentially unreasonable risk of illness or injury (21 U.S.C. 360(l)(1)). Devices within this type are exempt from the premarket notification requirements under section 510(k), subject to the limitations of exemptions in 21 CFR 862.9.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order refers to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 820, regarding current good manufacturing practices, have been approved under OMB control number 0910–0073.

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 862.3800 to subpart D to read as follows:

§ 862.3800 Reagents for molecular diagnostic instrument test systems.

(a) *Identification.* Reagents for molecular diagnostic test systems are reagents other than analyte specific reagents used as part of molecular diagnostic test systems, such as polymerases, nucleotides and nucleotide mixes, master mixes in which individual reagents are optimized to be used together, and labeled nucleic acid molecules.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedure in subpart E of part 807 of this chapter, subject to the limitations in § 862.9.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27853 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. FDA–2017–N–6643]

Medical Devices; Hematology and Pathology Devices; Classification of the Flow Cytometric Test System for Hematopoietic Neoplasms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the flow cytometric test system for hematopoietic neoplasms into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the flow cytometric test system for hematopoietic neoplasms' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective December 27, 2017. The classification was applicable on June 29, 2017.

FOR FURTHER INFORMATION CONTACT: Ryan Lubert, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4545, Silver Spring, MD 20993–0002, 240–402–6357, *ryan.lubert@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the flow cytometric test system for hematopoietic neoplasms as class II (special controls), which we have

determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 3, 2016, Beckman Coulter submitted a request for De Novo classification of the ClearLLab Reagents (T1, T2, B1, B2, M). FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on June 29, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 864.7010. We have named the generic type of device flow cytometric test system for hematopoietic neoplasms, and it is identified as a device that consists of reagents for immunophenotyping of human cells in relation to the level of expression, antigen density, and distribution of specific cellular markers. These reagents are used as an aid in the differential diagnosis or monitoring of hematologically abnormal patients having or suspected of having hematopoietic neoplasms. The results should be interpreted by a pathologist or equivalent professional in conjunction with other clinical and laboratory findings.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—FLOW CYTOMETRIC TEST FOR HEMATOPOIETIC NEOPLASMS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures/21 CFR section
Incorrect test results (false negatives or false positives)	General Controls and Special Controls (1) and (2) (21 CFR 864.7010(b)(1) and (2)).
Incorrect interpretation of device results by the end user	General Controls and Special Controls (1), (2), and (3) (21 CFR 864.7010(b)(1), (2), and (3)).
Patient harm from specimen(s) collection	General Controls and Special Control (1) (21 CFR 864.7010(b)(1)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to

premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for part 864 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 864.7010 to subpart H to read as follows:

§ 864.7010 Flow cytometric test system for hematopoietic neoplasms.

(a) *Identification.* A flow cytometric test for hematopoietic neoplasms is a device that consists of reagents for immunophenotyping of human cells in relation to the level of expression, antigen density, and distribution of specific cellular markers. These reagents are used as an aid in the differential diagnosis or monitoring of hematologically abnormal patients having or suspected of having hematopoietic neoplasms. The results should be interpreted by a pathologist or equivalent professional in conjunction with other clinical and laboratory findings.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Premarket notification submissions must include the following information:

(i) The indications for use must indicate the clinical hematopoietic neoplasms for which the assay was designed and validated, for example, chronic leukemia or lymphoma.

(ii) A detailed device description including the following:

(A) A detailed description of all test components, all required reagents, and all instrumentation and equipment, including illustrations or photographs of nonstandard equipment or methods.

(B) Detailed documentation of the device software including, but not limited to, standalone software applications and hardware-based devices that incorporate software.

(C) A detailed description of methodology and assay procedure.

(D) A description of appropriate internal and external quality control materials that are recommended or provided. The description must identify those control elements that are incorporated into the testing procedure, if applicable.

(E) Detailed specifications for sample collection, processing, and storage.

(F) Detailed specification of the criteria for test results interpretation and reporting including pre-established templates.

(G) If applicable, based on the output of the results, a description of the specific number of events to collect, result outputs, and analytical sensitivity of the assay that will be reported.

(iii) Information that demonstrates the performance characteristics of the test, including:

(A) Device performance data from either a method comparison study comparing the specific lymphocyte cell markers to a predicate device or data collected through a clinical study demonstrating clinical validity using well-characterized clinical specimens. Samples must be representative of the intended use population of the device including hematologic neoplasms and the specific sample types for which the test is indicated for use.

(B) If applicable, device performance data from a clinical study demonstrating clinical validity for parameters not established in a predicate device of this generic type using well-characterized prospectively obtained clinical specimens including all hematologic neoplasms and the specific sample types for which the device is indicated for use.

(C) Device precision data using clinical samples to evaluate the within-lot, between-lot, within-run, between run, site-to-site and total variation using a minimum of three sites, of which at least two sites must be external sites. Results shall be reported as the standard deviation and percentage coefficient of variation for each level tested.

(D) Reproducibility data generated using a minimum of three lots of reagents to evaluate mean fluorescence intensity and variability of the recovery of the different markers and/or cell populations.

(E) Data from specimen and reagent carryover testing performed using well-established methods (*e.g.,* CLSI H26–A2).

(F) Specimen and prepared sample stability data established for each specimen matrix in the anticoagulant combinations and storage/use conditions that will be indicated.

(G) A study testing anticoagulant equivalency in all claimed specimen type/anticoagulant combinations using clinical specimens that are representative of the intended use population of the device.

(H) Analytic sensitivity data using a dilution panel created from clinical samples.

(I) Analytical specificity data, including interference and cross-contamination.

(J) Device stability data, including real-time stability of reagents under various storage times and temperatures.

(K) For devices that include polyclonal antibodies, Fluorescence Minus One (FMO) studies to evaluate non-specific binding for all polyclonal antibodies. Each FMO tube is compared to reagent reference to demonstrate that no additional population appears when one marker is absent. Pre-specified acceptance criteria must be provided and followed.

(L) For devices indicated for use as a semi-quantitative test, linearity data using a dilution panel created from clinical samples.

(M) For devices indicated for use as a semi-quantitative test, clinically relevant analytical sensitivity data,

including limit of blank, limit of detection, and limit of quantification.

(iv) Identification of risk mitigation elements used by the device, including a detailed description of all additional procedures, methods, and practices incorporated into the instructions for use that mitigate risks associated with testing the device.

(2) The 21 CFR 809.10 compliant labeling must include the following:

(i) The intended use statement in the 21 CFR 809.10(a)(2) and (b)(2) compliant labeling must include a statement that the results should be interpreted by a pathologist or equivalent professional in conjunction with other clinical and laboratory findings. The intended use statement must also include information on what the device detects and measures, whether the device is qualitative, semi-quantitative, and/or quantitative, the clinical indications for which the device is to be used, and the specific population(s) for which the device is intended.

(ii) A detailed description of the performance studies conducted to comply with paragraph (b)(1)(iii) of this section and a summary of the results.

(3) As part of the risk management activities performed under 21 CFR 820.30 design controls, product labeling and instruction manuals must include clear examples of all expected phenotypic patterns and gating strategies using well-defined clinical samples representative of both abnormal and normal cellular populations. These samples must be selected based upon the indications described in paragraph (b)(1)(i) of this section.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27855 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2017–N–6642]

Medical Devices; Neurological Devices; Classification of the Computerized Behavioral Therapy Device for Psychiatric Disorders

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the computerized behavioral therapy device for psychiatric disorders into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the computerized behavioral therapy device for psychiatric disorders' classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective December 27, 2017. The classification was applicable on September 14, 2017.

FOR FURTHER INFORMATION CONTACT: Patrick Antkowiak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2663, Silver Spring, MD 20993–0002, 240–402–3705, *Patrick.Antkowiak@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the computerized behavioral therapy device for psychiatric disorders as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act and part 807 (21 U.S.C. 360(k) and 21 CFR part 807, respectively).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On May 16, 2016, Pear Therapeutics, Inc., submitted a request for De Novo classification of the reSET. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on September 14, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 882.5801. We have named the generic type of device computerized behavioral therapy device for psychiatric disorders, and it is identified as a prescription only device intended to provide a computerized version of condition-specific behavioral therapy as an adjunct to clinician supervised outpatient treatment to patients with psychiatric conditions. The digital therapy is intended to provide patients access to therapy tools used during treatment sessions to improve recognized treatment outcomes.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—COMPUTERIZED BEHAVIORAL THERAPY DEVICE FOR PSYCHIATRIC DISORDERS RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Device provides ineffective treatment, leading to worsening condition	Clinical data; Software verification, validation, and hazard analysis; and labeling.
Device software failure, leading to delayed access	Software verification, validation, and hazard analysis; and Labeling.
Use error/improper device use	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, computerized behavioral therapy devices for psychiatric disorders are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l,* 371.

■ 2. Add § 882.5801 to subpart F to read as follows:

§ 882.5801 Computerized behavioral therapy device for psychiatric disorders.

(a) *Identification.* A computerized behavioral therapy device for psychiatric disorders is a prescription only device intended to provide a computerized version of condition-specific behavioral therapy as an adjunct to clinician supervised outpatient treatment to patients with psychiatric conditions. The digital therapy is intended to provide patients access to therapy tools used during treatment sessions to improve recognized treatment outcomes.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical data must be provided to fulfill the following:

(i) Describe a validated model of behavioral therapy for the psychiatric disorder; and

(ii) Validate the model of behavioral therapy as implemented by the device.

(2) Software must be described in detail in the software requirements specification (SRS) and software design specification (SDS). Software verification, validation, and hazard analysis must be performed. Software documentation must demonstrate that the device effectively implements the behavioral therapy model.

(3) The following labeling must be provided:

(i) Patient and physician labeling must include instructions for use, including images that demonstrate how to interact with the device.

(ii) Patient and physician labeling must list compatible devices.

(iii) Patient and physician labeling must include a warning that the device is not intended for use as a standalone therapy.

(iv) Patient and physician labeling must include a warning that the device does not represent a substitution for the patient's medication.

(v) Physician labeling must include a summary of the clinical testing with the device.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27843 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2017–N–6531]

Medical Devices; Neurological Devices; Classification of the External Vagal Nerve Stimulator for Headache

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the external vagal nerve stimulator for headache into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the external vagal nerve stimulator for headache's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective December 27, 2017. The classification was applicable on April 14, 2017.

FOR FURTHER INFORMATION CONTACT: William Heetderks, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2682, Silver Spring, MD 20993–0002, 240–402–5360, *William.Heetderks@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the external vagal nerve stimulator for headache as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA shall classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 16, 2015, electroCore, LLC, submitted a request for De Novo classification of the gammaCore Non-invasive Vagus Nerve Stimulator. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on April 14, 2017, FDA issued an order to the requester classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 882.5892. We have named the generic type of device external vagal nerve stimulator for headache, and it is identified as a prescription device used to apply an electrical current to a patient's vagus nerve through electrodes placed on the skin for the treatment of headache.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—EXTERNAL VAGAL NERVE STIMULATOR FOR HEADACHE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Adverse tissue reaction resulting from patient contacting components	Biocompatibility evaluation and Labeling.
Electrical shock injury from device failure	Electrical safety, thermal, and mechanical testing; Software verification, validation, and hazard analysis; and Labeling.
Incorrect stimulation resulting from interference from other electrical devices.	Electromagnetic compatibility testing.
Stimulation side effects such as the following • Seizure • Cardiac side effects • Worsening of headache.	Labeling.
Ineffective therapeutic response due to device failure	Non-clinical performance testing; Software verification, validation, and hazard analysis; and Labeling.
User error	Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, external vagal nerve stimulators for headache are for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met (referring to 21 U.S.C. 352(f)(1)).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 882

Medical devices, Neurological devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 882.5892 to subpart F to read as follows:

§ 882.5892 External vagal nerve stimulator for headache.

(a) *Identification.* An external vagal nerve stimulator for headache is a prescription device used to apply an electrical current to a patient's vagus nerve through electrodes placed on the skin for the treatment of headache.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The technical parameters of the device, including waveform, output modes, maximum output voltage and current (with 500, 2,000, and 10,000 ohm loads), pulse duration, frequency, net charge (μC) per pulse, maximum phase charge at 500 ohms, maximum current density (mA/cm^2, r.m.s.), maximum average current (mA), maximum average power density (W/cm^2), and the type of impedance monitoring system shall be fully characterized through non-clinical performance testing.

(2) Software verification, validation, and hazard analysis shall be performed.

(3) Biocompatibility evaluation of the patient-contacting components of the device shall be performed.

(4) The device shall be tested for electrical, thermal, and mechanical safety, and for electromagnetic compatibility (EMC).

(5) The labeling must include:

(i) Instructions for proper use of the device, including placement of the device on the patient; and

(ii) Instructions on care and cleaning of the device.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27854 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 892

[Docket No. FDA–2017–N–6855]

Medical Devices; Radiology Devices; Classification of the Rectal Balloon for Prostate Immobilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the rectal balloon for prostate immobilization into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the rectal balloon for prostate immobilization's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices, in part by reducing regulatory burdens.

DATES: This order is effective December 27, 2017. The classification was applicable on January 28, 2014.

FOR FURTHER INFORMATION CONTACT: Steven Tjoe, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4550, Silver Spring, MD 20993–0002, 301–796–5866, *steven.tjoe@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the rectal balloon for prostate immobilization as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

We believe this De Novo classification will enhance patients' access to beneficial innovation, in part by reducing regulatory burdens. When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s. As a result, other device sponsors do not have to submit a De Novo request or PMA in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 15, 2013, RadiaDyne, LLC submitted a request for De Novo classification of the prostate immobilizer rectal balloon. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on January 28, 2014, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 892.5720. We have named the generic type of device rectal balloon for prostate immobilization, and it is identified as a single use, inflatable, non-powered positioning device placed in the rectum to immobilize the prostate in patients undergoing radiation therapy. The device is intended to be used during all the phases of radiation therapy, including treatment planning, image verification, and radiotherapy delivery.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RECTAL BALLOON FOR PROSTATE IMMOBILIZATION RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures/21 CFR section
Anorectal Toxicity	Special controls (1)(i) (21 CFR 892.5720(b)(1)(i)), (1)(ii) (21 CFR 892.5720(b)(1)(ii)), (1)(iii) (21 CFR 892.5720(b)(1)(iii)), (1)(iv) (21 CFR 892.5720(b)(1)(iv)), (2)(i)(D) (21 CFR 892.5720(b)(2)(i)(D)), (2)(ii) (21 CFR 892.5720(b)(2)(ii)), (2)(iii) (21 CFR 892.5720(b)(2)(iii)), and (2)(iv) (21 CFR 892.5720(b)(2)(iv)).
Tissue Damage	Special controls (1)(iv) (21 CFR 892.5720(b)(1)(iv)), (1)(v) (21 CFR 892.5720(b)(1)(v)), (2)(i)(A) (21 CFR 892.5720(b)(2)(i)(A)), (2)(i)(D) (21 CFR 892.5720(b)(2)(i)(D)), (2)(ii) (21 CFR 892.5720(b)(2)(ii)), (2)(iii) (21 CFR 892.5720(b)(2)(iii)), and (2)(iv) (21 CFR 892.5720(b)(2)(iv)).
Perforation of the Rectum	Special controls (1)(v)(A) (21 CFR 892.5720(b)(1)(v)(A)), (1)(v)(B) (21 CFR 892.5720(b)(1)(v)(B)), (2)(i)(A) (21 CFR 892.5720(b)(2)(i)(A)), (2)(i)(D) (21 CFR 892.5720(b)(2)(i)(D)), (2)(ii) (21 CFR 892.5720(b)(2)(ii)), (2)(iii) (21 CFR 892.5720(b)(2)(iii)), and (2)(iv) (21 CFR 892.5720(b)(2)(iv)).
Irradiation of Healthy Tissue	Special controls (1)(v)(A) (21 CFR 892.5720(b)(1)(v)(A)), (1)(v)(B) (21 CFR 892.5720(b)(1)(v)(B)), (2)(i)(B) (21 CFR 892.5720(b)(2)(i)(B)), (2)(ii) (21 CFR 892.5720(b)(2)(ii)), (2)(iii) (21 CFR 892.5720(b)(2)(iii)), and (2)(iv) (21 CFR 892.5720(b)(2)(iv)).
Patient Intolerance	Special controls (1)(v)(A) (21 CFR 892.5720(b)(1)(v)(A)), (2)(i)(A) (21 CFR 892.5720(b)(2)(i)(A)), (2)(i)(C) (21 CFR 892.5720(b)(2)(i)(C)), (2)(ii) (21 CFR 892.5720(b)(2)(ii)), (2)(iii) (21 CFR 892.5720(b)(2)(iii)), and (2)(iv) (21 CFR 892.5720(b)(2)(iv)).

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for part 892 is revised to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360*l*, 371.

■ 2. Add § 892.5720 to subpart F to read as follows:

§ 892.5720 Rectal balloon for prostate immobilization.

(a) *Identification.* A rectal balloon for prostate immobilization is a single use, inflatable, non-powered positioning device placed in the rectum to immobilize the prostate in patients undergoing radiation therapy. The device is intended to be used during all the phases of radiation therapy, including treatment planning, image verification, and radiotherapy delivery.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) The premarket notification submission must include methodology and results of the following non-clinical and clinical performance testing:

(i) Biocompatibility testing of the final finished device;

(ii) If provided sterile, sterilization validation;

(iii) If not provided sterile, bioburden testing of the final finished device;

(iv) Shelf life and expiration date validation; and

(v) Performance testing including but not limited to:

(A) Venting mechanism (if device has a vent mechanism);

(B) Safety mechanism(s) to prevent advancement beyond its intended safe placement; and

(C) Structural integrity testing (*e.g.,* tensile strength, balloon leakage and burst strength).

(2) Labeling that includes:

(i) Appropriate warnings and contraindications, including, but not limited to the following statements:

(A) ''Do not transport the patient with the rectal balloon inserted. The balloon should be removed prior to transport.'';

(B) ''Failure to perform the standard imaging position verification protocol may cause the device to not perform as intended.'';

(C) ''Reduce the rectal balloon fill volume if the patient experiences discomfort due to the rectal balloon inflation.''; and

(D) ''Do not apply excessive pressure/force on the shaft or tubing of the rectal balloon.''

(ii) Adequate instructions for use on the proper insertion procedure, positioning, and inflation of the rectal balloon;

(iii) Whether the device is sterile or non-sterile; and

(iv) An expiration date.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27856 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 547

RIN 3141–AA64

Minimum Technical Standards for Class II Gaming Systems and Equipment

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is amending its minimum technical standards for Class II gaming systems and equipment. The rule amends the regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the minimum technical standards.

DATES: *Effective Date:* January 26, 2018.

FOR FURTHER INFORMATION CONTACT: Austin Badger, National Indian Gaming Commission; 1849 C Street NW, MS 1621, Washington, DC 20240. Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On October 10, 2008, the NIGC published a final rule in the **Federal Register** establishing minimum technical standards for Class II gaming systems and equipment. 73 FR 60508. The minimum technical standards are designed to assist tribal gaming regulatory authorities (TGRAs) and operators with ensuring the integrity and security of Class II gaming, the accountability of Class II gaming revenue, and provide guidance to equipment manufacturers and distributors of Class II gaming systems. The minimum technical standards do not classify which games are Class II and which games are Class III.

When implemented in 2008, the part 547 minimum technical standards introduced several new requirements for Class II gaming systems designed to protect the security and integrity of Class II gaming systems and tribal operations. The Commission understood, however, that some existing Class II gaming systems might not meet all of the requirements of the minimum technical standards. Therefore, to avoid any potentially significant economic and practical consequences of requiring immediate compliance, the Commission implemented a five-year sunset provision which allowed eligible gaming systems manufactured before November 10, 2008 (2008 Systems) to remain on the gaming floor. The Commission believed that a five-year period was sufficient for market forces to move systems toward compliance with the standards applicable to systems manufactured on or after November 10, 2008.

On September 21, 2012, the NIGC published a final rule in the **Federal Register** which included an amendment delaying the sunset provision by an additional five years. 77 FR 58473. The Commission recognized that its prior analysis regarding the continued economic viability of 2008 Systems had proven to be mistaken. The NIGC had established the initial five-year period during a much stronger economy. Many tribal gaming operations set new priorities during the following economic downturn that required keeping a 2008 System on the gaming floor for a longer period. Balancing the economic needs of the industry against a risk that potentially increases as technology advances and 2008 Systems remain static, the Commission determined that 2008 Systems could continue to be offered for play until November 10, 2018.

Now, with the November 10, 2018, sunset for 2008 Systems approaching, the Commission has determined that it is in the best interest of Indian gaming to amend the regulations that describe how tribal governments, tribal gaming regulatory authorities, and tribal gaming operations comply with the minimum technical standards. The amendments include removal of the sunset provision, providing for additional annual review of 2008 Systems by TGRAs, and requiring all modifications of Class II gaming systems to be subject to a uniform independent laboratory testing and TGRA approval process. The Commission has determined that the amended rule continues to fulfill the rule's ultimate goal of assisting tribes in ensuring the security and integrity of Class II games played with technologic aids, the auditability of the gaming revenue that those games earn, and accounting and allowing for evolving and new technology.

II. Development of the Rule

The development of the rule formally began with the Commission's notice to tribal leaders by letter dated November 22, 2016, of the topic's inclusion in the Commission's 2017 tribal consultation series. Thereafter, on March 23, 2017, in Tulsa, OK, and April 12, 2017, in San Diego, CA, the NIGC consulted on the 2008 Systems and associated sunset provision of the minimum technical standards. The Commission also solicited written comments through May 31, 2017. In addition, NIGC staff attended meetings with the National Indian Gaming Association Class II Subcommittee, as well as other representatives from the gaming industry. The consultations and meetings, combined with the written comments, proved invaluable in the development of a discussion draft issued on June 14, 2017, which, among other proposed amendments, proposed removing the November 10, 2018, sunset for 2008 Systems. Additional written comments responsive to the discussion draft were solicited through July 15, 2017.

The Commission subsequently published a proposed rule in the **Federal Register** on September 28, 2017. 82 FR 45228. The proposed rule included several amendments to the discussion draft prompted by the Commission's careful consideration of the substantive comments received through consultation and written submissions. The proposed rule included the Commission's responses to comments received and invited interested parties to continue to participate in the rulemaking process by submitting comments and any supporting data responsive to the proposed rule to the Commission by November 13, 2017. The comments received throughout this process have proven invaluable to the Commission in developing this rule amending the minimum technical standards for Class II gaming systems and equipment.

III. Review of Public Comments

In response to the proposed rule the Commission received the following comments.

Removal of the Sunset Provision

Comment: Commenters overwhelmingly supported removal of the sunset provision. One commenter, however, suggested that the sunset provision should not be removed.

Response: The following responses seek to address each of the substantive arguments raised by the commenter that suggested the sunset provision should not be removed.

Comment: A commenter suggested that the public and tribes would be best served if all Class II gaming systems adhered to a uniform minimum standard.

Response: The Commission acknowledges that the rule permits the continued existence of two sets of minimum standards for Class II gaming systems—one for 2008 Systems and one for systems manufactured after November 10, 2008. The Commission disagrees, however, that a uniform minimum standard is necessary to best serve the needs of the public and tribes.

First and foremost, the Commission's minimum technical standards are just that—minimums. The standards implemented by tribes applicable to gaming operations within their lands are not required nor intended to be uniform. Each tribe is empowered and encouraged to implement additional or more stringent tribal standards applicable to Class II gaming systems operating within their lands. IGRA and the Commission recognize that tribes have the primary responsibility for regulating Class II gaming within their lands. A stated purpose of IGRA is to promote tribal economic development, self-sufficiency, and self-government. 25 U.S.C. 2702(1). The minimum technical standards are therefore designed to give TGRAs the primary role in approving Class II gaming systems and modifications.

The Commission's minimum technical standards represent the standards that, in the Commission's judgment, are best able to assist TGRAs with ensuring the integrity and security of Class II gaming, ensuring the accountability of Class II gaming revenue, and providing guidance to equipment manufacturers and distributors of Class II gaming systems. Importantly, the minimum technical standards are one component of a regulatory framework that includes the Commission's minimum internal control standards (MICS). 25 CFR part 543. The Commission endeavored to place all minimum requirements for the design, construction, and implementation of Class II gaming systems into the minimum technical standards and all minimum requirements for the operation of such systems, and the authorization, recognition, and recordation of gaming and gaming-related transactions into the MICS. The MICS apply uniformly to the operation of all Class II gaming, irrespective of Class II gaming system manufacture date.

The Commission's minimum technical standards and MICS make meaningful the Commission's monitoring, inspection, and examination authority. 25 U.S.C. 2706(b). Without such minimums, the Commission would be required to independently evaluate, at significant expense, the technical standards and internal controls implemented by each tribe to determine whether each tribe's technical standards and internal controls adequately protected the security and integrity of Indian gaming. With such minimums, the Commission can efficiently evaluate a tribal gaming operation by verifying that the operation adheres to standards and controls that meet or exceed Commission minimums. Thus, the Commission has long maintained that it has a regulatory interest in a uniform set of minimum standards—an interest that includes the efficient administration of its monitoring, inspection, and examination authority.

In 2008, 2012, and now, the Commission has sought to balance its interest in a uniform set of minimum standards against the economic impact of applying those standards to systems manufactured before the standards were in place. The Commission recognizes that despite being initially certified to a subset of the standards applicable to newer systems, 2008 Systems have continued to operate within the overall regulatory framework in a manner that protects the security and integrity of Indian gaming. The Commission credits tribes, TGRAs and manufacturers for, as the Commission acknowledged in 2012, the relatively few problems to the patron or the gaming operations attributable to 2008 Systems. In balance, the Commission has determined that the continued operation of 2008 Systems is in the best interest of Indian gaming provided that such systems are subject to additional annual review by TGRAs. The Commission is fully prepared, however, to revisit the minimum technical standards, including those applicable to 2008 Systems, if necessary to address any threat to the integrity of Class II gaming systems and equipment.

Finally, the Commission acknowledges that it has previously expressed concern regarding risks that potentially increase as technology advances and 2008 Systems remain static. The Commission now recognizes, however, that 2008 Systems have generally not remained static, but instead have been modified over time in compliance with existing regulations. Repair and replacement of individual components of Class II gaming systems have been and continue to be permitted. Modification of components of 2008 Systems also continue to be permitted provided the TGRA determines that the modification either maintains compliance with the requirements for 2008 Systems or increases compliance with the requirements for newer systems. The rule seeks to continue to facilitate the on-going modification of 2008 Systems as needed to respond to developments in technology with the goal of increased compliance with the requirements for newer systems.

Comment: A commenter suggests that the economic needs of tribes considered by the Commission in 2008 and 2012 are no longer applicable.

Response: The Commission has determined that, while the significance of the economic factors considered by the Commission in 2008 and 2012 has decreased over time, economic factors remain applicable. As noted previously, 2008 Systems have generally been modified over time towards increased compliance with the standards for newer systems. Thus, the economic impact of the sunset provision, if left in place, is the cost of the remaining modifications needed to bring the system into compliance with the standards for newer systems. The Commission notes that tribes, as the customers of Class II gaming systems and equipment, will ultimately incur those costs.

The Commission also recognizes that the economic health of the Indian gaming industry as a whole, which includes both Class II and Class III gaming, is not representative of the economic health of individual Indian gaming operations that may be affected by the sunset provision. Indian gaming operations vary in size and measures of economic success. The Commission and staff engaged extensively with the tribal gaming industry on the continued use of 2008 Systems and heard the costs of complying with the sunset provision would fall primarily on the tribes least able to afford it. Additionally, the Commission received many comments asserting that failing to remove the sunset provision would cause significant economic harm to tribes.

Comment: A commenter suggests that removal of the sunset provision would have anti-competitive effects. The commenter suggests that manufacturers that maintain obsolete 2008 Systems are economically rewarded while new market entrants are punished.

Response: The Commission notes that IGRA, as informed by consultation with tribes, forms the basis for all Commission regulations. Nevertheless, the Commission does not agree that removal of the sunset provision has a significant anti-competitive effect. Importantly, the rule brings parity to the independent testing laboratory requirements for 2008 Systems and newer systems. All modifications to a Class II gaming systems are now required to be tested against the standards for newer systems. And,

while TGRAs retain the authority to approve a modification to a 2008 System that maintains compliance with 2008 System standards, 2008 Systems are also subject to an additional annual review which is not applicable to newer systems.

In addition, the minimum technical standards are not intended to render any particular Class II gaming system technology ''obsolete.'' The minimum technical standards require the implementation of certain features which may be implemented by a wide array of technology. The minimum technical standards are intended to provide all manufacturers with the flexibility to implement technologies unforeseen and undeveloped when the rule was first promulgated. Importantly, the minimum technical standards allow Class II gaming systems to be modified over time as manufacturers innovate new implementations of the required features. Tribes and tribal gaming regulatory authorities may also add additional or more stringent requirements for manufacturers to implement. Finally, to the extent that a specific technical standard potentially impedes innovation, TGRAs and gaming operations are able to submit to the NIGC Chairman for approval an alternate minimum standard that accomplishes the same purpose.

Comment: A commenter suggests that removal of the sunset provision transforms the rule into a major rule having an effect on the economy of $100 million or more because the 2008 System provisions were initially implemented to avoid up to $3.7 billion in lost revenue in the industry.

Response: The Commission has determined that the commenter's assumptions are mistaken. The Commission found that the annual cost to the Indian gaming industry of the technical standards, considered alone, was $3.1 million in 2008. 73 FR 60508, 60512. The figure cited by the commenter appears to have been inferred from a February 1, 2008 economic impact study which considered not only the potential economic impact of minimum technical standards (part 547) but also of the MICS (part 543) and game classification standards (proposed but not adopted). The Commission has determined that there is no plausible basis for finding that the removal of the sunset provision from the minimum technical standards approximately ten years after the standards were first promulgated could have an effect on the economy of $100 million or more.

Comment: A commenter suggests that the 2008 System standards should meet the standards required for an alternate minimum standard for a newer system.

Response: The Commission's alternate minimum standard provisions recognize that there may be alternatives to the Commission's minimum standards that will ''achieve a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace.'' 25 CFR 547.17(a)(1). The 2008 System provisions are specific to systems manufactured before November 10, 2008. The alternate minimum standard provisions are equally applicable to 2008 Systems and to newer systems. In other words, the 2008 Systems standards are the standards against which an alternate minimum standard for a 2008 System would be evaluated against.

2008 Systems Annual Review

Comment: Commenters suggest that the NIGC has provided no compelling reason to change the existing reporting requirements. Commenters suggest that it would be redundant to require annual re-review of testing laboratory reports which amounts to a restatement of certification opinions that have already been submitted to the NIGC.

Response: The Commission does not believe that the annual review requirement is unnecessary. First, the Commission believes that removal of the sunset provision warrants annual review specific to 2008 Systems. The annual review requirement will ensure that 2008 Systems are adequately monitored and that 2008 Systems that meet the standards applicable to newer systems are identified by the TGRA and gaming operation. In addition, the annual review requirement requires the TGRA to identify the components of the 2008 System that prevent the system from being approved as a newer system. The Commission believes this information will be useful to the Commission, TGRAs, and gaming operations in considering whether the applicable technical standards, in conjunction with applicable internal controls, continue to adequately protect the integrity and security of Class II gaming and accountability of Class II gaming revenue.

Second, the Commission does not believe that the annual review requirement is redundant. Existing 2008 System requirements require TGRAs to maintain records of all modifications so long as the Class II gaming system that is the subject of the modification remains available to the public for play. The rule adds as an additional requirement that TGRAs review the existing modification records annually to determine whether the 2008 Systems, as currently modified, may be approved pursuant to the provisions for newer systems. The required finding by the TGRA is based on its review of existing documentation and does not require TGRAs to obtain new testing laboratory reports. Components for which existing laboratory reports show that the component does not meet the standards for newer systems, as well as components for which laboratory reports have not been maintained, would be included in the required finding as components preventing approval of the system under the standards for newer systems. To further assist TGRAs in conducting the required review and developing the findings, the Commission intends to issue guidance specific to the annual review requirement for 2008 Systems.

Testing Standards for All Modifications

Comment: Commenters suggest the new requirement that modifications to 2008 Systems be tested to the standards for newer systems is unnecessary and will only result in additional costs with no practical benefit. Commenters suggest that TGRAs should be able to determine whether to test a modification to the standards for newer systems or to 2008 System standards.

Response: The Commission believes the new requirement appropriately balances laboratory testing requirements with TGRA approval requirements without imposing unreasonable costs. The rule requires the testing laboratory to test all modifications to the technical standards for newer systems. The rule recognizes the primary regulator status of the TGRA by providing that the TGRA is required to determine, among other requirements, whether the modification will maintain the system's compliance or advance the system's compliance with the standards for newer systems. Testing all modifications to the standards for newer systems therefore ensures that TGRAs are provided with the information needed to make such a determination.

Records

Comment: Commenters expressed reluctance to expose sensitive testing and compliance records to possible public disclosure. Commenters suggest that records only be available for review on site by NIGC staff or on a government-to-government basis. Commenters request that the second and third sentence of paragraph (g) be removed.

Response: The Commission believes that paragraph (g) appropriately describes the Commission's obligations with regards to the inspection and

release of records as set forth by IGRA, the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act of 1974, 5 U.S.C. 552a. The second sentence of paragraph (g), as limited by the third sentence, describes the Commission's intended internal use of such information.

Regulatory Matters

Tribal Consultation

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

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandates Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

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

Civil Justice Reform

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

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0007, which expired in August of 2011. The NIGC is in the process of reinstating that Control Number.

List of Subjects in 25 CFR Part 547

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 547 is amended as follows:

PART 547—MINIMUM TECHNICAL STANDARDS FOR CLASS II GAMING SYSTEMS AND EQUIPMENT

■ 1. The authority citation for part 547 continues to read as follows:

Authority: 25 U.S.C. 2706(b).

■ 2. Revise § 547.5 to read as follows:

§ 547.5 How does a tribal government, TGRA, or tribal gaming operation comply with this part?

(a) *Gaming systems manufactured before November 10, 2008.* (1) Any Class II gaming system manufactured before November 10, 2008, that is not compliant with paragraph (b) of this section may be made available for use at any tribal gaming operation if:

(i) The Class II gaming system software that affects the play of the Class II game, together with the signature verification required by § 547.8(f) was submitted to a testing laboratory within 120 days after November 10, 2008, or October 22, 2012;

(ii) The testing laboratory tested the submission to the standards established by § 547.8(b), § 547.8(f), and § 547.14;

(iii) The testing laboratory provided the TGRA with a formal written report setting forth and certifying to the findings and conclusions of the test;

(iv) The TGRA made a finding, in the form of a certificate provided to the supplier or manufacturer of the Class II gaming system, that the Class II gaming system is compliant with § 547.8(b), § 547.8(f), and § 547.14;

(v) The Class II gaming system is only used as approved by the TGRA and the TGRA transmitted its notice of that approval, identifying the Class II gaming system and its components, to the Commission;

(vi) Remote communications with the Class II gaming system are only allowed if authorized by the TGRA; and

(vii) Player interfaces of the Class II gaming system exhibit information consistent with § 547.7(d) and any other information required by the TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (a) the TGRA shall:

(i) Retain copies of the testing laboratory's report, the TGRA's compliance certificate, and the TGRA's approval of the use of the Class II gaming system;

(ii) Maintain records identifying the Class II gaming system and its current components; and

(iii) Annually review the testing laboratory reports associated with the Class II gaming system and its current components to determine whether the Class II gaming system may be approved pursuant to paragraph (b)(1)(v) of this section. The TGRA shall make a finding identifying the Class II gaming systems reviewed, the Class II gaming systems subsequently approved pursuant to paragraph (b)(1)(v), and, for Class II gaming systems that cannot be approved pursuant to paragraph (b)(1)(v), the components of the Class II gaming system preventing such approval.

(3) If the Class II gaming system is subsequently approved by the TGRA pursuant to paragraph (b)(1)(v) as compliant with paragraph (b) of this section, this paragraph (a) no longer applies.

(b) *Gaming system submission, testing, and approval—generally.* (1) Except as provided in paragraph (a) of this section, a TGRA may not permit the use of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (b)(1)(ii)(C) of this section;

(iv) The testing laboratory's written report confirms that the operation of a player interface prototype has been certified that it will not be compromised or affected by electrostatic discharge, liquid spills, electromagnetic interference, or any other tests required by the TGRA;

(v) Following receipt of the testing laboratory's report, the TGRA makes a finding that the Class II gaming system conforms to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA.

(2) For so long as a Class II gaming system is made available for use at any tribal gaming operation pursuant to this paragraph (b) the TGRA shall:

(i) Retain a copy of the testing laboratory's report; and

(ii) Maintain records identifying the Class II gaming system and its current components.

(c) *Class II gaming system component repair, replacement, or modification.* (1) As permitted by the TGRA, individual hardware or software components of a Class II gaming system may be repaired or replaced to ensure proper functioning, security, or integrity of the Class II gaming system.

(2) A TGRA may not permit the modification of any Class II gaming system in a tribal gaming operation unless:

(i) The Class II gaming system modification has been submitted to a testing laboratory;

(ii) The testing laboratory tests the submission to the standards established by:

(A) This part;

(B) Any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(C) The TGRA;

(iii) The testing laboratory provides a formal written report to the party making the submission, setting forth and certifying its findings and conclusions, and noting compliance with any standard established by the TGRA pursuant to paragraph (c)(2)(ii)(C) of this section;

(iv) Following receipt of the testing laboratory's report, the TGRA makes a finding that the:

(A) The modification will maintain or advance the Class II gaming system's compliance with this part and any applicable provisions of part 543 of this chapter; and

(B) The modification will not detract from, compromise or prejudice the proper functioning, security, or integrity of the Class II gaming system;

(3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(d) *Emergency Class II gaming system component modifications.* (1) A TGRA, in its discretion, may permit the modification of previously approved components to be made available for play without prior laboratory testing or review if the modified hardware or software is:

(i) Necessary to correct a problem affecting the fairness, security, or integrity of a game or accounting system or any cashless system, or voucher system; or

(ii) Unrelated to game play, an accounting system, a cashless system, or a voucher system.

(2) If a TGRA authorizes modified components to be made available for play or use without prior testing laboratory review, the TGRA must thereafter require the hardware or software manufacturer to:

(i) Immediately advise other users of the same components of the importance and availability of the update;

(ii) Immediately submit the new or modified components to a testing laboratory for testing and verification of compliance with this part and any applicable provisions of part 543 of this chapter that are testable by the testing laboratory; and

(iii) Immediately provide the TGRA with a software signature verification tool meeting the requirements of § 547.8(f) for any new or modified software component.

(3) If a TGRA authorizes a component modification under this paragraph, it must maintain a record of the modification and a copy of the testing laboratory report so long as the Class II gaming system that is the subject of the modification remains available to the public for play.

(e) *Compliance by charitable gaming operations.* This part does not apply to charitable gaming operations, provided that:

(1) The tribal government determines that the organization sponsoring the gaming operation is a charitable organization;

(2) All proceeds of the charitable gaming operation are for the benefit of the charitable organization;

(3) The TGRA permits the charitable organization to be exempt from this part;

(4) The charitable gaming operation is operated wholly by the charitable organization's employees or volunteers; and

(5) The annual gross gaming revenue of the charitable gaming operation does not exceed $3,000,000.

(f) *Testing laboratories.* (1) A testing laboratory may provide the examination, testing, evaluating and reporting functions required by this section provided that:

(i) It demonstrates its integrity, independence and financial stability to the TGRA.

(ii) It demonstrates its technical skill and capability to the TGRA.

(iii) If the testing laboratory is owned or operated by, or affiliated with, a tribe, it must be independent from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions required by this section.

(iv) The TGRA:

(A) Makes a suitability determination of the testing laboratory based upon standards no less stringent than those set out in § 533.6(b)(1)(ii) through (v) of this chapter and based upon no less information than that required by § 537.1 of this chapter, or

(B) Accepts, in its discretion, a determination of suitability for the testing laboratory made by any other gaming regulatory authority in the United States.

(v) After reviewing the suitability determination and the information provided by the testing laboratory, the TGRA determines that the testing laboratory is qualified to test and evaluate Class II gaming systems.

(2) The TGRA must:

(i) Maintain a record of all determinations made pursuant to

paragraphs (f)(1)(iii) and (f)(1)(iv) of this section for a minimum of three years.

(ii) Place the testing laboratory under a continuing obligation to notify it of any adverse regulatory action in any jurisdiction where the testing laboratory conducts business.

(iii) Require the testing laboratory to provide notice of any material changes to the information provided to the TGRA.

(g) *Records.* Records required to be maintained under this section must be made available to the Commission upon request. The Commission may use the information derived therefrom for any lawful purpose including, without limitation, to monitor the use of Class II gaming systems, to assess the effectiveness of the standards required by this part, and to inform future amendments to this part. The Commission will only make available for public review records or portions of records subject to release under the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; or the Indian Gaming Regulatory Act, 25 U.S.C. 2716(a).

Dated: December 19, 2017.

Jonodev O. Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2017–27945 Filed 12–26–17; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9825]

RIN 1545–BJ08

Treatment of Transactions in Which Federal Financial Assistance Is Provided; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9825) that were published in the **Federal Register** on Thursday, October 19, 2017. The final regulations are under section 597 of the Internal Revenue Code. These final regulations amend existing regulations that address the federal income tax treatment of transactions in which federal financial assistance is provided to banks and domestic building and loan associations, and they clarify the federal income tax consequences of those transactions to banks, domestic building and loan associations, and related parties.

DATES: This correction is effective on *December 27, 2017* and applicable on or after October 19, 2017.

FOR FURTHER INFORMATION CONTACT: Russell G. Jones at (202) 317–5357, or Ken Cohen at (202) 317–5367 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9825) that are the subject of this correction are issued under section 597 of the Internal Revenue Code.

Need for Correction

As published, the final regulation (TD 9825) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9825) that are the subject of FR Doc. 2017–21129 appearing on page 48618 in the **Federal Register** of Thursday, October 19, 2017, are corrected as follows:

On page 48619, in the second column, in the preamble, under the caption ''Special Analyses'', in the fifth line, the language ''Executive Order 13653. Therefore, a'' is corrected to read ''Executive Order 13563. Therefore, a''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2017–27863 Filed 12–26–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9825]

RIN 1545–BJ08

Treatment of Transactions in Which Federal Financial Assistance Is Provided; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9825) that were published in the **Federal Register** on Thursday, October 19, 2017. The final regulations are under section 597 of the Internal Revenue Code. These final regulations amend existing regulations that address the federal income tax treatment of transactions in which federal financial assistance is provided to banks and domestic building and loan associations, and they clarify the federal income tax consequences of those transactions to banks, domestic building and loan associations, and related parties.

DATES: This correction is effective on *December 27, 2017* and is applicable on or after October 19, 2017.

FOR FURTHER INFORMATION CONTACT: Russell G. Jones at (202) 317–5357, or Ken Cohen at (202) 317–5367 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9825) that are the subject of this correction are issued under section 597 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9825) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.597–5 is amended by revising the seventh and eighth sentences of paragraph (f), *Example 4,* and by revising the first and second sentences of paragraph (f), *Example 5* (ii), to read as follows:

§ 1.597–5 Taxable Transfers.

* * * * *

(f) * * *

Example 4. * * * The fair market value of the loans is their Expected Value, $800,000 (the sum of the $500,000 Third-Party Price and the $300,000 that the Agency would pay if N sold the loans for $500,000). The fair market value of each foreclosed property is its Expected Value, $80,000 (the sum of the $50,000 Third-Party Price and the $30,000 that the Agency would pay if N sold the

foreclosed property for $50,000) under paragraph (b) of § 1.597–1. * * *

* * * * *

Example 5. * * *

(ii) At the end of 2018, the Third-Party Price for the loans drops to $400,000, and the Third-Party Price for each of the foreclosed properties remains at $50,000. The fair market value of the loans at the end of Year 2 is their Expected Value, $600,000 ($400,000 Third-Party Price + $200,000 (the amount of the loss if the loans were disposed of for the Third-Party Price × 33.33%) (the Average Reimbursement Rate does not change)). * * *

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2017–27862 Filed 12–26–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–1109]

Drawbridge Operation Regulation; Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Burlington Northern Santa Fe (BNSF) Railway Bridge across the Columbia River, mile 105.6, at Vancouver, WA. The deviation is necessary to accommodate replacement gears, shafts and bearings. This deviation allows the bridge to remain in the closed-to-navigation position during maintenance activities.

DATES: This deviation is effective from 8 a.m. to 3 p.m. on December 27, 2017.

ADDRESSES: The docket for this deviation, USCG–2017–1109 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: BNSF requested that the BNSF Swing Bridge across the Columbia River, mile 105.6, remain closed to marine vessel traffic to install new swing gears, shafts and bearings. During this installation period, the swing span of the bridge will be in the closed-to-navigation position. The BNSF Swing Bridge, mile 105.6, provides 39 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position.

The subject bridge operates in accordance with 33 CFR 117.5. This deviation allows the swing span of the BNSF Railway Bridge across the Columbia River, mile 105.6, to remain in the closed-to-navigation position, and need not open for maritime traffic from 8 a.m. to 3 p.m. on December 27, 2017. The bridge shall operate in accordance to 33 CFR 117.5 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from large ships to commercial tug and tow vessels to recreational pleasure craft including cabin cruisers and sailing vessels. Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will not be able to open for emergencies during this closure period, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: December 21, 2017.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2017–27923 Filed 12–26–17; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0383; FRL–9972–49–Region 9]

Approval of California Air Plan Revisions; Anti-Idling Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X) and particulate matter (PM) from the idling of diesel-powered trucks. We are approving portions of a state rule submitted by the California Air Resources Board (CARB) to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on January 26, 2018.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2017–0383. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, (415) 947–4152, *buss.jeffrey@epa.gov.*

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

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Incorporation by Reference
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I. Proposed Action

On September 29, 2017, the EPA proposed to approve subsections (c)(1)(A) and (c)(1)(B) of Title 13 California Code of Regulations (CCR) Section 2485, ''Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling'' (collectively, ''Idling Restrictions''). The California Air Resources Board (CARB) adopted Section 2485 on September 1, 2006, and submitted the Idling Restrictions and other portions of Section 2485 to the EPA on December 9, 2011.[1]

We proposed to approve these provisions because we determined that they comply with relevant CAA

[1] As described in the proposal, the EPA previously approved other portions of section 2485 into the SIP on June 16, 2016. 81 FR 39423, 39443.

requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received 10 comments. All comments received were either supportive of or not specific to this action and thus are not addressed here.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

IV. 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 portions of 13 CCR 2485 described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for inclusion in the SIP, 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 the 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 documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- 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 February 26, 2018. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: December 12, 2017.

Alexis Strauss,

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 F—California

■ 2. Section 52.220a is amended by adding in paragraph (c) in table 1 an entry for "2485, subsections (c)(1)(A), (c)(1)(B) only" after the entry for "2485, excluding (c)(1)(A), (c)(1)(B), (c)(3)(B)" to read as follows:

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

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS [1]

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
2485, subsections (c)(1)(A), (c)(1)(B) only.	Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.	November 15, 2006 ..	[Insert **Federal Register** citation], December 27, 2017.	Submitted December 9, 2011. Limits diesel vehicle idling to 5 minutes.
*	*	*	*	*

[1] Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

* * * * *

[FR Doc. 2017–27818 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2017–0213; FRL–9972–48–OAR]

RIN 2060–AT43

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 28, 2017, the Environmental Protection Agency (EPA) published a direct final rule and an accompanying notice of proposed rulemaking entitled ''Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant.'' Because EPA received adverse comment, EPA is withdrawing the direct final rule through a separate notice. In this action, EPA is finalizing its proposal to correct the editing oversight that led to a potential conflict in a prior rulemaking as to whether or not containers holding two pounds or less of non-exempt substitute refrigerants for use in motor vehicle air conditioning that are not equipped with a self-sealing valve can be sold to persons that are not certified technicians, provided those small cans were manufactured or imported prior to January 1, 2018. This action clarifies that those small cans manufactured or imported prior to January 1, 2018 may continue to be sold to persons that are not certified as technicians under sections 608 or 609 of the Clean Air Act.

DATES: This final rule is effective December 27, 2017.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2017–0213. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information may not be 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: Sara Kemme by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205T), 1200 Pennsylvania Avenue NW, Washington, DC 20460; by telephone: (202) 566–0511; or by email: *kemme.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

On September 28, 2017, EPA published a Direct Final Rule (82 FR 45202) to make a minor change to resolve a potential conflict in regulatory text at 40 CFR 82.154(c)(1)(x) to ensure that it conforms to the EPA's intention. We stated in that direct final rule that if we received adverse comment by October 30, 2017, we would publish a timely withdrawal in the **Federal Register** so that the direct final rule would not take effect. EPA received adverse comment on that direct final rule by October 30, 2017 and is publishing a separate notice withdrawing that direct final rule.

To accompany the direct final rule, EPA also published a Notice of Proposed Rulemaking on September 28, 2017 entitled ''Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant'' (82 FR 45253). That notice proposed to make the same change in the regulatory text as in the direct final rule. This action addresses the relevant comments received and finalizes the revisions in the proposal.

B. Does this action apply to me?

Categories and entities potentially affected by this action include entities that distribute or sell small cans of refrigerant for use in motor vehicle air conditioning (MVAC) systems. Regulated entities include, but are not limited to, importers, manufacturers, and distributors of small cans of refrigerant (NAICS codes 325120, 441310, 447110) such as automotive parts and accessories stores and industrial gas manufacturers. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations at 40 CFR part 82, subpart F. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

C. Judicial Review

Under CAA section 307(b)(1), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 26, 2018. This final action is a nationally applicable regulation and has nationwide scope and effect because it makes revisions to the EPA's regulations for the National Recycling and Emission Reduction Program found at 40 CFR part

82, subpart F, which are nationally applicable regulations that have nationwide scope and effect. Under CAA section 307(d)(7)(B), only an objection to this final action that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to [EPA] that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344–A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

D. Effective Date

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the Clean Air Act (CAA), which states: ''The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective immediately upon publication in the **Federal Register**. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule relieves a restriction on the sale of certain small cans of MVAC refrigerant that were manufactured or imported prior to January 1, 2018.

II. Background

Section 608 of the CAA bears the title ''National Recycling and Emission Reduction Program.'' Under the structure of section 608, this program has three main components. First, section 608(a) requires EPA to establish standards and requirements regarding use and disposal of class I and II substances,[1] including a comprehensive refrigerant management program to limit emissions of ozone-depleting refrigerants. The CAA directs EPA to include regulations that reduce the use and emissions of class I and II substances to the lowest achievable level and that maximize the recapture and recycling of such substances. The second component, section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, section 608(c), prohibits the knowing venting, release, or disposal of ozone-depleting refrigerants and their substitutes during the maintenance, service, repair, or disposal of air-conditioning and refrigeration appliances or industrial process refrigeration.

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

On November 9, 2015, EPA proposed updates to the refrigerant management regulations under section 608 of the CAA (80 FR 69458). Among other things, EPA proposed to extend the sales restriction to non-exempt substitute refrigerants with an exception for small cans of refrigerant for use in MVAC. That is, the proposed revisions would have restricted the sale of non-exempt substitute refrigerants to certified technicians, with an exception for small cans (two pounds or less) of non-exempt substitute refrigerant for the servicing of MVACs[2] if the cans had a self-sealing valve. EPA requested comments on several aspects of that proposal including a scenario that would have included a sell-through provision for all small cans manufactured or imported prior to that effective date. (80 FR 69481). The proposal further stated that:

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

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

> With regards to small cans of MVAC refrigerant, manufacturers, distributors and retailers of automotive refrigerant supported the proposed ''manufacture-by'' date of one year from publication of the final rule, but commented that they oppose a sell-through date for small cans that do not have self-sealing valves. They commented that such a

[1] A class I or class II substance refers to an ozone-depleting substance listed 40 CFR part 82 subpart A, appendix A or appendix B, respectively.

[2] In this context, containers that meet these criteria are referred to interchangeably as ''small cans of MVAC refrigerant,'' ''small cans of refrigerant for MVAC servicing,'' or simply ''small cans.''

requirement would be inefficient, burdensome, costly, and environmentally problematic. It would require all retailers to know of the requirement and establish processes for returning unsold cans back to the manufacturer for destruction. More likely, the cans may be improperly disposed of, which would negate the environmental benefit of the new provisions. One commenter stated that a ''manufacture-by'' date would shift EPA's burden in ensuring compliance from a few manufacturers to thousands of retailers. Furthermore, commenters cited EPA's July 2015 SNAP rule (80 FR 42901; July 20, 2015) which listed HFC–134a as unacceptable for use as an aerosol as of a ''manufacture-by'' date, rather than a ''sell-by'' date. [81 FR 82342]

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

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

These intentions were also expressed in the regulatory text at 40 CFR 82.154(c)(2), which was revised in the November 2016 rule. However, because of an editing error, another provision, 40 CFR 82.154(c)(1)(ix), contains text that could be construed as contradicting the Agency's clearly expressed intent to allow non-technicians to purchase, and retailers to sell, small cans of refrigerant for use in MVAC that were manufactured or imported before the January 1, 2018, compliance date irrespective of whether they have a self-sealing valve.

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

The public comment period for the notice of proposed rulemaking that accompanied the direct final rule closed on October 30, 2017. EPA received adverse comment on the direct final rule and accordingly is publishing a notice withdrawing the direct final rule. EPA is now finalizing the regulatory revisions based on the accompanying proposal, ''Protection of Stratospheric Ozone: Refrigerant Management Regulations for Small Cans of Motor Vehicle Refrigerant'' (82 FR 45253). The regulatory text being finalized in this action is the same as the revised text in the direct final rule.

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

III. Response to Comments

EPA received several comments on the direct final rule, some of which were adverse at least in part. EPA is addressing those comments, as relevant, in this final rule. Consistent with the statements in the direct final rule and the parallel proposed rule, EPA did not initiate a second comment period on this action.

One commenter asked why it is that the sell through provision proposed in 2015 was not finalized, if the intent was to protect ozone.[3] The commenter stated that finalizing a sell through provision that does not permit the sales of refrigerant without a self-sealing valve would have a greater benefit for the general welfare, stating that it would reduce harmful gases being released and bolster the argument for allowing do-it-yourselfers to be allowed to purchase the product, regardless of the impending compliance date. Conversely, another commenter wrote that the selling of these cans will present very little damage to the ozone[4] and does not break any regulations, acts, or executive orders that have been previously passed. However, the commenter further said that the extended use of such cans of refrigerant that leak could pose a small threat to our ozone in the future and that for this reason, they should not be able to be imported or manufactured after the date of January 1, 2018.

EPA responds that it disagrees that the first commenter's suggestion would have a greater benefit for the general welfare, for reasons explained in its response to comments on the 2016 final rule.[5] More specifically, in the 2016 final rule EPA noted that comments from distributors and retailers of automotive refrigerant supported the proposed ''manufacture-by'' date of one year from publication of the final rule, but commented that they oppose a sell-through date for small cans that do not have self-sealing valves. (81 FR 82342). They commented that such a requirement would be inefficient, burdensome, costly, and environmentally problematic, and that it would require all retailers to know of the requirement and establish processes for returning unsold cans back to the manufacturer for destruction. *Id.* EPA further noted in the 2016 rule the comment that the cans may be improperly disposed of, which would negate the environmental benefit of the new provisions added in that rule. *Id.* EPA additionally noted the point made by one commenter who stated that a ''manufacture-by'' date would shift EPA's burden in ensuring compliance from a few manufacturers to thousands of retailers. *Id.* EPA responded in the 2016 final rule that to allow all entities in the distribution chain time to plan for and communicate changes to the sales restriction on non-exempt substitute

[3] EPA believes the commenter is referring to stratospheric ozone.

[4] EPA believes the commenter is referring to stratospheric ozone.

[5] EPA additionally notes that to the extent that the comments are based on a premise that the provision applies to containers that hold ozone-depleting refrigerants, that premise is mistaken, as explained in a later comment response.

refrigerants, as well as the requirement for self-sealing valves on small cans, EPA was finalizing a sales restriction date and ''manufacture-by'' or ''import-by'' date of January 1, 2018. *Id.* EPA also noted this was consistent with past practice in a Significant New Alternatives Policy (SNAP) Program rule (*id.,* citing 80 FR 42901; July 20, 2015). For all of these reasons, EPA continues to support the approach articulated in the 2016 final rule and is finalizing the revisions in the September 28, 2017 proposal, so that EPA's intent in the 2016 final rule to have a sales restriction date be based on a ''manufacture-by'' or ''import-by'' date of January 1, 2018 is effectuated.

EPA received one comment that EPA should require self-sealing valves for all refrigerants in order to prevent inadvertent release of ozone-depleting substances (ODS). This comment is outside of the scope of this rulemaking, which clarifies the status of small cans of non-exempt substitute refrigerant for use in MVACs that were manufactured or imported prior to January 1, 2018. The exemption at issue in this rule does not apply to any container that contains ODS. Further, there are no ODS that are allowed to be sold in small cans for MVAC use. All ODS refrigerants are subject to a sales restriction that places restrictions on the sale of such substances to people who are certified technicians (40 CFR 82.154(c)). Given there are no ODS MVAC refrigerants currently sold in small cans and given that all ODS refrigerants are subject to the sales restriction, EPA did not propose to require self-sealing valves on small cans of ODS MVAC refrigerant and is not finalizing such a requirement.

EPA received one comment that the agency should not allow the sale of small cans of MVAC refrigerants because instead of taking corrective measures and replacing leaking refrigeration system components, business owners are purchasing these small cans at automotive stores and recharging commercial equipment themselves. This comment is likewise outside the scope of this action. EPA did not propose to eliminate or revise the aspects of the provision at 40 CFR 82.154(c)(1)(ix) that allows the continued sale of small cans of MVAC refrigerants to people who are not certified technicians subject to certain conditions (for example, that they have a self-sealing valve) and is not finalizing such a provision.

One comment asked whether self-sealing valves are required for small containers of R–134a, a non-exempt substitute refrigerant used in MVACs, if they are sold only to certified technicians. EPA responds that the self-sealing valve specifications at 40 CFR 82.154(c)(2) establish eligibility for the exception from the sales restriction at 40 CFR 82.154(c)(1)(ix). If the buyer is a certified technician, then adherence to 40 CFR 82.154(c)(2) would not be required, but the seller would be responsible for the recordkeeping at 40 CFR 82.154(c)(3).

EPA also received a comment suggesting that EPA consider a future regulatory action to require that small cans of MVAC refrigerant be labeled with the date of manufacture. EPA appreciates the suggestion. As noted by the commenter, however, this comment is outside the scope of this current rulemaking. In the direct final rule EPA specifically noted that ''EPA is not making, and is not seeking comment on, any changes to the regulations at 40 CFR part 82, subpart F other than the revision discussed in this notice.'' (82 FR 45202). EPA did not propose to require labeling of small cans of MVAC refrigerant. In addition, while EPA recognizes labels may bring increased transparency, the costs and benefits associated with this suggested revision have not been assessed. Thus, EPA is not finalizing the commenter's suggested changes at this time.

After considering all of the comments received, EPA concludes that it is appropriate to finalize the revisions as proposed and is doing so in this final action.

IV. Statutes and Executive Orders Review

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 deregulatory action. EPA described the potential cost savings of this action in the direct final rule. (82 FR 45202).

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The regulatory revisions finalized in this action do not contain any information collection activities

D. Regulatory Flexibility Act (RFA)

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

E. Unfunded Mandates Reform Act

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

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This rule does not impose any new regulatory requirements. It is deregulatory in that it corrects a potential conflict in the refrigerant management regulations as to whether or not small cans of refrigerant for use in MVAC could be sold to non-technicians if they were manufactured or imported prior to January 1, 2018, and do not have a self-sealing valve. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

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

L. Congressional Review Act (CRA)

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

List of Subjects in 40 CFR Part 82

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

Dated: December 15, 2017.

E. Scott Pruitt,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

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

§ 82.154 Prohibitions.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

[FR Doc. 2017–27800 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 414, 416, and 419

[CMS–1678–CN]

RIN 0938–AT03

Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on December 14, 2017 entitled ''Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs.''

DATES: *Effective Date:* January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Lela Strong (410) 786–3213.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. R1–2017–23932 of December 14, 2017 (82 FR 59216), titled ''Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs'' (hereinafter referred to as the CY 2018 OPPS/ASC final rule), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the document published December 14, 2017. Accordingly, the corrections are effective January 1, 2018.

We note that the CY 2018 OPPS/ASC final rule was originally published on pages 52356 through 52637 in the issue of Monday, November 13, 2017. In that publication, a section of the document was omitted due to a printing error. Therefore, on December 14, 2017, the CY 2018 OPPS/ASC final rule was republished in its entirety. Accordingly, any corrections made in this document are made to the December 14, 2017 republished version.

II. Summary of Errors

A. Errors in the Preamble

1. Hospital Outpatient Prospective Payment System (OPPS) Corrections

On page 59256, we are correcting the OPPS weight scalar based on the conforming policy correction to the Ambulatory Payment Classification (APC) assignment of Healthcare Common Procedure Coding System (HCPCS) code 93880 in APC 5522 (Level 2 Imaging without Contrast) to APC 5523 (Level 3 Imaging without Contrast).

On page 59262, we are correcting language related to hospital-specific Cost-to-Charge Ratios (CCRs) and their application on payments for pass-through devices.

On pages 59269 through 59271, we use the payment rates available in Addenda A and B to display calculation of adjusted payment and copayment. Due to the correction of OPPS payment rates as a result of the corrected OPPS weight scalar, we are also correcting the payment and copayment numbers used in the example.

On page 59277, due to the corrected OPPS APC geometric mean cost as a result of the conforming policy correction to the imaging without contrast APCs, we are correcting the list of APCs excepted from the 2 times rule for calendar year (CY) 2018. Specifically, we are revising Table 14 to

include APC 5523 (Level 3 Imaging without Contrast) to this list, for a total of 12 APCs.

On page 59295, we inadvertently excluded a summary of a comment and our response to that comment. We are revising the discussion to include the comment and response.

On page 59311, due to the correction in OPPS APC geometric mean cost as a result of the conforming policy correction to the imaging without contrast APCs in Addendum A and Addendum B, we are also correcting the CY 2018 APC geometric mean cost for APC 5522 (Level 2 Imaging without Contrast) and APC 5523 (Level 3 Imaging without Contrast) in Table 54 as well as in the OPPS Addenda A and B.

On page 59323, we incorrectly listed the HCPCS code that describes Lung biopsy plug with delivery system as C2623 instead of C2613.

On page 59369, we inadvertently omitted vaccines assigned to OPPS status indicator ''F'' from the 340B payment adjustment exclusion. Specifically, we stated in the preamble that ''We remind readers that our 340B payment policy applies to only OPPS separately payable drugs (status indicator ''K'') and does not apply to vaccines (status indicator ''L'' or ''M''), or drugs with transitional pass-through payment status (status indicator ''G'').'' We are correcting this statement to read ''We remind readers that our 340B payment policy applies to only OPPS separately payable drugs (status indicator ''K'') and does not apply to vaccines (status indicator ''F'', ''L'' or ''M''), or drugs with transitional pass-through payment status (status indicator ''G'').'' In addition, we are also correcting the statement on page 59369 that reads ''Part B drugs or biologicals excluded from the 340B payment adjustment include vaccines (assigned status indicator ''L'' or ''M'') and drugs with OPPS transitional pass-through payment status (assigned status indicator ''G'')'' to correctly state our final policy that ''Part B drugs or biologicals excluded from the 340B payment adjustment include vaccines (assigned status indicator ''F'', ''L'' or ''M'') and drugs with OPPS transitional pass-through payment status (assigned status indicator ''G'').''

On pages 59412 through 59413, we are correcting a typographical error in the title of Table 87.

On pages 59482 through 59483, we are correcting the count of excepted Rural Sole Community Hospitals as well as the count of other providers that were listed in regards to the 340B Program.

On pages 59486 through 59488, we provided and described Table 88—Estimated Impact of the CY 2018 Changes for the Hospital Outpatient Prospective Payment System, based on rates which applied an incorrect scalar. We have updated Table 88 and the description of the table to reflect the corrections to the scalar as a result of the corrections to geometric mean costs in APCs 5522 and 5523.

2. Ambulatory Surgical Center (ASC) Payment System Corrections

On page 59413, the discussion of ASC Payment for Covered Ancillary Services for CY 2018 was inadvertently omitted. We are including that discussion in this correcting document.

On page 59422, we inadvertently published an incorrect ASC conversion factor of $44.663 for ASCs that do not meet the quality reporting requirements. With the correct application of our established policy, the corrected 2018 ASC conversion factor for ASCs that do not meet the quality reporting requirements is $44.674.

3. Partial Hospitalization Program Corrections

On page 59375, the text states: ''We proposed to apply our established methodologies in developing the CY 2018 geometric mean per diem costs and payment rates, including the application of a ±2 standard deviation trim on costs per day for CMHCs and a CCR≤5 hospital service day trim for hospital-based PHP providers.'' The less than or equal to sign that appears in this sentence is incorrect and misstates our trim policy. Therefore, we are correcting ''CCR≤5'' to read ''CCR>5.''

B. Summary of Errors and Corrections to the OPPS and ASC Addenda Posted on the CMS Website

1. OPPS Addenda Posted on the CMS Website

The payment and copayment rates in Addendum A (Final OPPS APCs for CY 2018), Addendum B (Final OPPS Payment by HCPCS Code for CY 2018), Addendum C (Final HCPCS Codes Payable Under the 2018 OPPS by APC), and the payment rates in the 2018 OPPS APC Offset File and the 2018 OPPS HCPCS Device Offset File that were published on the CMS website in conjunction with the CY 2018 OPPS/ASC final rule are corrected to reflect the corrected assignment of HCPCS code 93880 to APC 5522 (Level 2 Imaging without Contrast) and APC 5523 (Level 3 Imaging without Contrast).

In addition, in Addendum B, 17 HCPCS codes were incorrectly assigned to OPPS status indicator ''Q4'' when they should have been assigned to status indicator ''A.'' We are correcting the mistake by assigning status indicator ''A'' to these codes as shown in the chart that follows.

HCPCS code	Short descriptor	CI	SI
81105	Hpa-1 genotyping	NC	A
81106	Hpa-2 genotyping	NC	A
81107	Hpa-3 genotyping	NC	A
81108	Hpa-4 genotyping	NC	A
81109	Hpa-5 genotyping	NC	A
81110	Hpa-6 genotyping	NC	A
81111	Hpa-9 genotyping	NC	A
81112	Hpa-15 genotyping	NC	A
81120	Idh1 common variants	NC	A
81121	Idh2 common variants	NC	A
81175	Asxl1 full gene sequence	NC	A
81176	Asxl1 gene target seq alys	NC	A
81448	Hrdtry perph neurphy panel	NC	A
81520	Onc breast mrna 58 genes	NC	A
81521	Onc breast mrna 70 genes	NC	A
81541	Onc prostate mrna 46 genes	NC	A
81551	Onc prostate 3 genes	NC	A

In Addendum M, we inadvertently excluded Current Procedural Terminology (CPT) codes 71045 (Radiologic examination, chest; single view) and 71046 (Radiologic examination, chest; 2 views). The revised Addendum M includes these codes. CPT codes 71045 and 71046 replaced CPT codes 71010 (Radiologic examination, chest; single view, frontal) and 71020 (Radiologic examination, chest, 2 views, frontal and lateral; with apical lordotic procedure) effective January 1, 2018. Since the predecessor codes were assigned to composite APC 5041 (Critical Care) and APC 5045 (Trauma Response with Critical Care) before January 1, 2018, the replacement codes are assigned to the same composite APCs effective January 1, 2018.

In Addendum P, we inadvertently excluded the following 7 CPT codes:

- 0409T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; pulse generator only);
- 0410T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; atrial electrode only);
- 0411T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; ventricular electrode only);
- 0414T (Removal and replacement of permanent cardiac contractility modulation system pulse generator only);
- 0446T (Creation of subcutaneous pocket with insertion of implantable interstitial glucose sensor, including system activation and patient training);
- 0449T (Insertion of aqueous drainage device, without extraocular reservoir, internal approach, into the subconjunctival space; initial device); and
- 28291 (Hallux rigidus correction with cheilectomy, debridement and capsular release of the first metatarsophalangeal joint; with implant).

CPT codes 0409T, 0410T, 0411T, 0414T, 0446T, 0449T represent procedures requiring the implantation of medical devices that do not have yet have associated claims data and therefore have been granted device-intensive status with a default device offset percentage of 41 percent, per our current policy outlined in the CY 2017 OPPS/ASC final rule with comment (81 FR 79658). CPT code 28291 replaced CPT code 28293 (Correction, hallux valgus (bunion), with or without sesamoidectomy; resection of joint with implant) which previously held the device-intensive designation with a device offset percentage of 43.78 percent. Since the predecessor code was device-intensive, CPT code 28291 is also device-intensive status and a device offset percentage of 43.78 percent based on the offset from the predecessor code.

To view the corrected CY 2018 OPPS status indicator, payment and copayment rates, that result from these technical corrections as well as CPT codes that were inadvertently excluded, we refer readers to the Addenda and supporting files that are posted on the CMS website at: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/HospitalOutpatientPPS/index.html.* Select ''CMS–1678–CN'' from the list of regulations. All corrected Addenda for this correcting document are contained in the zipped folder titled ''2018 OPPS Final Rule Addenda'' at the bottom of the page for CMS–1678–CN.

2. ASC Payment System Addenda Posted on the CMS Website

As a result of the technical corrections described in Section II.A. and II.B.1. of this correction notice, we have updated Addenda AA and BB to reflect the final corrected payment rates and indicators for CY 2018 for ASC covered surgical procedures and covered ancillary services. In addition, in addendum BB, we inadvertently included HCPCS code Q2040 (Tisagenlecleucel, up to 250 million car-positive viable t cells, including leukapheresis and dose preparation procedures, per infusion) as a separately payable drug when furnished in the ASC setting. Because the complement of services required to furnish the drug described by HCPCS code Q2040 are not all covered ASC surgical procedures, we are correcting the error by removing HCPCS code Q2040 from Addendum BB.

To view the corrected final CY 2018 ASC payment rates and indicators that result from these technical corrections, we refer readers to the Addenda and supporting files on the CMS website at: *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html.* Select ''CMS–1678–CN'' from the list of regulations. All corrected ASC addenda for this correcting document are contained in the zipped folder entitled ''Addendum AA, BB, DD1, DD2, and EE'' at the bottom of the page for CMS–1678–CN.

In addition, we inadvertently excluded the below nine codes from the file labeled ''CY 2018 ASC Procedures to which the No Cost/Full Credit and Partial Credit Device Adjustment Policy Applies''. These nine codes were included as ASC device-intensive procedures to which the no cost/full credit and partial credit device adjustment policy applies in the CY 2017 final rule, and we did not intend any changes to them for CY 2018.

- 0409T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; pulse generator only);
- 0410T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; atrial electrode only);
- 0411T (Insertion or replacement of permanent cardiac contractility modulation system, including contractility evaluation when performed, and programming of sensing and therapeutic parameters; ventricular electrode only);
- 0414T (Removal and replacement of permanent cardiac contractility modulation system pulse generator only);
- 0446T (Creation of subcutaneous pocket with insertion of implantable interstitial glucose sensor, including system activation and patient training);
- 0449T (Insertion of aqueous drainage device, without extraocular reservoir, internal approach, into the subconjunctival space; initial device);
- 22867 (Insertion of interlaminar/interspinous process stabilization/distraction device, without fusion, including image guidance when performed, with open decompression, lumbar; single level);
- 22869 (Insertion of interlaminar/interspinous process stabilization/distraction device, without open decompression or fusion, including image guidance when performed, lumbar; single level); and
- 28291 (Hallux rigidus correction with cheilectomy, debridement and capsular release of the first metatarsophalangeal joint; with implant).

To view the revised version of the ''CY 2018 ASC Procedures to which the No Cost/Full Credit and Partial Credit Device Adjustment Policy Applies,'' we refer readers to the CMS website at:

https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Policy-Files.html.

III. Waiver of Proposed Rulemaking

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date of the APA requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rulemaking that would be subject to these requirements. This correcting document corrects technical and typographic errors in the preamble, addenda, payment rates, tables, and appendices included or referenced in the CY 2018 OPPS/ASC final rule but does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, the corrections made through this correcting document are intended to ensure that the information in the CY 2018 OPPS/ASC final rule accurately reflects the policies adopted in that rule.

In addition, even if this were a rulemaking to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public's interest for providers to receive appropriate payments in as timely a manner as possible, and to ensure that the CY 2018 OPPS/ASC final rule accurately reflects our policies as of the date they take effect and are applicable.

Furthermore, such procedures would be unnecessary, as we are not altering our payment methodologies or policies, but rather, we are simply correctly implementing the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the CY 2018 OPPS/ASC final rule accurately reflects these payment methodologies and policies. For these reasons, we believe we have good cause to waive the notice and comment and effective date requirements.

IV. Correction of Errors

In FR Doc. R1–2017–23932 of December 14, 2017 (82 FR 59216), make the following corrections:

1. On page 59256, third column, first paragraph, in line 11, correct ''1.4457'' to read ''1.4458''.

2. On page 59262, second column, second full paragraph, in line 7, add the parenthetical phrase ''(in cases where we are unable to use the implantable device CCR)'' after the words ''pass-through devices''.

3. On page 59269,

a. Third column, last full paragraph,

(1) In line 17, correct ''$572.81'' to read ''$575.85.''

(2) In line 21, correct ''$561.35'' to read ''$561.39.''

b. Third column, last partial paragraph,

(1) In lines 5 and 6, correct ''$442.53 (.60 * $572.81 * 1.2876).'' to read ''$442.56 (.60 * $575.85 * 1.2876).''

(2) In line 9, correct ''$443.68 (.60 * $561.35 * 1.2876).'' to read ''$443.70 (.60 * $561.39 * 1.2876).''

(3) In line 12, correct ''$229.12 (.40 * $572.81).'' to read ''$229.14 (.40 * $575.85).''

4. On page 59270, first column, first partial paragraph,

a. In line 2, correct ''$224.54 (.40 * $561.35).'' to read ''$224.56 (.40 * $561.39).''

b. In lines 6 and 7, correct ''$671.65 ($442.53 + $229.12).'' to read ''$671.70 ($442.56 + $229.14).''

c. In lines 9 and 10, correct ''$658.22 ($433.68 + $224.54).'' to read ''$658.26 ($443.70 + $224.56).''

5. On page 59271, first column, second full paragraph, under ''Step 1,'' in line 8, correct ''$572.81'' to read ''$575.85.''

6. On page 59277, Table 14—APC Exceptions to the 2 Times Rule for CY 2018, is corrected to read as follows:

TABLE 14—APC EXCEPTIONS TO THE 2 TIMES RULE FOR CY 2018

APC	CY 2018 APC title
5112	Level 2 Musculoskeletal Procedures
5521	Level 1 Imaging without Contrast
5522	Level 2 Imaging without Contrast
5523	Level 3 Imaging without Contrast
5524	Level 4 Imaging without Contrast
5571	Level 1 Imaging with Contrast
5691	Level 1 Drug Administration
5721	Level 1 Diagnostic Tests and Related Services
5731	Level 1 Minor Procedures
5732	Level 2 Minor Procedures
5771	Cardiac Rehabilitation
5823	Level 3 Health and Behavior Services

7. On page 59295, third column,

a. After the first partial paragraph, add the following comment and response:

Comment: We received a comment to the CY 2018 OPPS/ASC proposed rule

requesting the reassignment of the procedures assigned to APCs 5361 (Level 1 Laparoscopy and Related Services) and 5362 (Level 2 Laparoscopy and Related Services) to ensure a more logical distribution of procedure costs between these two APCs.

Response: We appreciate the suggestion and will consider for future rulemaking. We note that in the CY 2018 OPPS/ASC proposed rule, there was no violation of the 2 times rule for either APC 5361 or APC 5362.

b. First full paragraph, in line 2, correct ''comment'' to read ''comments''.

8. On page 59311, Table 54—Comparison of CY 2017 and CY 2018 Geometric Mean Costs For The Imaging APCs, is corrected to read as follows:

TABLE 54–COMPARISON OF CY 2017 AND CY 2018 GEOMETRIC MEAN COSTS FOR THE IMAGING APCS

APC	APC group title	CY 2017 APC geometric mean cost	CY 2018 APC geometric mean cost
5521	Level 1 Imaging without Contrast	$61.53	$62.08
5522	Level 2 Imaging without Contrast	115.88	114.39
5523	Level 3 Imaging without Contrast	232.21	232.17
5524	Level 4 Imaging without Contrast	462.23	486.38
5571	Level 1 Imaging with Contrast	272.40	252.58
5572	Level 2 Imaging with Contrast	438.42	456.08
5573	Level 3 Imaging with Contrast	675.23	681.45

9. On page 59323, second column, second full paragraph, in line 4, correct ''C2623'' to read ''C2613''.

10. On page 59369,

a. Second column, second full paragraph, in line 5, correct ''status indicator ''L'' or ''M'''' to read ''status indicator ''F'', ''L'', or ''M''''.

b. Third column, first full paragraph, in line 19, correct ''status indicator ''L'' or ''M'''' to read ''status indicator ''F'', ''L'', or ''M''''.

11. On page 59375, second column, third full paragraph, in line 7, correct ''CCR ≤5'' to read ''CCR≤5''.

12. On pages 59412 and 59413, in the title for Table 87, correct ''ASDC'' to read ''ASC''.

13. On page 59413, second column, after the second full paragraph, add the following paragraphs before the section titled, ''D. ASC Payment for Covered Surgical Procedures and Covered Ancillary Services'':

''2. Covered Ancillary Services

Consistent with the established ASC payment system policy, in the CY 2018 OPPS/ASC proposed rule (82 FR 33662) we proposed to update the ASC list of covered ancillary services to reflect the payment status for the services under the CY 2018 OPPS. We noted that maintaining consistency with the OPPS may result in proposed changes to ASC payment indicators for some covered ancillary services because of changes that are being finalized under the OPPS for CY 2018. For example, a covered ancillary service that was separately paid under the ASC payment system in CY 2017 may be proposed for packaged status under the CY 2018 OPPS and, therefore, also under the ASC payment system for CY 2018.

To maintain consistency with the OPPS, we proposed to continue this reconciliation of packaged status for the ASC payment system for CY 2018. Comment indicator ''CH,'' discussed in section XII.F. of the proposed rule, was used in Addendum BB to the proposed rule (which is available via the internet on the CMS website) to indicate covered ancillary services for which we proposed a change in the ASC payment indicator to reflect a proposed change in the OPPS treatment of the service for CY 2018.

We included all ASC covered ancillary services and their proposed payment indicators for CY 2018 in Addendum BB to the proposed rule. We invited public comments on this proposal.

We did not receive any public comments on these proposals. Therefore, we are finalizing, without modification, our proposal to update the ASC list of covered ancillary services to reflect the payment status for the services under the OPPS. All CY 2018 ASC covered ancillary services and their final payment indicators are included in Addendum BB to this final rule (which is available via the internet on the CMS website).''

14. On page 59422, first column, first partial paragraph, in line 1, correct ''44.663'' to read ''44.674''.

15. On page 59482, third column, second partial paragraph, in line 43, correct ''270'' to read ''247''.

16. On page 59483, first column, third partial paragraph, in line 29, correct ''$199'' to read ''$169''.

17. On page 59486,

a. First column, first full paragraph, in line 16, correct ''0.5'' to read ''0.6''.

b. Third column, first full paragraph, in line 6, correct ''1.2'' to read ''1.3''.

18. On page 59487 through 59488, Table 88—Estimated Impact of the CY 2018 Changes for the Hospital Outpatient Prospective Payment System, is corrected to read as follows:

TABLE 88—ESTIMATED IMPACT OF THE CY 2018 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM

	Number of hospitals	APC recalibration (all changes)	New wage index and provider adjustments	340B adjustment	All budget neutral changes (combined cols 2–4) with market basket update	All changes
	(1)	(2)	(3)	(4)	(5)	(6)
ALL PROVIDERS *	3,878	0.0	0.0	0.0	1.3	1.4

TABLE 88—ESTIMATED IMPACT OF THE CY 2018 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals (1)	APC recalibration (all changes) (2)	New wage index and provider adjustments (3)	340B adjustment (4)	All budget neutral changes (combined cols 2–4) with market basket update (5)	All changes (6)
ALL HOSPITALS (excludes hospitals held harmless and CMHCs)	3,765	0.0	0.1	−0.1	1.4	1.5
URBAN HOSPITALS	2,951	0.1	0.1	−0.3	1.3	1.3
LARGE URBAN (GT 1 MILL.)	1,589	0.1	0.0	−0.2	1.2	1.3
OTHER URBAN (LE 1 MILL.)	1,362	0.0	0.2	−0.3	1.3	1.4
RURAL HOSPITALS	814	−0.3	0.0	1.4	2.5	2.7
SOLE COMMUNITY	372	−0.2	0.1	2.6	3.9	4.0
OTHER RURAL	442	−0.4	−0.2	0.0	0.8	0.9
BEDS (URBAN):						
0–99 BEDS	1,021	0.0	0.0	1.9	3.3	3.4
100–199 BEDS	850	0.0	0.2	1.2	2.8	2.9
200–299 BEDS	468	0.1	0.1	0.5	2.0	2.1
300–499 BEDS	399	0.1	0.0	−0.4	1.1	1.2
500 + BEDS	213	0.0	0.1	−2.2	−0.7	−0.6
BEDS (RURAL):						
0–49 BEDS	333	−0.6	−0.2	2.1	2.7	2.9
50–100 BEDS	297	−0.2	−0.2	1.9	2.8	3.0
101–149 BEDS	97	−0.3	0.1	1.1	2.3	2.4
150–199 BEDS	49	−0.2	0.1	0.7	2.0	2.1
200 + BEDS	38	−0.3	0.4	0.8	2.4	2.5
REGION (URBAN):						
NEW ENGLAND	144	0.2	0.4	−0.2	1.7	1.8
MIDDLE ATLANTIC	348	0.1	−0.2	−0.1	1.2	1.3
SOUTH ATLANTIC	463	0.0	0.3	−0.4	1.3	1.4
EAST NORTH CENT	471	0.0	0.1	−0.2	1.3	1.4
EAST SOUTH CENT	178	−0.1	−0.1	−1.6	−0.4	−0.3
WEST NORTH CENT	191	0.1	0.5	−0.6	1.4	1.5
WEST SOUTH CENT	513	0.0	0.3	0.9	2.5	2.6
MOUNTAIN	211	0.3	−0.9	−0.2	0.5	0.7
PACIFIC	383	0.1	0.0	−0.6	0.8	0.9
PUERTO RICO	49	−0.4	0.2	2.9	4.1	4.2
REGION (RURAL):						
NEW ENGLAND	21	0.1	1.5	1.2	4.2	4.2
MIDDLE ATLANTIC	53	−0.1	−0.5	1.8	2.5	2.7
SOUTH ATLANTIC	124	−0.4	−0.6	0.7	1.1	1.2
EAST NORTH CENT	122	−0.2	0.0	1.5	2.7	2.8
EAST SOUTH CENT	155	−0.6	−0.1	0.0	0.7	0.8
WEST NORTH CENT	98	−0.1	0.2	2.4	3.9	4.1
WEST SOUTH CENT	161	−0.7	0.3	2.6	3.6	3.7
MOUNTAIN	56	0.0	−0.3	1.9	2.9	3.3
PACIFIC	24	−0.2	0.1	1.7	3.0	3.0
TEACHING STATUS:						
NON-TEACHING	2,655	−0.1	0.1	1.3	2.8	2.9
MINOR	761	0.1	0.1	0.1	1.6	1.7
MAJOR	349	0.1	0.0	−2.4	−1.0	−0.9
DSH PATIENT PERCENT:						
0	10	0.0	0.2	3.2	4.8	4.9
GT 0–0.10	272	0.2	−0.1	2.8	4.4	4.5
0.10–0.16	263	0.2	0.0	2.7	4.3	4.4
0.16–0.23	572	0.1	0.3	2.6	4.4	4.5
0.23–0.35	1132	0.0	0.1	−0.4	1.0	1.2
GE 0.35	935	0.0	0.0	−2.2	−0.9	−0.8
DSH NOT AVAILABLE **	581	−2.0	0.1	2.0	1.4	1.6
URBAN TEACHING/DSH:						
TEACHING & DSH	1,002	0.1	0.0	−1.1	0.3	0.4
NO TEACHING/DSH	1,386	0.1	0.2	1.3	2.9	3.0
NO TEACHING/NO DSH	10	0.0	0.2	3.2	4.8	4.9
DSH NOT AVAILABLE2	553	−1.9	0.1	1.9	1.4	1.6
TYPE OF OWNERSHIP:						
VOLUNTARY	1,979	0.0	0.0	−0.3	1.2	1.3
PROPRIETARY	1,293	0.1	0.1	2.7	4.3	4.5
GOVERNMENT	493	−0.1	0.2	−1.6	−0.1	0.0

TABLE 88—ESTIMATED IMPACT OF THE CY 2018 CHANGES FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM—Continued

	Number of hospitals (1)	APC recalibration (all changes) (2)	New wage index and provider adjustments (3)	340B adjustment (4)	All budget neutral changes (combined cols 2–4) with market basket update (5)	All changes (6)
CMHCs	49	12.5	0.2	3.2	17.8	17.9

Column (1) shows total hospitals and/or CMHCs.
Column (2) includes all final CY 2018 OPPS policies and compares those to the CY 2017 OPPS.
Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2018 hospital inpatient wage index, including all hold harmless policies and transitional wages. The rural adjustment continues our current policy of 7.1 percent so the budget neutrality factor is 1. The budget neutrality adjustment for the cancer hospital adjustment is 1.0008 because the target payment-to-cost ratio changes from 0.91 in CY 2017 to 0.89 in CY 2018 and is further reduced by 1 percentage point to 0.88 in accordance with the 21st Century Cures Act. However, this reduction does not affect the budget neutrality adjustment consistent with statute.
Column (4) shows the impact of the 340B drug payment reductions and the corresponding increase in non-drug payments.
Column (5) shows the impact of all budget neutrality adjustments and the addition of the 1.35 percent OPD fee schedule update factor (2.7 percent reduced by 0.6 percentage points for the productivity adjustment and further reduced by 0.75 percentage point as required by law).
Column (6) shows the additional adjustments to the conversion factor resulting from the frontier adjustment, a change in the pass-through estimate, and adding estimated outlier payments.
These 3,878 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.
** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

19. On page 59488, bottom third of the page,

a. Second column, first partial paragraph, in line 6, correct ''17.2'' to read ''17.9''.

b. Third column, first partial paragraph, in line 10, correct ''17.2'' to read ''17.9''.

Dated: December 20, 2017.

Ann C. Agnew,

Executive Secretary to the Department, Department of Health and Human Services.

[FR Doc. 2017–27949 Filed 12–22–17; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 161020985–7181–02]

RIN 0648–XF908

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels equal to or greater than 60 feet (18.3 meters) length overall (LOA) using pot gear to catcher/processors (C/Ps) using pot gear, catcher vessels less than 60 feet (18.3 meters) LOA using hook-and-line or pot gear, and C/Ps using hook-and-line gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2017 total allowable catch of Pacific cod to be harvested.

DATES: Effective December 21, 2017, through 2400 hours, Alaska local time (A.l.t.), December 31, 2017.

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

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

The 2017 Pacific cod total allowable catch (TAC) specified for catcher vessels greater than or equal to 60 feet LOA using pot gear in the BSAI is 15,389 metric tons (mt) as established by the final 2017 and 2018 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017) and reallocation (82 FR 47162, October 11, 2017).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels greater than or equal to 60 feet LOA using pot gear will not be able to harvest 1,500 mt of the remaining 2017 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*). Therefore, in accordance with § 679.20(a)(7)(iii), taking into account the capabilities of the sectors to harvest reallocated amounts of Pacific cod, and following the hierarchies set forth in § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(B), NMFS reallocates 155 mt of Pacific cod to C/Ps using pot gear, 200 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and 1,145 mt to C/Ps using hook-and-line gear.

The harvest specifications for Pacific cod included in the final 2017 harvest specifications for groundfish in the BSAI (82 FR 11826, February 27, 2017) and reallocations (FR 57162, December 4, 2017; 82 FR 43503, September 18, 2017; 82 FR 41899, September 5, 2017; and 82 FR 8905, February 1, 2017; 82) are revised as follows: 13,889 mt for catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear, 4,999 mt for C/Ps using pot gear, 9,271 mt for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and 107,589 mt for C/Ps using hook-and-line gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and

opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from catcher vessels greater than or equal to 60 feet (18.3 m) LOA using pot gear to C/Ps using pot gear, catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear, and catcher/processors using hook-and-line gear in the BSAI management area. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 6, 2017.

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

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

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

Dated: December 21, 2017.

Alan D. Risenhoover,

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

[FR Doc. 2017–27873 Filed 12–21–17; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 82, No. 247

Wednesday, December 27, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2017–N–5476]

Akzo Nobel Surface Chemistry AB; Filing of Food Additive Petition (Animal Use); Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; petition for rulemaking; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the notice of petition that appeared in the **Federal Register** of September 21, 2017, proposing that the food additive regulations be amended to provide for the safe use of glyceryl polyethylene glycol (15) ricinoleate as an emulsifier in animal food that does not include food for cats, dogs, vitamin premixes, or aquaculture. FDA is reopening the comment period to allow additional time for comments on environmental impacts.

DATES: FDA is reopening the comment period on the notice of petition published in the **Federal Register** of September 21, 2017 (82 FR 44128). Submit either electronic or written comments by January 26, 2018.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 26, 2018. The *https://www.regulations.gov* electronic filing system will accept comments until midnight Eastern Time at the end of January 26, 2018. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5476 for ''Food Additives Permitted in Feed and Drinking Water of Animals; glyceryl polyethylene glycol (15) ricinoleate.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Chelsea Trull, Center for Veterinary Medicine (HFV–224), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6729, *Chelsea.trull@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 2017 (82 FR 44128), FDA gave notice that Akzo Nobel Surface Chemistry AB had filed a petition to amend Title 21 of the Code of Federal Regulations in part 573 Food Additives Permitted in Feed and

Drinking Water of Animals (21 CFR part 573) to provide for the safe use of glyceryl polyethylene glycol (15) ricinoleate as an emulsifier in animal food that does not include food for cats, dogs, vitamin premixes, or aquaculture.

Interested persons were originally given until October 23, 2017, to comment on the petitioner's environmental assessment.

The environmental assessment was not placed on public display until October 13, 2017. On our own initiative, we are reopening the comment period to allow potential respondents to thoroughly evaluate and address pertinent environmental issues. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on this important issue.

Dated: December 20, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–27840 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 175

[167A2100DD/AAKC001030/ A0A501010.999900 253G]

RIN 1076–AF31

Indian Electric Power Utilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises regulations addressing electric power utilities of the Colorado River, Flathead, and San Carlos Indian irrigation projects to use plain language, update definitions, lengthen a regulatory deadline, and make other minor changes.

DATES: Comments must be received on or before February 26, 2018.

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

- *Federal eRulemaking Portal: www.regulations.gov.* Search for Docket No. BIA–2016–0002 and follow the instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Attn: 1076–AF31, U.S. Dept. of the Interior, 1849 C Street NW, Mail Stop 3642, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs; telephone (202) 273–4680, *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Changes
III. Procedural Requirements
A. Regulatory Planning and Review (E.O.s 12866 and 13563) and Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)
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)
I. Paperwork Reduction Act
J. National Environmental Policy Act
K. Effects on the Energy Supply (E.O. 13211)
L. Clarity of This Regulation

I. Background

Various statutes provide the Bureau of Indian Affairs (BIA) with authority to issue this regulation and for administering electric power utilities for the Colorado River, Flathead (Mission Valley Power), and San Carlos Indian irrigation projects. For example, see 5 U.S.C. 301; 25 U.S.C. 13; 25 U.S.C. 385c; 43 Stat. 475–76; 45 Stat. 210–13; 49 Stat. 1039–40; 49 Stat. 1822–23; 54 Stat. 422; 62 Stat. 269–73; 65 Stat. 254; 99 Stat. 319–20. Each of these power projects provides energy, transmission, and distribution of electrical services to customers in their respective service areas. BIA (or the contracting/compacting Indian Tribe) provides oversight and limited technical assistance for power projects and conducts operations and maintenance of the distribution systems.

The regulations addressing BIA's administration of the power utilities are at 25 CFR part 175, Indian Electric Power Utilities. These regulations were last updated in 1991.

II. Description of Changes

The revisions being proposed today are intended to make the regulations more user-friendly through plain language. The proposed rule would also update definitions, lengthen the time by which BIA must issue a decision on an appeal from 30 days to 60 days (by referring to 25 CFR 2.19(a)), and require publication of rate adjustments in the **Federal Register**. The following tables summarize the proposed changes:

Current 25 CFR section	Proposed 25 CFR section	Summary of proposed changes
175.1 Definitions	175.100 What terms should I know for this part?	Deletes the definitions of "appellant" and "officer-in-charge." Adds definitions for "bill," "CFR," "day(s)," "delinquent," "due date," "electric energy," "energy," "fee," "I, me, my, you, and your," "must," "past due bill," "power," "public notice," "purchased power," "taxpayer identification number," "utility(ies)," and "we, us, and our." Replaces definition of "Area Director" with a definition of "BIA." Revises the definition of "customer," "electric power utility," "electric service," "operations manual," "service," "service fee." Revises the definition of "power rate" and replaces it with the terms "rate" and "electric power rate." Revises the definition of "service agreement" and replaces it with the term "agreement." Revises the definition of "special contract" and replaces it with the term "special agreement."
175.2 Purpose	175.105 What is the purpose of this part?	Revises for plain language.
175.3 Compliance	175.110 Does this part apply to me?	Revises for plain language.
175.4 Authority of area director	N/A	Deletes provisions containing delegations of authority to eliminate possible conflicts with the Departmental Delegations of Authority.

Current 25 CFR section	Proposed 25 CFR section	Summary of proposed changes
175.5 Operations manual	175.115 How does BIA administer its electric power utilities? 175.120 What are Operations Manuals?	Revises for plain language, deletes specific means by which public notice of changes will be provided, and incorporates instead the definition of "public notice," which provides for publishing information consistent with the operations manual.
175.6 Information collection	175.600 How does the Paperwork Reduction Act affect this part?	Revises for plain language.
175.10 Revenues collected from power operations.	175.200 Why does BIA collect revenue from you and the other customers it serves, and how is that revenue used? 175.205 When are BIA rates and fees reviewed?	Revises for plain language and deletes amortization as an example for what BIA may use revenue.
175.11 Procedures for setting service fees.	175.210 What is BIA's procedure for setting service fees?	Deletes provisions containing delegations of authority to eliminate possible conflicts with Departmental Delegations of Authority.
175.12 Procedures for adjusting electric power rates except for adjustments due to changes in the cost of purchased power or energy.	175.215 What is BIA's procedure for adjusting electric power rates? 175.220 How long do rate and fee adjustments stay in effect?	Adds a requirement for BIA to publish a proposed rate adjustment in the **Federal Register**.
175.13 Procedures for adjusting electric power rates to reflect changes in the cost of purchased power or energy.	175.235 How does BIA include changes in purchased power costs to our electric power rates?	Revises for plain language.
175.20 Gratuities	N/A	This section is deleted because it is already addressed by other laws.
175.21 Discontinuance of service	175.315 What will happen if I do not pay my bill?	Revises for plain language.
175.22 Requirements for receiving electrical service.	175.125 How do I request and receive service?	Revises for plain language.
175.23 Customer responsibilities	N/A	Deleted because this provision is for a project-specific authority addressed at the local BIA level.
175.24 Utility responsibilities	N/A	Incorporates the substance into proposed sections 175.115 and 175.120, which refer to operations manual instead of setting out responsibilities.
175.30 Billing	175.300 How does BIA calculate my electric bill?	Revises for plain language.
175.31 Methods and terms of payment.	175.310 How do I pay my bill?	Replaces provision stating that the utility may refuse, for cause, to accept personal checks with a general statement that the electric utility that serves you may provide additional requirements.
175.32 Collections	175.315 What will happen if I do not pay my bill? 175.320 What will happen if my service is disconnected and my account remains delinquent?	Revises for plain language.
175.40 Financing of extensions and upgrades.	175.400 Will the utility extend or upgrade its electric system to serve new or increased loads?	Revises to direct customers to contact the electric power utility for more information.
175.50 Obtaining rights-of-way	175.500 How does BIA manage rights-of-way?	Revises to direct customers to contact the electric power utility for more information.
175.51 Ownership.		
175.60 Appeals to the area director.	175.145 Can I appeal a BIA decision?	Combines current sections 175.60 and 175.61 into a paragraph that refers to 25 CFR part 2 rather than explicitly stating appeal procedures. Increases the time by which BIA must issue a decision on an appeal from 30 days to 60 days (*see* 25 CFR 2.19(a)). Adds a new paragraph (b) to clarify that a customer must pay the bill to continue to receive service. Incorporates section 175.62 into new paragraphs (c) through (e).
175.61 Appeals to the Interior Board of Indian Appeals.		
175.62 Utility actions pending the appeal process.		

New Provisions

Current 25 CFR section	Proposed 25 CFR section	Summary of proposed changes
N/A	175.130 What information must I provide when I request service?	New section.
N/A	175.135 Why is BIA collecting this information?	New section.

Current 25 CFR section	Proposed 25 CFR section	Summary of proposed changes
N/A	175.140 What is BIA's authority to collect my taxpayer identification number?	New section.
N/A	175.225 What is the **Federal Register**, and where can I get it?	New section.
N/A	175.230 Why are changes to purchased power costs not included in the procedure for adjusting electric power rates?	New section.
N/A	175.320 What will happen if my service is disconnected and my account remains delinquent?	New section.
N/A	175.305 When is my bill due?	New section.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O.s 12866 and 13563) and Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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. The executive order 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 emphasizes further 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.

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

B. Regulatory Flexibility Act

This document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rule does not make any changes to electric power rates or service fees.

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:

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

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

(c) 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. 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 effect a taking of private property or otherwise have taking implications under E.O. 12630. 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. 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:

(a) 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

(b) 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 consult with Indian Tribes and recognize their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 for substantial direct effects on federally recognized Indian Tribes and have consulted with those Tribes served by the electric power utilities subject to this rule. We hosted two in-person Tribal consultation sessions in the vicinity of Tribes served by the electric power utilities: one on April 14, 2016, in Pablo, Montana, and one on April 19, 2016, in Phoenix, Arizona. One Tribe submitted comments on the draft regulation, to which we have responded by letter because the comments are primarily unique to the local utility. If any Tribe would like additional consultation opportunities on these regulatory changes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, preferably within the first 30 days of the comment period.

I. Paperwork Reduction Act

The information collection requirements contained in 25 CFR part 175 are authorized by OMB Control

Number 1076–0021, with an expiration date of June 30, 2019. A submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required because this proposed rule would not affect the information collection requirements contained in 25 CFR part 175. 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. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information, see 43 CFR 46.210(i).) 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. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

List of Subjects in 25 CFR Part 175

Administrative practice and procedure, Electric power, Indians-lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Bureau of Indian Affairs, Department of the Interior proposes to amend chapter 1 of title 25 Code of Federal Regulations by revising part 175 to read as follows:

PART 175—INDIAN ELECTRIC POWER UTILITIES

Subpart A—General Provisions

Sec.

175.100 What terms should I know for this part?
175.105 What is the purpose of this part?
175.110 Does this part apply to me?
175.115 How does BIA administer its electric power utilities?
175.120 What are Operations Manuals?
175.125 How do I request and receive service?
175.130 What information must I provide when I request service?
175.135 Why is BIA collecting this information?
175.140 What is BIA's authority to collect my taxpayer identification number?
175.145 Can I appeal a BIA decision?

Subpart B—Service Fees, Electric Power Rates and Revenues

175.200 Why does BIA collect revenue from you and the other customers it serves, and how is that revenue used?
175.205 When are BIA rates and fees reviewed?
175.210 What is BIA's procedure for adjusting service fees?
175.215 What is BIA's procedure for adjusting electric power rates?
175.220 How long do rate and fee adjustments stay in effect?
175.225 What is the Federal Register, and where can I get it?
175.230 Why are changes to purchased power costs not included in the procedure for adjusting electric power rates?
175.235 How does BIA include changes in purchased power costs to our electric power rates?

Subpart C—Billing, Payments, and Collections

175.300 How does BIA calculate my electric power bill?
175.305 When is my bill due?
175.310 How do I pay my bill?
175.315 What will happen if I do not pay my bill?
175.320 What will happen if my service is disconnected and my account remains delinquent?

Subpart D—System Extensions and Upgrades, Rights-of-Way, and Paperwork Reduction Act

175.400 Will the utility extend or upgrade its electric system to serve new or increased loads?
175.500 How does BIA manage rights-of-way?
175.600 How does the Paperwork Reduction Act affect this part?

Authority: 5 U.S.C. 301; 25 U.S.C. 13; 25 U.S.C. 385c; 43 Stat. 475–76; 45 Stat. 210–13; 49 Stat. 1039–40; 49 Stat. 1822–23; 54 Stat. 422; 62 Stat. 269–73; 65 Stat. 254; 99 Stat. 319–20.

Subpart A—General Provisions

§ 175.100 What terms should I know for this part?

Agreement means the executed written form between you and the utility providing your service, except for service provided under a Special Agreement.

BIA means the Bureau of Indian Affairs within the United States Department of the Interior or the BIA's authorized representative.

Bill means our written statement notifying you of the charges and/or fees you owe the United States for the administration, operation, maintenance, rehabilitation, and/or construction of the electric power utility servicing you.

CFR means Code of Federal Regulations.

Customer means any person or entity to whom we provide service.

Customer service is the assistance or service provided to customers, except for the actual delivery of electric power or energy. Customer service may include: Line extension, system upgrade, meter testing, connections or disconnection, special meter reading, or other assistance or service as provided in the Operations Manual.

Day(s) means calendar day(s).

Delinquent means an account that has not been paid and settled by the due date.

Due date means the date by which you must pay your bill. The due date is printed on your bill.

Electric energy (see *Electric power*).

Electric power means the energy we deliver to meet customers' electrical needs.

Electric power rate means the charges we establish for delivery of energy to our customers, which includes administration costs and operation and maintenance costs in addition to the cost of purchased power.

Electric power utility means all structures, equipment, components, and human resources necessary for the delivery of electric service.

Electric service means the delivery of electric power by our utility to our customers.

Energy means electric power.

Fee (see *Service fee*).

I, me, my, you, and *your* means all interested parties, especially persons or

entities to which we provide service and receive use of our electric power service.

Must means an imperative or mandatory act or requirement.

Operations manual means the written policies, practices, procedures and requirements of the utility providing your service. The Operations Manual supplements this Part and includes our responsibilities to our customers and our customers' responsibilities to the utility.

Past due bill means a bill that has not been paid by the due date.

Power (see *Energy*).

Public notice is the notice provided by publishing information consistent with the utility's Operations Manual.

Purchased power means the power we must purchase from power marketing providers for resale to our customers to meet changing power demands. Each of our utilities establishes its own power purchasing agreement based on its power demands and firm power availability.

Rate (see *Electric power rate*).

Reserve funds means funds held in reserve for maintenance, repairs, or unexpected expenses.

Revenue means the monies we collect from our customers through service fees and electric power rates.

Service (see *Electric service*).

Service fee means our charge for providing or performing a specific administrative or customer service.

Special agreement means a written agreement between you and us for special conditions or circumstances including unmetered services.

Taxpayer identification number means either your Social Security Number or your Employer Identification Number.

Utility(ies) (see *Electric power utility*).

Utility office(s) means our facility used for conducting business with our customers and the general public.

We, us, and *our* means the United States Government, the Secretary of the Interior, the BIA, and all who are authorized to represent us in matters covered under this Part.

§ 175.105 What is the purpose of this part?

The purpose of this part is to establish the regulations for administering BIA electric power utilities.

§ 175.110 Does this part apply to me?

This part applies to you if we provide you service or if you request service from us.

§ 175.115 How does BIA administer its electric power utilities?

We promote efficient administration, operation, maintenance, and construction of our utilities by following and enforcing:

(a) Applicable statutes, regulations, Executive Orders, Indian Affairs manuals, Operations Manuals;

(b) Applicable written policies, procedures, directives, safety codes; and

(c) Utility industry standards.

§ 175.120 What are Operations Manuals?

(a) We maintain an Operations Manual for each of our utilities. Each utility's Operations Manual is available at the utility.

(b) The Operations Manual sets forth the requirements for the administration, management, policies, and responsibilities of that utility and its customers.

(c) We update our Operations Manual for each utility to reflect changing requirements to administer, operate, or maintain that utility.

(d) When we determine it necessary to revise an Operations Manual, we will:

(1) Provide public notice of the proposed revision;

(2) State the effective date of the proposed revision;

(3) State how and when to submit your comments on our proposed revision;

(4) Provide 30 days from the date of the notice to submit your comments; and

(5) Consider your comments and provide notice of our final decision.

§ 175.125 How do I request and receive service?

(a) If you need electrical service in an area where we provide service, you must contact our utility in that service area.

(b) To receive service, you must enter into an Agreement with that utility after it has determined that you have met its requirements.

§ 175.130 What information must I provide when I request service?

At a minimum, you must provide the utility with the following information when you request service:

(a) Your full legal name or the legal name of the entity needing service;

(b) Your taxpayer identification number;

(c) Your billing address;

(d) Your service address; and

(e) Any additional information required by the utility.

§ 175.135 Why is BIA collecting this information?

We are collecting this information so we can:

(a) Provide you with service;

(b) Bill you for the service we provide; and

(c) Account for monies you pay us, including any deposits as outlined in the Operations Manual.

§ 175.140 What is BIA's authority to collect my taxpayer identification number?

We are required to collect your taxpayer identification number under the authority of, and as prescribed in, the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–364).

§ 175.145 Can I appeal a BIA decision?

(a) You may appeal a decision in accordance with the procedures set out in 25 CFR part 2, unless otherwise prohibited by law.

(b) If the appeal involves the discontinuation of service, the utility is not required to resume the service during the appeal process unless the customer meets the utility's requirements.

(c) If you appeal your bill, you must pay your bill in accordance with this part to continue to receive service from us.

(1) If the appeal involves the amount of your bill, the bill will be considered paid under protest until the final decision has been rendered on appeal.

(2) If you appeal your bill but do not pay the bill in full, you may not continue to receive service from us. If the final decision rendered in the appeal requires payment of the bill, the bill will be handled as a delinquent account and the amount of the bill may be subject to interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

(3) If the appeal involves an electric power rate, the rate will be applied and remain in effect subject to the final decision on the appeal.

Subpart B—Service Fees, Electric Power Rates and Revenues

§ 175.200 Why does BIA collect revenue from you and the other customers it serves, and how is that revenue used?

(a) The revenue we collect from you and the other customers is authorized by 25 U.S.C. 385c (60 Stat. 895, as amended by 65 Stat. 254).

(b) The revenue we collect may be used to:

(1) Pay for operation and maintenance of the utility; and

(2) Maintain Reserve Funds to:

(i) Make repairs and replacements to the utility;

(ii) Defray emergency expenses;

(iii) Ensure the continuous operation of the power system; and

(iv) Pay other allowable expenses and obligations to the extent required or permitted by law.

§ 175.205 When are BIA rates and fees reviewed?

We review our rates and fees at least annually to:

(a) Determine if our financial requirements are being met to ensure the reliable operation of the utility serving you; and

(b) Determine if revenues are sufficient to meet the statutory requirements.

§ 175.210 What is BIA's procedure for adjusting service fees?

If, based on our annual review, we determine our service fees need to be adjusted:

(a) We will notify you at least 30 days prior to the effective date of the adjustment; and

(b) We will publish a schedule of the adjusted service fees in a local newspaper(s) and post them in the local utility office serving you.

§ 175.215 What is BIA's procedure for adjusting electric power rates?

Except for purchased power costs, if we determine electric power rates need to be adjusted, we will:

(a) Hold public meetings and notify you of their respective time, date, and location by newspaper notice and a notice posted in the utility office serving you;

(b) Provide you notice at least 15 days prior to the meeting;

(c) Provide you a description of the proposed rate adjustment;

(d) Provide you information on how, where, and when to submit comments on our proposed rate adjustment;

(e) Make a final determination on the proposed rate adjustment after all comments have been received, reviewed, and evaluated; and

(f) Publish the proposed rate adjustment and the final rate in the **Federal Register** if we determine the rate adjustment is necessary.

§ 175.220 How long do rate and fee adjustments stay in effect?

These adjustments remain in effect until we conduct a review and determine adjustments are necessary.

§ 175.225 What is the Federal Register, and where can I get it?

The **Federal Register** is the official daily publication for rules, proposed rules, and notices of official actions by Federal agencies and organizations, as well as Executive Orders and other Presidential Documents and is produced by the Government Publishing Office (GPO). You can get **Federal Register** publications by:

(a) Visiting *www.federalregister.gov* or *www.gpo.gov/fdsys*;

(b) Writing to the GPO at Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954; or

(c) Calling the GPO at (202) 512–1800.

§ 175.230 Why are changes to purchased power costs not included in the procedure for adjusting electric power rates?

Changes to purchased power costs are not included in the procedure for adjusting electric power rates because unforeseen increases in the cost of purchased power are:

(a) Not under our control;

(b) Determined by current market rates; and

(c) Subject to market fluctuations that can occur at an undetermined time and frequency.

§ 175.235 How does BIA include changes in purchased power costs in electric power rates?

When our cost of purchased power changes:

(a) We determine the effect of the change;

(b) We adjust the purchased power component of your bill accordingly;

(c) We add the purchased power adjustment to the existing electric power rate and put it into effect immediately;

(d) The purchased power adjustment remains in effect until we determine future adjustments are necessary;

(e) We must publish in the local newspaper and post at our office a notice of the purchase power adjustment and the basis for the adjustment; and

(f) Our decision to make a purchased power adjustment must be final.

Subpart C—Billing, Payments, and Collections

§ 175.300 How does BIA calculate my electric power bill?

(a) We calculate your electric power bill based on the:

(1) Current rate schedule for your type service; and

(2) Applicable service fees for your type service.

(b) If you have a metered service we must:

(1) Read your meter monthly;

(2) Calculate your bill based on your metered energy consumption; and

(3) Issue your bill monthly, unless otherwise provided in a Special Agreement.

(c) If we are unable to calculate your metered energy consumption, we must make a reasonable estimate based on one of the following reasons:

(1) Your meter has failed;

(2) Your meter has been tampered with; or

(3) Our utility personnel are unable to read your meter.

(d) If you have an unmetered service, we calculate your bill in accordance with your Special Agreement.

§ 175.305 When is my bill due?

The due date is provided on your bill.

§ 175.310 How do I pay my bill?

You may pay your bill by any of the following methods:

(a) In person at our utility office;

(b) Mail your payment to the address stated on your bill; or

(c) As further provided by the electric utility that serves you.

§ 175.315 What will happen if I do not pay my bill?

(a) If you do not pay your bill prior to the close of business on the due date, your bill will be past due.

(b) If your bill is past due we may:

(1) Disconnect your service; and

(2) Not reconnect your service until your bill, including any applicable fees, is paid in full.

(c) Specific regulations regarding non-payment can be found in 25 CFR 143.5(c).

§ 175.320 What will happen if my service is disconnected and my account remains delinquent?

(a) If your service has been disconnected and you still have an outstanding balance, we will assess you interest, penalties, and administrative costs in accordance with 31 CFR 901.9.

(b) We must forward your delinquent balance to the United States Treasury if it is not paid within 180 days after the original due date in accordance with 31 CFR 901.1.

Subpart D—System Extensions and Upgrades, Rights-of-Way, and Paperwork Reduction Act

§ 175.400 Will the utility extend or upgrade its electric system to serve new or increased loads?

The utility may extend or upgrade its electric system to serve new or increased loads. Contact your electric power utility providing service in your area for further information on new or increased loads.

§ 175.500 How does BIA manage rights-of-way?

Contact your electric power utility providing service in your area for further information on rights-of-way.

§ 175.600 How does the Paperwork Reduction Act affect this part?

The collection of information contained in this part have been approved by the Office of Management

and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0021. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the form or regulation requesting the information displays a currently valid OMB Control Number. Send comments regarding this collection of information, including suggestions for reducing the burden, to the Information Collection Clearance Officer—Indian Affairs, 1849 C Street NW, Washington, DC 20240.

Dated: October 19, 2017.

John Tahsuda,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2017–27668 Filed 12–26–17; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–119514–15]

RIN 1545–BM80

Exclusion of Foreign Currency Gain or Loss Related to Business Needs From Foreign Personal Holding Company Income; Mark-to-Market Method of Accounting for Section 988 Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains corrections to the proposed regulations (REG–119514–15) that were published in the **Federal Register** on Tuesday, December 19, 2017. The proposed regulations provide guidance on the treatment of foreign currency gain or loss of a controlled foreign corporation (CFC) under the business needs exclusion from foreign personal holding company income (FPHCI). The proposed regulations also provide an election for a taxpayer to use a mark-to-market method of accounting for foreign currency gain or loss attributable to section 988 transactions. In addition, the proposed regulations permit the controlling United States shareholders of a CFC to automatically revoke certain elections concerning the treatment of foreign currency gain or loss.

DATES: Written or electronic comments and requests for a public hearing, for the notice of proposed rulemaking at 82 FR 60135, December 19, 2017, are still being accepted and must be received by March 19, 2018.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–119514–15), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–119514–15), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–119514–15).

FOR FURTHER INFORMATION CONTACT: Jeffery G. Mitchell, (202) 317–6934 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under sections 446, 954 and 988 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations contain errors which may prove to be misleading and need to be clarified.

Correction of Publication

Accordingly, the proposed regulations (REG–119514–15) that are the subject of FR Doc. 2017–27320 are corrected as follows:

On page 60138, in the preamble, first column, the first full paragraph is corrected to read:

''Although the borrowing and lending in the same nonfunctional currency are economically offsetting, section 475 creates the potential for a mismatch of gains and losses for a treasury center CFC. If the treasury center CFC qualifies as a dealer under section 475, for example because it regularly purchases debt from related CFCs in the ordinary course of a trade or business, the treasury center CFC generally must use a mark-to-market method of accounting for its securities. *See* section 475 and § 1.475(c)–1(a)(3)(i). However, § 1.475(c)–2(a)(2) provides that a dealer's own issued debt liabilities are not securities for purposes of section 475. Consequently, a treasury center CFC that marks to market its assets but not its liabilities may recognize any offsetting foreign currency gains and losses in different taxable years. To avoid this mismatch, taxpayers have taken positions that match a treasury center CFC's foreign currency gains and losses under a variety of theories. No inference is intended in these proposed regulations as to whether these positions are permissible in the years prior to the application of these proposed regulations.''

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2017–27865 Filed 12–26–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS–PWR–GOGA–24579; PPPWGOGAPO, PPMPSPD1Z.YM0000]

Withdrawal of Proposed Rule for Dog Management at the Golden Gate National Recreation Area, California

AGENCY: National Park Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The National Park Service (NPS) no longer intends to prepare a final rule or issue a Golden Gate National Recreation Area dog management plan. The NPS has terminated the rulemaking process.

DATES: The proposed rule is withdrawn as of December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Dana Polk, Public Affairs Office, Park Headquarters, Fort Mason, Building 201, San Francisco, CA 94123; phone 415–561–4728.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA) and the regulations implementing NEPA (40 CFR parts 1500–1508 and 43 CFR part 46), the NPS published a proposed rule for dog management on February 24, 2016 (81 FR 9139). The NPS has now cancelled that planning process and terminated the associated NEPA and rulemaking processes. No final rule will be issued.

Dated: December 19, 2017.

Martha J. Lee,

Acting Regional Director, Pacific West Region.

[FR Doc. 2017–27827 Filed 12–26–17; 8:45 am]

BILLING CODE 4312–52–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2005–6]

Statutory Cable, Satellite, and DART License Reporting Practices

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

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The United States Copyright Office is extending the deadlines for the submission of written comments in response to its December 1, 2017 notice of proposed rulemaking concerning the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements.

DATES: The comment period for the notice of proposed rulemaking, published on December 1, 2017 (82 FR 56926), is extended. Initial written comments must be received no later than 11:59 p.m. Eastern Time on March 16, 2018. Written reply comments must be received no later than 11:59 p.m. Eastern Time on April 6, 2018.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://copyright.gov/rulemaking/section111.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at *sdam@loc.gov,* Regan A. Smith, Deputy General Counsel, by email at *resm@loc.gov,* or Anna Chauvet, Assistant General Counsel, by email at *achau@loc.gov,* or any of them by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: On December 1, 2017, the Office issued a notice of proposed rulemaking (''NPRM'') on proposed rules governing the royalty reporting practices of cable operators under section 111 and proposed revisions to the Statement of Account forms, and on proposed amendments to the Statement of Account filing requirements.[1] After determining that meetings with interested parties might be beneficial and that reply comments would be appropriate for this rulemaking, on December 11, 2017, the Office issued a notice of *ex-parte* communication and request for reply comments.[2]

On December 13, 2017, NCTA—The Internet & Television Association submitted a motion seeking to extend the initial comment period until March 16, 2018, with written comments due by April 2, 2018.[3]

To ensure that commenters have sufficient time to respond to the NPRM, the Office is extending the deadline for the submission of initial written comments to 11:59 p.m. Eastern Time on March 16, 2018. Written reply comments must be received no later than 11:59 p.m. Eastern Time on April 6, 2018.

Dated: December 19, 2017.

Karyn Temple Claggett,

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

[FR Doc. 2017–27933 Filed 12–26–17; 8:45 am]

BILLING CODE 1410–30–P

[1] 82 FR 56926 (Dec. 1, 2017).

[2] 82 FR 58153 (Dec. 11, 2017).

[3] COLC–2017–0013–0003.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0544; FRL–9972–40–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to the Regulatory Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two state implementation plan (SIP) revisions (Revision C16 and Revision I16) formally submitted by the Commonwealth of Virginia. These revisions pertain to amendments made to the definition of ''volatile organic compound'' (VOC) in the Virginia Administrative Code to conform with EPA's regulatory definition of VOC. Specifically, these amendments remove the record keeping and reporting requirements for t-butyl acetate (also known as tertiary butyl acetate or TBAC; Chemical Abstracts Service [CAS] number: 540–88–5) and add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE–347pcf2; CAS number: 406–78–0) as a compound excluded from the regulatory definition of VOC, which match actions EPA has taken. EPA is approving these revisions to update the definition of VOC in the Virginia SIP under the Clean Air Act (CAA).

DATES: Written comments must be received on or before January 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2017–0544 at *http://www.regulations.gov,* or via email to *pino.maria@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814–2043, or by email at *calcinore.sara@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 31, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted two SIP revisions (Revisions C16 and Revision I16). Revision C16 requested that the definition of VOC be updated in the Virginia SIP to conform with EPA's February 25, 2016 (81 FR 9339) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC. Revision I16 requests that the definition

of VOC be updated in the Virginia SIP to conform with EPA's August 1, 2016 (81 FR 50330) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to add 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane to the list of compounds excluded from EPA's regulatory definition of VOC.

I. Background

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO_X) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for regulatory purposes. It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity.

Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented subsequently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On September 30, 1999, EPA proposed to revise the regulatory definition of VOC in 40 CFR 51.100(s) to exclude TBAC as a VOC (64 FR 52731). In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. However, EPA's final rule excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC (69 FR 69298, November 29, 2004) (2004 Final Rule). This was primarily due to EPA's conclusion in the 2004 Final Rule that ''negligibly reactive'' compounds may contribute significantly to ozone formation if present in sufficient quantities and that emissions of these compounds need to be represented accurately in photochemical modeling analyses. Per EPA's 2004 Final Rule, Virginia partially excluded TBAC from the regulatory definition of VOC, which was approved into Virginia's SIP on August 18, 2006 (71 FR 47742).

When EPA exempted TBAC from the VOC definition for purposes of control requirements in the 2004 Final Rule, EPA created a new category of compounds and a new reporting requirement that required that emissions of TBAC be reported separately by states and, in turn, by industry. However, EPA did not issue any guidance on how TBAC emissions should be tracked and reported. Therefore, the data that was reported as a result of these requirements was incomplete and inconsistent. Also, in the 2004 Final Rule, EPA stated that the primary objective of the recordkeeping and reporting requirements for TBAC was to address the cumulative impacts of ''negligibly reactive'' compounds and suggested that future exempt compounds may also be subject to such requirements. However, such requirements were not included in any other proposed or final VOC exemptions.

Because having high quality data on TBAC emissions alone was unlikely to be useful in assessing the cumulative impacts of ''negligibly reactive'' compounds on ozone formation, EPA subsequently concluded that the recordkeeping and reporting requirements for TBAC were not achieving their primary objective of informing more accurate photochemical modeling in support of SIP submissions. Also, there was no evidence that TBAC was being used at levels that would cause concern for ozone formation and that the requirements were not providing sufficient information to evaluate the cumulative impacts of exempted compounds. Therefore, because the requirements were not addressing EPA's concerns as they were intended, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (February 25, 2016, 81 FR 9341). EPA's rationale for this action is explained in more detail in the final rule for that action. *See* 81 FR 50330 (August 1, 2016).

On August 1, 2016, EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE–347pcf2 to the list of compounds excluded from the regulatory definition of VOC (81 FR 50330). This action was based on EPA's consideration of the compound's negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. EPA's rationale for this action is explained in more detail in the final rule for this action. *See* 81 FR 50330 (August 1, 2016).

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), the Virginia State Air Pollution Control Board amended the definition of VOC in 9 VAC 5–10–20. These amendments removed the recordkeeping and reporting requirements for TBAC (Revision C16) and added HFE–347pcf2 to the list of compounds excluded from the regulatory definition of VOC (Revision I16). Revision C16 was adopted by the State Air Pollution Control Board on June 17, 2016 and was effective as of December 15, 2016. Revision I16 was adopted by the State Air Pollution Control Board on December 5, 2014 and was effective as of July 30, 2015. VADEQ formally submitted Revision C16 and Revision I16 as two separate SIP revisions on July 31, 2017.

Virginia's amendments to the definition of VOC in 9 VAC 5–10–20 are in accordance with EPA's regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are therefore approvable for the Virginia SIP in accordance with CAA section 110. Also, because EPA has made the determination that TBAC and HFE–347pcf2 are of negligible reactivity and therefore have low contributions to ozone as well as low likelihood of risk

to human health or the environment, removing these chemicals from the definition of VOC in the Virginia SIP as well as the recordkeeping and reporting requirements for these chemicals will not interfere with attainment of any NAAQS, reasonable further progress, or any other requirement of the CAA. Thus, the removal of the recordkeeping and reporting requirements for TBAC and the addition of HFR–347pcf2 to the list of compounds excluded from the regulatory definition of VOC is in accordance with CAA section 110(l).

III. Proposed Action

EPA is proposing to approve both Revision C16 and Revision I16, submitted on July 31, 2017, as revisions to the Virginia SIP, as the submissions meet the requirements of CAA section 110. Revision C16 updates the regulatory definition of VOC in the Virginia SIP and removes the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC. Revision I16 updates the regulatory definition of VOC in the Virginia SIP to add HFE–347pcf2 to the list of compounds excluded from the regulatory definition of VOC. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the updated definition of VOC in 9 VAC 5–10–20 of the Virginia Administrative Code that removed the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC and added HFE–347pcf2 to the list of compounds excluded from the regulatory definition of VOC. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This action amending the definition of VOC in the Virginia SIP to conform with the regulatory definition of VOC in 40 CFR 51.100(s) is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: December 12, 2017.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2017–27522 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2017–0737; FRL–9972–57–Region 9]

Approval of California Air Plan Revisions, Northern Sierra Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Northern Sierra Air Quality Management District (NSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of particulate matter (PM) from wood burning devices. We are proposing to approve a local measure to reduce emissions from these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by January 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2017–0737 at *http://www.regulations.gov,* or via email to Doris Lo, at *lo.doris@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *kay.rynda@epa.gov.*

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

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I. The State's Submittal

A. What measure did the State submit?

Table 1 lists the measure addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED MEASURE

Local agency	Resolution No.	Measure title	Adopted	Submitted
NSAQMD	2017–01	Northern Sierra Air Quality Management District Resolution #2017–01 ...	01/23/17	02/28/17

On August 28, 2017, the submittal for the NSAQMD measure was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this measure?

There are no previous versions of the NSAQMD measure in the SIP.

C. What is the purpose of the submitted measure?

Particulate matter, including PM with diameters that are generally 2.5 microns or smaller ($PM_{2.5}$) and PM with diameters that are generally 10 microns or smaller (PM_{10}), contributes to effects that are harmful to human health and

the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions.

On January 15, 2013, the EPA revised the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ to provide increased protection of public health by lowering the level of the annual standards from 15 to 12 micrograms per cubic meter (μg/m^3) (40 CFR 50.18). Effective April 15, 2015, the EPA designated and classified the Plumas County nonattainment area (NAA) as moderate nonattainment for the 2012 $PM_{2.5}$ NAAQS (40 CFR 81.305; 80 FR 2206, 2218). CARB submitted the NSAQMD measure on February 28, 2017, as part of an attainment plan to address nonattainment area SIP requirements for the 2012 $PM_{2.5}$ NAAQS in the Plumas County NAA.

The submitted measure is an enforceable commitment by the NSAQMD to implement a woodstove change-out incentive program during the 2016–2022 timeframe in accordance with specific program requirements that are designed to achieve quantifiable, surplus, enforceable, and permanent $PM_{2.5}$ emission reductions in the Plumas County NAA. The program requirements ensure, among other things, that older, dirtier wood stoves currently in operation in the Plumas County NAA will be replaced with EPA-certified wood stoves or other less-polluting devices. The woodstove change-out program is funded by the EPA's 2015 Targeted Air Shed Grant Program, the NSAQMD, and other agencies and is the primary control strategy in California's attainment plan for the 2012 $PM_{2.5}$ NAAQS in the Plumas County NAA.

The enforceable commitment obligates the NSAQMD to achieve specific amounts of $PM_{2.5}$ emission reductions through implementation of the woodstove change-out program by specific years, to submit annual reports to the EPA detailing its implementation of the program and the projected emission reductions, and to adopt and submit substitute measures by specific dates if the EPA determines that the woodstove change-out program will not achieve the necessary emission reductions. The EPA's technical support document (TSD) has more information about this measure.

We intend to evaluate California's $PM_{2.5}$ attainment plan for the Plumas County NAA as a whole through a subsequent notice-and-comment rulemaking action.

II. The EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the measure?

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

The CAA explicitly provides for the use of economic incentive programs (EIPs) as one tool for states to use to achieve attainment of the NAAQS (see, *e.g.,* CAA sections 110(a)(2)(A), 172(c)(6), and 183(e)(4)). EIPs use market-based strategies to encourage the reduction of emissions from stationary, area, and mobile sources in an efficient manner. EPA has promulgated regulations for statutory EIPs required under section 182(g) of the Act and has issued guidance for discretionary EIPs (see 59 FR 16690 (April 7, 1994), codified at 40 CFR part 51, subpart U and U.S. EPA, ''Improving Air Quality with Economic Incentive Programs,'' January 2001 (''2001 EIP Guidance'')).[1]

EPA's guidance documents addressing EIPs and other nontraditional programs provide for some flexibility in meeting established SIP requirements for enforceability and quantification of emission reductions, provided the State takes clear responsibility for ensuring that the emission reductions necessary to meet applicable CAA requirements are achieved. Accordingly, EPA has consistently stated that nontraditional emission reduction measures submitted to satisfy SIP requirements under the Act must be accompanied by appropriate ''enforceable commitments'' from the State to monitor emission reductions achieved and to rectify shortfalls in a timely manner (see, *e.g.,* U.S. EPA, ''Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP),'' September 2004 (''2004 Emerging and Voluntary Measures Guidance'') at pages 8–12 and U.S. EPA, ''Guidance for Quantifying and Using Emission Reductions from Voluntary Woodstove Changeout Programs in State Implementation Plans,'' January 2006 (''2006 Woodstove Guidance'') at page 7). The EPA has also consistently stated that, where a State intends to rely on a nontraditional program to satisfy CAA requirements, the State must demonstrate that the program achieves emission reductions that are quantifiable, surplus, enforceable, and permanent (see, *e.g.,* 2001 EIP Guidance at Section 4.1 and 2006 Woodstove Guidance at 3–4).

Guidance documents that we use to evaluate discretionary EIPs and other nontraditional emission reduction programs include the following:

- ''Improving Air Quality with Economic Incentive Programs'' January 2001 (EPA–452/R–01–001) (''2001 EIP Guidance'').
- ''Incorporating Emerging and Voluntary Measure in a State Implementation Plan (SIP),'' Stephen D. Page, OAQPS, October 4, 2004 (''2004 Emerging and Voluntary Measures Guidance'').
- ''Guidance on Incorporating Bundled Measures in a State Implementation Plan,'' Stephen D. Page, OAQPS, and Margo Oge, OTAQ, August 16, 2005 (''2005 Bundled Measures Guidance'').
- ''Guidance for Quantifying and Using Emission Reductions from Voluntary Woodstove Changeout Programs in State Implementation Plans,'' January 2006 (EPA–456/B–06–001) (''2006 Woodstove Guidance'').

B. Does the measure meet the evaluation criteria?

The submitted commitment contains clear, nondiscretionary and mandatory obligations that are enforceable against the NSAQMD and ensure that information about the emission reductions achieved through the woodstove change-out program will be readily available to the public through the NSAQMD's submission of annual reports to the EPA. Our approval of this commitment would make these obligations enforceable by the EPA and by citizens under the CAA. The commitment obligates the District to implement a new program that achieves quantifiable, surplus, permanent, and enforceable $PM_{2.5}$ emission reductions and does not alter any existing SIP requirements. Our approval of the commitment into the SIP would strengthen the SIP and would not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements, consistent with the requirements of CAA section 110(l). Section 193 of the CAA does not apply

[1] A ''discretionary economic incentive program'' is ''any EIP submitted to the EPA as an implementation plan revision for purposes other than to comply with the statutory requirements of sections 182(g)(3), 182(g)(5), 187(d)(3), or 187(g) of the Act.'' 40 CFR 51.491.

to this action because this measure does not modify any SIP control requirement that was in effect before November 15, 1990.

We are proposing to find that the submitted measure satisfies CAA requirements for enforceability, SIP revisions, and nontraditional emission reduction programs as interpreted in EPA guidance documents. The TSD contains more information on our evaluation of this measure.

C. Public Comment and Proposed Action

The EPA proposes to fully approve the submitted measure under CAA section 110(k)(3) based on a conclusion that the measure satisfies all applicable requirements. We will accept comments from the public on this proposal until January 26, 2018. If we take final action to approve the submitted measure, our final action will incorporate this measure into the federally enforceable SIP.

III. Incorporation by Reference

In this action, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the NSAQMD measure described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 14, 2017.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2017–27950 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2017–0655; FRL–9972–59–OAR]

RIN 2060–AT82

Proposed Rule; Renewable Fuel Standard Program; Grain Sorghum Oil Pathway

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this proposed rule, the Environmental Protection Agency (EPA) is providing an opportunity to comment on an analysis of the lifecycle greenhouse gas (GHG) emissions associated with certain biofuels that are produced from grain sorghum oil extracted at dry mill ethanol plants at any point downstream from sorghum grinding, also known as distiller sorghum oil. EPA seeks comment on its proposed assessment that using distillers sorghum oil as feedstock results in no significant agricultural sector GHG emissions; and that biodiesel and heating oil produced from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from distillers sorghum oil via a hydrotreating process, would meet the lifecycle GHG emissions reduction threshold of 50 percent required for advanced biofuels, and biomass-based diesel under the Renewable Fuel Standard program. Based on these analyses, EPA is proposing to amend the RFS program regulations to define the term ''distillers sorghum oil''. We also propose to add to the regulations approved pathways from the production of biodiesel and heating oil from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from distillers sorghum oil via a hydrotreating process.

DATES: Comments must be received on or before January 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2017–0655, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be

Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Diana Galperin, Office of Air and Radiation, Office of Transportation and Air Quality, Mail Code: 6401A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–5687; email address: *Galperin.diana@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline of This Preamble

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II. Public Participation
III. Introduction
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F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, heating oil, renewable diesel, naphtha and liquefied petroleum gas. Potentially regulated categories include:

Examples of potentially affected entities	NAICS [1] codes
Sorghum Farming	11119, 111191, 111199
Petroleum refineries (including importers).	324110
Ethyl alcohol manufacturing.	325193
Other basic organic chemical manufacturing.	325199
Chemical and allied products merchant wholesalers.	424690
Petroleum Bulk Stations and Terminals; Petroleum	424710, 424720
Other fuel dealers.	454310

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What action is the Agency taking?

EPA is proposing to amend the RFS program regulations to define the term ''distillers sorghum oil'' as oil from grain sorghum that is extracted at a dry mill ethanol plant at any location downstream of grinding the grain sorghum kernel, provided that the grain sorghum is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the distillers grains resulting from the dry mill and oil extraction processes are marketable as animal feed. We also propose to add to Table 1 to 80.1426(f), approved pathways from the production of biodiesel and heating oil from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from distillers sorghum oil via a hydrotreating process. Alternatively, or in addition, EPA may consider the comments it receives in response to this document in evaluating facility-specific pathway petitions submitted pursuant to 40 CFR 80.1416 that propose using distillers sorghum oil to make biofuel.

C. What is the Agency's authority for taking this action?

Statutory authority for this action comes from Clean Air Act sections 114, 208, 211, and 301.

II. Public Participation

EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by January 11, 2018. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

III. Introduction

Section 211(o) of the Clean Air Act (CAA) establishes the Renewable Fuel Standard (RFS) program, under which EPA sets annual percentage standards specifying the amount of renewable fuel, as well as three subcategories of renewable fuel, that must be used to reduce or replace fossil fuel present in transportation fuel, heating oil, or jet

[1] North American Industry Classification System.

fuel. Non-exempt[2] renewable fuels must achieve at least a 20 percent reduction in lifecycle GHG emissions as compared to a 2005 petroleum baseline. Advanced biofuel and biomass-based diesel must achieve at least a 50 percent reduction, and cellulosic biofuel must achieve at least a 60 percent reduction.

In addition to the lifecycle GHG reduction requirements, renewable identification numbers (RINs) may only be generated if the fuel meets the other definitional criteria for renewable fuel (*e.g.,* produced from renewable biomass as defined in the regulations, and used to reduce or replace the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel) in CAA section 211(o) and the RFS regulations at 40 CFR part 80 subpart M.

Since the formation of the RFS program, EPA has periodically promulgated rules to add new pathways to the regulations.[3] In addition, EPA has approved facility-specific pathways through the petition process in 40 CFR 80.1416. There are three critical components of approved fuel pathways under the RFS program: (1) Fuel type; (2) feedstock; and (3) production process. Each pathway is associated with a specific ''D code'' depending on whether the fuel meets the requirements for renewable fuel, advanced fuel, cellulosic fuel, or biomass-based diesel.

EPA's lifecycle analyses are used to assess the overall GHG emissions of a fuel throughout each stage of its production and use. The results of these analyses, considering uncertainty and the weight of available evidence, are used to determine whether a fuel meets the necessary GHG reductions required under the CAA. Lifecycle analysis includes an assessment of emissions related to the full fuel lifecycle, including feedstock production, feedstock transportation, fuel production, fuel transportation and distribution, and tailpipe emissions. Per the CAA definition of lifecycle GHG emissions, EPA's lifecycle analyses also include an assessment of significant indirect emissions, such as those from land use changes and agricultural sector impacts.

EPA received a petition from the National Sorghum Producers (NSP), submitted under partial claims of confidential business information (CBI), requesting that EPA evaluate the GHG emissions associated with biofuels produced using grain sorghum oil derived from dry mill ethanol production as a feedstock, and that EPA provide a determination of the renewable fuel categories, if any, for which such biofuels may be eligible. In this action, EPA is proposing to amend the RFS program regulations to define the term ''distillers sorghum oil'' as oil from grain sorghum that is extracted at a dry mill ethanol plant at any location downstream of grinding the grain sorghum kernel, provided that the grain sorghum is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the distillers grains resulting from the dry mill and oil extraction processes are marketable as animal feed. We also propose to add to Table 1 to 40 CFR 80.1426(f), approved pathways from the production of biodiesel and heating oil from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, heating oil, naphtha, and LPG produced from distillers sorghum oil via a hydrotreating process. Alternatively, or in addition, EPA may consider the comments it receives in response to this document in evaluating facility-specific pathway petitions submitted pursuant to 40 CFR 80.1416 that propose using distillers sorghum oil to make biofuel.

This preamble describes EPA's analysis of the GHG emissions associated with distillers sorghum oil when used to produce specified biofuels. The analysis considers a scenario where distillers sorghum oil is extracted from distillers grains with solubles (DGS) at dry mill plants that produce ethanol from grain sorghum and where the remaining reduced-oil DGS co-product is used as animal feed. The distillers sorghum oil is then used as a feedstock for conversion into certain biofuels. As described in Section IV of this preamble, we estimate that the lifecycle GHG emissions associated with the production of biodiesel and heating oil produced from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel, naphtha, and LPG, produced from distillers sorghum oil via a hydrotreating process, are approximately 80 percent less than the lifecycle GHG emissions associated with the baseline petroleum fuels they would replace. Based on these results, we propose to find that these biofuels would meet the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel. We also anticipate that heating oil produced through transesterification or hydrotreating from distillers sorghum oil would meet the 50 percent GHG emission reduction threshold required for advanced biofuel and biomass-based diesel.[4] EPA is seeking public comment on its analyses of the lifecycle GHG emissions related to biofuels produced from distillers sorghum oil.

IV. Analysis of GHG Emissions Associated With Production of Biofuels From Distillers Sorghum Oil

A. Overview of Distillers Sorghum Oil

Dry mill ethanol plants grind and ferment grain sorghum, produce ethanol from the fermented grain sorghum starch, and also produce a DGS co-product (made of non-fermentable solids, solubles syrup, and sorghum oil) that is sold as a type of livestock feed. A portion of the oil that would otherwise reside in the DGS can be extracted at the ethanol plant, typically through gravimetric methods. At dry mill ethanol plants, sorghum oil is recovered through methods nearly identical to that of corn oil extracted from DGS, and corn and sorghum oil extraction can occur at the same facilities.

EPA has approved pathways for the production of ethanol from grain sorghum made through a dry mill process as qualifying for renewable fuel (D code 6) RINs, and in some cases advanced biofuel (D code 5) RINs, depending on process energy sources used during production.[5] However, the regulations do not currently include pathways for the production of other biofuels from grain sorghum. According to the U.S. Department of Agriculture (USDA), the largest regions for grain sorghum production in the United States are located in Texas, Oklahoma, and Kansas.[6] Currently about 30 percent

[2] A baseline volume of renewable fuel produced from facilities that commenced construction on or before December 19, 2007, and which completed construction by December 19, 2010 without an 18-month hiatus in construction, is exempt from the minimum 20 percent GHG reduction requirement that otherwise applies to renewable fuel. In addition, a baseline volume of ethanol from facilities that commenced construction after December 19, 2007, and on or before December 31, 2009, qualifies for the same exemption if construction was completed within 36 months without an 18-month hiatus in construction; the facility was fired with natural gas, biomass, or any combination thereof, at all times the facility operated between December 19, 2007 and December 31, 2009; and the baseline volume continues to be produced through processes fired with natural gas, biomass, or any combination thereof.

[3] Please see information on Pathways I and Pathways II in 40 CFR part 80 subpart M, and in the **Federal Register** at 78 FR 14190 (March 5, 2013) and 79 FR 42128 (July 18, 2014). More information on these can be found at: *https://www.epa.gov/renewable-fuel-standard-program/final-rule-identify-additional-fuel-pathways-under-renewable-fuel* and *https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-pathways-ii-final-rule-identify-additional-fuel.*

[4] As defined in the RFS regulations at 40 CFR 80.1401, biomass-based diesel excludes renewable fuel that is co-processed with petroleum. Such fuel may qualify as advanced biofuel if it meets the 50 percent GHG reduction threshold.

[5] Table 1 to 40 CFR 80.1426, Rows R and S.

[6] USDA, NASS, ''Sorghum for Grain 2016 Harvested Acres by County for Selected States,''

Continued

of grain sorghum grown, or 120 million bushels a year, goes towards ethanol production.[7] For comparison, in recent years over 5,200 million bushels of corn have been used for ethanol production annually.[8] Distillers sorghum oil is still a relatively niche product, and the NSP petition anticipates a potential of 12 to 21 million ethanol-equivalent gallons of fuel to be produced from the oil per year.

We propose to define distillers sorghum oil to mean oil recovered at a point downstream of where a dry mill grain sorghum ethanol plant grinds the grain sorghum, provided that the grain sorghum is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the distillers grains resulting from the dry mill and oil extraction processes are marketable as animal feed. So long as these criteria are met, a variety of recovery methods could be implemented. For example, this would include recovery of sorghum oil before fermentation from the slurry or from liquefaction tanks. It would also include recovery of sorghum oil after fermentation from the thin stillage and/or DGS. Further, it would also include recovery of sorghum oil by a third-party from DGS produced by a dry mill sorghum ethanol plant.

B. Analysis of Lifecycle GHG Emissions

EPA evaluated the GHG emissions associated with using distillers sorghum oil as a biofuel feedstock based on information provided by the petitioner and other available data sources. GHG emissions include emissions from production and transport of distillers sorghum oil; the processing of the oil into biofuel; transport of the biofuel from the production facility to the fuel-blender; and, ultimately the use of the biofuel by the end consumer. The methodology EPA used for this analysis is generally the same approach used for the March 2010 RFS rule for lifecycle analyses of several other biofuel feedstocks, such as distillers corn oil and yellow grease.[9] We believe that applying the same methodology for these feedstocks is appropriate given similarities in how these feedstocks are produced, transported and processed into biofuel. These similarities are explained further in this section.

EPA's lifecycle analyses include upstream emissions, which include the significant direct and indirect GHG emissions (including such emissions from land use changes) associated with producing a feedstock and transporting it to the processing facility. All of the upstream emissions were calculated and taken into account in EPA's evaluation of the lifecycle GHG emissions associated with grain sorghum ethanol.[10] Based on our analysis, producing distillers sorghum oil at a dry mill ethanol plant converting grain sorghum to ethanol, and using the extracted sorghum oil as a biofuel feedstock does not result in additional upstream emissions, compared to the upstream emissions that have already been calculated and attributed to grain sorghum ethanol. Further, based on our analysis, the production of distillers sorghum oil does not significantly impact the upstream emissions associated with grain sorghum ethanol. While producing distillers sorghum oil may impact livestock markets, through the effects of de-oiling DGS, we discuss in the next section why, based on the data we have reviewed, we do not anticipate this to cause any significant indirect impacts. We welcome comments on this data and analysis.

1. Livestock Sector Impacts

During a typical dry mill ethanol production process, DGS are produced. These DGS are then used as animal feed, thereby displacing feed crops and the GHG emissions associated with growing and transporting those feed crops. When distillers sorghum oil is produced, DGS continue to be created with reduced oil content. A significant portion of this analysis focuses on reviewing how reduced-oil DGS compare to full-oil DGS in terms of feed values and displacement of other feeds.

Chemically, full-oil and reduced-oil sorghum DGS share similar compositions, primarily made up of crude protein, fat, and natural and acid detergent fibers. Where the two products differ most significantly is in their acid detergent fiber and fat concentrations. Table IV.1 shows the key nutrients that make up dried full-oil and reduced-oil DGS.

TABLE IV.1—KEY NUTRIENT MAKE-UP OF FULL-OIL AND REDUCED-OIL DRIED DISTILLERS GRAINS WITH SOLUBLES (DDGS)[11]

Nutrient	Full-oil sorghum DDGS	Reduced-oil sorghum DDGS
Crude Protein, %	30.80	31.36
Crude Fat, % (aka Ether Extract)	9.75	3.91
Neutral Detergent Fiber (NDF), %	33.60	37.23
Acid Detergent Fiber (ADF), %	22.68	31.91
Ash, %	6.62	7.60
Calcium, %	0.12	0.08
Phosphorus, %	0.76	0.96
Lysine, %	0.82	0.62
Methionine, %	0.54	0.47
Cystine, %	0.53	0.61
Tryptophan, %	0.25	0.23

The difference in fat values is important as crude fat concentrations impact net energy uptake by the livestock. A memorandum to the docket shows the total net energy profiles by livestock of full-oil and reduced-oil sorghum DGS.[12] Should fat content not be at sufficient levels, livestock producers might need to add nutrients or other types of feed to meet appropriate nutritional targets. This is reflected in the ''displacement rate'' of a DGS, which indicates how much weight a pound of distillers grain can replace of another feed. A lower displacement rate for a reduced-oil distillers grain as compared to a full-oil distillers grain could result in additional GHG emissions as it suggests that additional feed is required. In the case of reduced-oil sorghum DGS, we believe that it is unlikely that additional feed will be needed to backfill for the extracted oil.

Research suggests that for poultry and swine, ''increased concentrations of free fatty acids have a negative impact on

https://www.nass.usda.gov/Charts_and_Maps/graphics/AS-HA-RGBChor.pdf.

[7] Sorghum Checkoff, ''Renewables,'' *http://www.sorghumcheckoff.com/market-opportunities/renewables,* accessed 09–05–2017.

[8] USDA, ERS, ''Table 5— Corn supply, disappearance, and share of total corn used for ethanol,'' *U.S. Bioenergy Statistics, https://www.ers.usda.gov/data-products/us-bioenergy-statistics/us-bioenergy-statistics/#Feedstocks,* accessed 09–05–2017.

[9] The March 2010 RFS rule preamble (75 FR 14670, March 26, 2010) and Regulatory Impact Analysis (RIA) (EPA–420–R–10–006) provide further discussion of our approach. These documents are available online at *https://www.epa.gov/renewable-fuel-standard-program/renewable-fuel-standard-rfs2-final-rule-additional-resources.*

[10] See the December 2012 grain sorghum ethanol rule (77 FR 74592).

[11] The chart lists the most prominent nutrients in distillers grains. Data provided by the National Sorghum Producers. Data for full-oil Sorghum DDGS is sourced from *Nutrient Requirements of Swine,* 2012 National Academies Press, Washington DC, pg 329. Data for reduced-oil Sorghum DDGS was calculated by National Sorghum Producers using the ratio of (1) corn DDGS, between 6 to 9 percent Oil; and (2) corn DDGS, less than 4 percent oil from *Nutrient Requirements of Swine,* 2012 National Academies Press, Washington, DC, pp. 266 and 267.

[12] ''Summary of Net Energy Impacts of Reduced-Oil Sorghum Dried Distillers Grains with Solubles (DDGS) on Livestock,'' Air Docket EPA–HQ–OAR–2017–0655.

lipid digestion and energy content.'' [13] Free fatty acids are a class of acids that form part of a lipid molecule. Full-oil DGS typically contain higher levels of free fatty acids and thus may have a negative impact on the fat digestion of poultry and swine. This supports the conclusion that while the fat content may be lower for reduced-oil DGS, feeding values of this product should not be worse than full-oil DGS for poultry and swine.

For dairy, there are also benefits from feeding reduced-oil DGS as compared to full-oil DGS. Research on dairy cows shows that reduced-oil DGS produce a lessened likelihood of the onset of milk fat depression.[14] Milk fat depression occurs when milk fat is reduced by 0.2 percent or more.[15] If milk fat depression occurs over the long term, a decline in overall milk production may occur as well as worsened health conditions of the herd. High fat diets have been linked with this condition and have been shown to worsen the rumen environment of dairy cattle.[16] Therefore, dairy producers seek to avoid high fat diets. Given the benefits of reduced-oil DGS over full-oil DGS for milk fat production, it is expected that reduced-oil DGS will be preferred over full-oil DGS by dairy producers and that displacement rates will be no worse than those of full-oil DGS.

An impact on displacement rates may occur when reduced-oil instead of full-oil DGS are used for beef cattle, which has the ability to digest additional fat. Table IV.2 shows the displacement ratios for the livestock sectors where dried DGS (DDGS) are used. In this table, for instance, 1 pound of reduced-oil DDGS fed to beef cattle displaces 1.173 pounds of corn. A pound of full-oil and reduced-oil DDGS also displace equal portions (0.056 pounds) of urea. Urea is a non-protein nitrogen compound that is typically fed to cattle for aiding the production of protein by rumen microbes.[17] These values show that for dairy, swine, and poultry, reduced-oil DDGS replace the same amounts of alternative feed despite containing less oil.

TABLE IV.2—FULL-OIL AND REDUCED-OIL SORGHUM DISTILLERS GRAINS WITH SOLUBLES DISPLACEMENT RATIOS [18]

[lb of ingredient/lb of sorghum distillers grains with solubles, dry matter basis]

Ingredient	Beef cattle		Dairy cattle		Swine		Poultry [19]	
	Full-Oil	Reduced-Oil	Full-Oil	Reduced-Oil	Full-Oil	Reduced-Oil	Full-Oil	Reduced-Oil
Corn	1.196	1.173	0.731	0.731	0.890	0.890	0.292	0.292
Soybean Meal	....	....	0.633	0.633	0.095	0.095		
Urea	0.056	0.056						

We anticipate that sorghum oil producers will seek to sell reduced-oil DGS to poultry, swine, and dairy cow producers, as these markets allow them to obtain a higher value for their product. Dairy cattle producers may be willing to pay a premium for reduced-oil distillers grains, as data suggests lower oil DGs improve milk production. Sales of reduced-oil DGS to the beef cattle market are less likely, and in these cases we anticipate that should a higher fat product be required, the fat content of the DGS could be augmented through the addition of distillers sorghum oil, thereby reducing the volumes of biofuel produced from distillers sorghum oil but not causing additional indirect GHG emissions. Therefore, we do not expect that sorghum oil extraction will have a significant impact on the feed value of DGS and thus will have no significant indirect GHG impacts per pound of DGS. We welcome comment on this assessment.

2. Feedstock Production

Distillers sorghum oil is removed from DGS at dry mill ethanol plants using the same equipment and technologies used for corn oil extraction. Oil extraction requires thermal energy to heat the DGS and electricity to power centrifuges, pumps and other oil recovery equipment. Our analysis for the March 2010 RFS final rule,[20] the NSP petition, and two studies,[21 22] indicate that although extracting oil from DGS uses thermal

[13] Kerr, B.J., W.A. Dozier, and G.C. Shurson. (2016). ''Lipid digestibility and energy content of distillers' corn oil in swine and poultry,'' *Journal of Animal Science.* 94:2900–2908. doi:10.2527/jas.2016–0440, pp. 2905.

[14] H.A. Ramirez-Ramirez, E. Castillo Lopez, C.J.R. Jenkins, N.D. Aluthge, C. Anderson, S.C. Fernando, K.J. Harvatine, P.J. Kononoff, (2016). ''Reduced-fat dried distillers grains with solubles reduces the risk for milk fat depression and supports milk production and ruminal fermentation in dairy cows,'' *Journal of Dairy Science,* Volume 99, Issue 3 Pages 1912–1928, ISSN 0022–0302, *http://dx.doi.org/10.3168/jds.2015-9712. (http://www.sciencedirect.com/science/article/pii/S0022030216000515)*

[15] University of Kentucky, ''Preventing Milk Fat Depression in Dairy Cows,'' *https://afs.ca.uky.edu/dairy/preventing-milk-fat-depression-dairy-cows.* Accessed September 8, 2018. On the herd level milk fats range from 3 to 5 percent normally. Oetzel, Garret R., ''Subacute Ruminal Acidosis in Dairy Herds: Physiology, Pathophysiology, Milk Fat Responses, and Nutritional Management.'' Preconference Seminar 7A: Dairy Herd Problem Investigation Strategies: Lameness, Cow Comfort, and Ruminal Acidosis, American Association of Bovine Practitioners, 40th Annual Conference, September 17, 2007—Vancouver, BC, Canada, *https://www.vetmed.wisc.edu/dms/fapm/fapmtools/2nutr/sara1aabp.pdf* pp.98.

[16] PennState Extension, ''Troubleshooting Problems with Milkfat Depression,'' August 14, 2017, *https://extension.psu.edu/troubleshooting-problems-with-milkfat-depression.* Accessed September 8, 2017.

[17] PennState Extension, ''Urea in Beef Cattle Rations,'' August 8, 2017, *https://extension.psu.edu/urea-in-beef-cattle-rations.* Accessed October 18, 2017.

[18] Information provided by National Sorghum Producers, using the following sources Arora et al., (2008). Argonne National Laboratory. ''Update of distillers grains displacement ratios for corn ethanol life-cycle analysis''; Kerr et al., (2016). ''Lipid digestibility and energy content of distillers' corn oil in swine and poultry,'' *Journal of Animal Science* 94:2900-8.; Opheim et al., (2016). ''Biofuel feedstock and blended coproducts compared with deoiled corn distillers grains in feedlot diets: Effects on cattle growth performance, apparent total tract nutrient digestibility, and carcass characteristics,'' *Journal of Animal Science* 94:227.; Ramirez et al., (2016). ''Reduced-fat dried distillers grains with solubles reduces the risk for milk fat depression and supports milk production and ruminal fermentation in dairy cows,'' *Journal of Dairy Science* 99:1912-28. Poultry displacement ratios were provided by the National Sorghum Producers and calculated based on data from the Iowa State Extension Services, Agricultural Marketing and Resources Center, ''Estimated U.S. Dried Distillers Grains with Solubles (DDGS) Production and Use, *https://www.extension.iastate.edu/agdm/crops/outlook/dgsbalancesheet.pdf.*

[19] Protein sources such as soybean meal can be used to supplement sorghum DGS for poultry.

[20] See section 1.4.1.3 of USEPA (2010). Renewable fuel standard program (RFS2) regulatory impact analysis. U.S. Environmental Protection Agency Office of Transportation Air Quality, EPA–420–R–10–006. Washington, DC. *https://www.epa.gov/sites/production/files/2015-08/documents/420r10006.pdf.*

[21] Wang, Z., et al. (2015). ''Influence of corn oil recovery on life-cycle greenhouse gas emissions of corn ethanol and corn oil biodiesel.'' *Biotechnology for Biofuels* 8(1): 178.

[22] Mueller, S., Kwik, J. (2013). ''2012 Corn Ethanol: Emerging Plant Energy and Environmental Technologies.''

energy, it also leads to relatively less thermal energy being used later in the process to dry the DGS, resulting in an overall negligible change in thermal energy requirements for plants that dry their DGS. Our analysis here includes both the thermal and electrical energy requirements to remove the distillers sorghum oil. We do not account for the reduction in thermal energy needed for DGS drying mentioned above, so this can be viewed as a conservative approach (*i.e.,* resulting in higher estimated GHG emissions) for plants that dry their DGS.[23] Based on data reviewed by EPA,[24] we assume 200 Btu (British thermal units) of grid electricity and 800 Btu of natural gas are used to extract distillers sorghum oil from DGS, per pound of distillers sorghum oil extracted. These parameters are based on energy requirements associated with extracting oil from DGS at dry mill ethanol plants, but we believe they are also appropriate and conservative in cases where the oil is extracted at any point downstream from sorghum grinding.

As discussed above, we do not expect sorghum oil extraction to significantly change the feed value of DGS on a per pound basis. According to the NSP petition, grain sorghum oil yields should be 0.67 pounds per bushel of grain sorghum feedstock.[25] EPA's modeling for the December 2012 grain sorghum ethanol final rule (77 FR 74592) assumed average dried DGS yield of 17 pounds per bushel of grain sorghum feedstock. Thus, sorghum oil extraction may reduce the total mass of DGS produced by up to approximately 4 percent. If full-oil and reduced-oil DGS have equivalent feed value on a per pound basis, we would expect a reduction in the total mass of DGS produced to impact livestock feed markets and result in a net increase in GHG emissions if production of other feed crops (*e.g.,* corn, soybeans) increased to backfill the lost DGS, given that producing additional corn and soybeans would result in more GHG emissions.[26] However, if reduced-oil DGS are more beneficial than full oil DGS for dairy cows, on a per pound of DGS basis, that could offset some or all of the impacts associated with the DGS mass reduction. The information currently available makes the magnitude of these countervailing impacts difficult to determine, and we did not include any emissions impacts from DGS mass reduction in our lifecycle GHG analysis of biofuels produced from distillers sorghum oil. We invite comment on our analysis of the GHG emissions associated with extracting sorghum oil from DGS.

3. Feedstock Transport

In our analysis, distillers sorghum oil is transported 50 miles by heavy duty truck from the dry mill ethanol plant to the biodiesel or hydrotreating facility where it is converted to transportation fuel. GHG emissions associated with feedstock transport are relatively small, and modest changes in transport distance are unlikely to affect the results of our analysis.

4. Feedstock Pretreatment

For emissions from feedstock pretreatment and fuel production, we perform two analyses. In the first analysis, we calculate the emissions from biodiesel produced using transesterification. In the second analysis, we calculate the emissions from renewable diesel, jet fuel, LPG, and naphtha, produced using hydrotreating. In Section V below, we then explain how similar results can be inferred for heating oil.

Before distillers sorghum oil is converted to biodiesel via transesterification, it is processed to remove free-fatty acids. This process requires thermal energy. Our evaluation of yellow grease for the March 2010 RFS final rule included 14,532 Btu of natural gas per gallon of biodiesel produced for pretreatment, and we have applied the same assumption for this analysis. According to the NSP petition, distillers sorghum oil has free fatty acid content near or below 15 percent, which is in the range of yellow grease free fatty acid contents (<15 percent).[27] This rate of thermal energy use for pretreatment is higher than thermal energy rates used in other lifecycle assessments EPA reviewed,[28] and can be viewed as a conservative assumption (*i.e.,* resulting in higher GHG emissions).

Pretreatment to remove free-fatty acids is not required when distillers sorghum oil is used to produce renewable diesel, jet fuel, LPG and naphtha through a hydrotreating process.

5. Fuel Production

For biodiesel production, we used the transesterification analysis for the March 2010 RFS rule for yellow grease biodiesel.[29] Based on comparison of this yellow grease analysis and the mass and energy balance data in the NSP petition, submitted under claim of CBI, the conversion of yellow grease and distillers sorghum oil are expected to require similar energy inputs and yield similar amounts of biodiesel and methanol as outputs.

For production of renewable diesel, jet fuel, naphtha and LPG via a hydrotreating process, we used the same data and approach as used in the March 2013 Pathways I rule (78 FR 14190, March 5, 2013), and subsequent facility-specific petitions involving hydrotreating processes.[30] The March 2013 Pathways I rule evaluated two hydrotreating configurations: One optimized for renewable diesel production and one optimized for jet fuel production. For this analysis we evaluated a hydrotreating process maximized for renewable diesel production, as that is the most common configuration. The jet fuel configuration results in higher emissions (approximately 5 $kgCO_2e/mmBtu$ higher), but the threshold GHG reduction results discussed below are not sensitive to this assumption.

Our previous analyses of hydrotreating processes have applied an energy allocation approach for RIN-generating co-products that qualify as renewable fuel.[31] This approach results in higher lifecycle GHG emissions for each of the fuel products than other approaches considered, such as a

[23] The purpose of lifecycle assessment under the RFS program is not to precisely estimate lifecycle GHG emissions associated with particular biofuels, but instead to determine whether or not the fuels satisfy specified lifecycle GHG emissions thresholds to qualify as one or more of the four types of renewable fuel specified in the statute. Where there are a range of possible outcomes and the fuel satisfies the GHG reduction requirements when "conservative" assumptions are used, then a more precise quantification of the matter is not required for purposes of a pathway determination.

[24] See sources referenced in footnotes 20 and 21 for energy use associated with oil extraction, and California Air Resources Board (2014). "California-Modified GREET Fuel Pathway: Biodiesel Produced in the Midwestern and the Western U.S. from Corn Oil Extracted at Dry Mill Ethanol Plants that Produce Wet Distiller's Grains with Solubles." Staff Summary, Method 1 Fuel Pathway.

[25] NSP petition, section F.2.iv

[26] For example, the California Air Resources Board (CARB) estimated this impact would be approximately 10 $kgCO_2e/mmBtu$ of biodiesel produced from distillers corn oil (*https://www.arb.ca.gov/fuels/lcfs/2a2b/apps/co_bd_wdgs-rpt-102414.pdf*). Applying such an impact to our analysis of biofuels produced from distillers sorghum oil would not change the GHG thresholds results for the biofuels produced from distillers sorghum oil evaluated in this document.

[27] See Table 15 in the January 5, 2012 Pathways I direct final rule (77 FR 722).

[28] See for example: *https://www.arb.ca.gov/fuels/lcfs/2a2b/apps/co_bd_wdgs-rpt-102414.pdf.*

[29] For details see section 2.4 of the RIA for the March 2010 RFS final rule.

[30] For determination documents responding to facility specific petitions, see: *https://www.epa.gov/renewable-fuelstandard-program/approved-pathways-renewable-fuel.*

[31] See the March 2013 Pathways I rule, specifically 78 FR 14198–14200 (March 5, 2013).

displacement approach, and thus can be viewed as a conservative approach.

In the allocation approach, all the emissions from the hydrotreating process are allocated across all co-products. There are a number of ways to do the allocation, for example on the basis of energy, mass, or economic value. Consistent with the approach taken in the hydrotreating analysis for the March 2013 RFS rule, for this analysis of fuels produced from distillers sorghum oil feedstock through a hydrotreating process we allocated emissions to the renewable diesel, naphtha and LPG based on the energy content (using lower-heating values) of the products produced. Emissions from the process were allocated equally to all of the Btus of fuel produced. Therefore, on a per Btu basis, all of the primary products coming from the hydrotreating facility have the same emissions from the fuel production stage of the lifecycle. For this analysis, the energy content was the most appropriate basis for allocating emissions because all of the fuel products are used as sources of energy. Energy content also has the advantage of being a fixed factor as opposed to market prices which fluctuate over time.

6. Fuel Distribution

We used the fuel distribution results from the biodiesel analysis for the March 2010 RFS rule. Fuel distribution emissions are relatively small compared to baseline lifecycle GHG emissions (see Table IV.3 below), and although they may be different for different types of fuel, for the purposes of this analysis we assume that renewable diesel, jet fuel, LPG, and naphtha, have the same fuel distribution emissions per mmBtu of fuel used. Even if we applied a more precise value for fuel distribution emissions, we do not expect that revision to change our assessment that these fuels meet a 50 percent GHG emission reduction.

7. Fuel Use

For this analysis we applied fuel use emissions factors developed for the March 2010 RFS final rule. For biodiesel we used the biodiesel emissions factor. For renewable diesel and jet fuel we used the emissions factors for non-CO_2 GHGs for baseline diesel fuel. For naphtha we used the emissions factors for non-CO_2 GHGs for baseline gasoline fuel. For LPG we used the LPG non-CO_2 emissions factor developed for the March 2010 RFS rule. The tailpipe emissions are relatively small, and the threshold GHG reduction results are not sensitive to these assumptions. More details on our analysis of fuel use emissions are described in a memo [32] to the rulemaking docket.

8. Results of GHG Lifecycle Analysis

Table IV.3 shows the lifecycle GHG emissions associated with biofuels produced from distillers sorghum oil that result from our assessment. The table also shows the percent reduction relative to the petroleum baseline. All of the fuels are compared to the diesel baseline, except for naphtha which is compared to the gasoline baseline.

TABLE IV.3—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH BIOFUELS PRODUCED FROM DISTILLERS SORGHUM OIL ($kgCO_2$-eq/MJ)

Fuel	Biodiesel	Renewable diesel, jet fuel	Naphtha	LPG	2005 Diesel baseline	2005 Gasoline baseline
Production process	Transesterification	Hydrotreating			Refining	
Feedstock Production	5.6	6.2	6.2	6.2	18.0	19.2
Feedstock Transport	0.2	0.3	0.3	0.3		
Feedstock Pretreatment	8.4	....	....	....		
Fuel Production	1.2	8.0	8.0	8.0		
Fuel Distribution	0.8	0.8	0.8	0.8		
Fuel Use	0.7	0.7	1.7	1.5	79.0	79.0
Total	17.0	16.0	17.0	16.8	97.0	98.2
Percent Reduction	82	84	82	83	....	....

V. Consideration of Lifecycle Analysis Results

Based on the lifecycle GHG emissions results presented above, all of the pathways evaluated would meet the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel.

The results presented above would also justify qualifying heating oil produced from distillers sorghum oil as meeting the 50 percent GHG threshold. In previous rulemakings, EPA considered the lifecycle GHG impacts associated with heating oil and determined that heating oil produced from a range of feedstocks (*e.g.,* soybean oil, distillers corn oil) via a transesterification or hydrotreating process satisfies the 50 percent lifecycle GHG reduction required for advanced biofuel.[33] Based on the results presented above, we anticipate that biofuels such as heating oil produced from distillers sorghum oil have significantly lower lifecycle GHG emissions than the same fuels produced from soybean oil, when the same production processes are used.[34] Therefore, based on EPA's previous lifecycle evaluations for heating oil produced from soybean oil, we believe that heating oil produced from distillers sorghum oil would also satisfy the 50 percent GHG reduction requirement.

VI. Summary

Based on our GHG lifecycle evaluation described above, we propose to find that biodiesel and heating oil produced from distillers sorghum oil via a transesterification process, and renewable diesel, jet fuel and heating oil produced from distillers sorghum oil via a hydrotreating process meet the 50 percent GHG reduction threshold requirement for advanced biofuel and biomass-based diesel. This finding

[32] See, ''Summary of Key Assumptions for EPA's Analysis of the Lifecycle Greenhouse Gas Emissions Associated with Biofuels Produced from Distillers Sorghum Oil,'' Air Docket EPA–HQ–OAR–2017–0655.

[33] See the March 2013 RFS Pathway I rule (78 FR 14190, March 5, 2013).

[34] For example, in analysis for the March 2010 RFS rule, EPA found that soybean oil biodiesel achieves a 57 percent GHG reduction (based on the mean result from our uncertainty assessment), whereas the results in Table IV.3, above, show biodiesel produced from distillers sorghum oil achieve a greater than 80 percent reduction.

would support a determination that these fuels are eligible for biomass-based diesel (D-code 4) RINs if they are produced through a process that does not co-process renewable biomass and petroleum, and for advanced biofuel (D-code 5) RINs if they are produced through a process that does co-process renewable biomass and petroleum. EPA invites comment on all aspects of its analysis of these proposed biofuel pathways.

VII. Statutory and Executive Order Reviews

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

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

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

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

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

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and therefore is not subject to these requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule proposes to provide a positive economic effect for distillers sorghum oil producers and producers of biofuels from distillers sorghum oil as they would be able to participate in the RFS program, see CAA section 211(o).

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This proposed rule would affect only producers of distillers sorghum oil and producers of biofuels made from distillers sorghum oil. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 because it does not concern an environmental health risk or safety risk.

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

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

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This proposed rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. This action does not relax the control measures on sources regulated by the fuel programs and RFS regulations and therefore will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel Fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: December 19, 2017.

E. Scott Pruitt,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

■ 1. The authority for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—[Amended]

■ 2. Section 80.1401 is amended by adding in alphabetical order a new definition for ''distillers sorghum oil'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Distillers sorghum oil means oil recovered at a point downstream of where a dry mill grain sorghum ethanol plant grinds the grain sorghum, provided that the grain sorghum is converted to ethanol, the oil is rendered unfit for food uses without further refining, and the distillers grains resulting from the dry mill and oil extraction processes are marketable as animal feed.

* * * * *

■ 3. Section 80.1426, paragraph (f)(1) is amended by revising entries F, H, and I in Table 1 to § 80.1426 to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Entry	Fuel type	Feedstock	Production process requirements	D-code
*	*	*	*	*
F	Biodiesel, renewable diesel, jet fuel and heating oil, biodiesel.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; Non-food grade corn oil; *Camelina sativa* oil; Distillers sorghum oil.	One of the following: TransEsterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
*	*	*	*	*
H	Biodiesel, renewable diesel, jet fuel and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; Non-food grade corn oil; *Camelina sativa* oil; Distillers sorghum oil.	One of the following: TransEsterification Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil.	Hydrotreating	5
*	*	*	*	*

* * * * *

[FR Doc. 2017–27946 Filed 12–26–17; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2017–0010; FRL–9972–46–OW]

RIN 2040–AF69

Water Quality Standards for the State of Missouri's Lakes and Reservoirs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) proposes to establish federal nutrient criteria to protect designated uses for the State of Missouri's lakes and reservoirs. On August 16, 2011, EPA disapproved most of the numeric criteria for total nitrogen, total phosphorus, and chlorophyll *a* that the State submitted to EPA in 2009. EPA acknowledged the importance of Missouri's proactive efforts to address nutrient pollution by adopting numeric nutrient criteria. However, EPA concluded that the Missouri Department of Natural Resources (MDNR) had failed to demonstrate the criteria would protect the State's designated uses and were not based on a sound scientific rationale. The Clean Water Act (CWA) directs EPA to promptly propose water quality standards (WQS) that meet CWA requirements if a state does not adopt WQS addressing EPA's disapproval. On February 24, 2016, the Missouri Coalition for the Environment (MCE) filed a lawsuit alleging that EPA failed to satisfy its statutory obligation to act ''promptly.'' On December 1, 2016, EPA entered into a consent decree with MCE committing to sign a notice of proposed rulemaking by December 15, 2017 to address EPA's 2011 disapproval, unless the State submits and EPA approves criteria that address the disapproval on or before December 15, 2017. As of the date of this proposed rule, Missouri has not submitted new or revised standards to address EPA's 2011 disapproval and EPA has not approved such water quality standards. Therefore, under the terms of the consent decree, EPA is signing a notice of proposed rulemaking that proposes new water quality standards addressing EPA's August 16, 2011 disapproval. In this proposal, EPA seeks comment on two primary alternatives. Under the first alternative, EPA proposes nutrient protection values and eutrophication impact factors in a combined criterion approach. Under the second alternative, EPA proposes a similar combined criterion approach that would mirror the State of Missouri's October 2017 proposal for lake nutrient water quality standards. EPA will not proceed with final rulemaking (or will withdraw its final rule, if applicable) to address its 2011 disapproval if Missouri adopts and submits criteria to address EPA's 2011 disapproval and EPA approves them as meeting CWA requirements.

DATES: Comments must be received on or before February 26, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2017–0010, at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

EPA is offering two online public hearings so that interested parties may provide verbal comments on this proposed rule. The first public hearing

will be on February 7, 2018. The second public hearing will be on February 8, 2018. For more details on the public hearings and a link to register, please visit *https://www.epa.gov/wqs-tech/proposed-nutrient-criteria-missouri-lakes-and-reservoirs.*

FOR FURTHER INFORMATION CONTACT:

Mario Sengco, Standards and Health Protection Division, Office of Water, Mailcode: 4305T, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–566–2676; email address: *sengco.mario@epa.gov.*

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J. National Technology Transfer Advancement Act of 1995
K. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

A. Does this action apply to me?

Citizens concerned with water quality in the State of Missouri may be interested in this proposed rulemaking. Entities discharging nitrogen or phosphorus to lakes and reservoirs, or to flowing waters emptying into lakes or reservoirs, could be affected directly or indirectly by this rulemaking because WQS are used in determining National Pollutant Discharge Elimination System (NPDES) permit effluent limits. Stakeholders that rely on lakes and reservoirs for recreation or as a source of drinking water likewise may be interested in the proposed criteria. Table 1 lists categories that ultimately may be affected by this proposal.

TABLE 1—CATEGORIES POTENTIALLY AFFECTED BY PROPOSED CRITERIA

Category	Examples of potentially affected entities
Industry	Factories discharging pollutants to lakes/reservoirs or flowing waters emptying into downstream lakes/reservoirs in Missouri.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes/reservoirs or flowing waters emptying into downstream lakes/reservoirs in Missouri.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Missouri.

This table is not intended to be exhaustive; rather, it provides a guide for entities that may be affected directly or indirectly by this action. Nonpoint source contributors and other entities not listed in the table also could be affected indirectly. Any party or entity that conducts activities within the watersheds affected by this rule, or that relies on, depends upon, influences, or contributes to the water quality of the lakes, reservoirs and flowing waters of Missouri, also may be affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What action is EPA taking?

The EPA is proposing two alternatives to establish federal nutrient criteria to protect designated uses for the State of Missouri's lakes and reservoirs. Under the first alternative, EPA proposes nutrient protection values (total nitrogen, total phosphorus, chlorophyll *a*) and eutrophication impact factors in a combined criterion approach. Under the second alternative, EPA proposes a combined criterion approach that would mirror the State of Missouri's October 2017 proposal for lake nutrient water quality standards. This action fulfills EPA's obligation under its consent decree entered on December 1, 2016 to prepare and publish proposed regulations for nutrient criteria to address the Agency's August 16, 2011, disapproval of the State's nutrient criteria by December 15, 2017.

II. Background

A. Nutrient Pollution

1. What is nutrient (*i.e.,* nitrogen and phosphorus) pollution?

Excess loading of nitrogen and phosphorus compounds [1] is one of the most prevalent causes of water quality impairment in the United States. Nitrogen and phosphorus pollution problems have been recognized for some time in the U.S. For example, a 1969

[1] To be used by living organisms, nitrogen gas must be fixed into its reactive forms; for plants, this generally includes either nitrate or ammonia (Boyd, C.E. 1979. *Water Quality in Warmwater Fish Ponds.* Alabama Agricultural Experiment Station, Auburn, AL). Eutrophication is defined as the natural or artificial addition of nitrogen/phosphorus to bodies of water and to the effects of added nitrogen/phosphorus (National Academy of Sciences (U.S). 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Sciences, Washington, DC).

report by the National Academy of Sciences [2] noted ''[t]he pollution problem is critical because of increased population, industrial growth, intensification of agricultural production, river-basin development, recreational use of waters, and domestic and industrial exploitation of shore properties. Accelerated eutrophication causes changes in plant and animal life—changes that often interfere with use of water, detract from natural beauty, and reduce property values.'' Inputs of nitrogen and phosphorus lead to over-enrichment in many of the Nation's waters and create a widespread, persistent, and growing problem. Nitrogen and phosphorus pollution in fresh water systems can significantly impact aquatic life and long-term ecosystem health, diversity, and balance. More specifically, high nitrogen and phosphorus loadings result in harmful algal blooms (HABs), reduced spawning grounds and nursery habitats, fish kills, and oxygen-starved hypoxic or ''dead'' zones. Public health concerns related to nitrogen and phosphorus pollution include impaired surface and groundwater drinking water sources from high levels of nitrate-nitrogen, formation of nitrogenous disinfection byproducts in drinking water, and increased exposure to toxic microbes such as cyanobacteria.[3 4]

Elevated nitrogen and phosphorus levels can occur locally in a stream or groundwater aquifer, or can accumulate much further downstream leading to degraded lakes, reservoirs, and estuaries and material impacts on fish and other aquatic life.[5 6] Excess nitrogen and phosphorus in water bodies come from many sources, which can be grouped into five major categories: (1) Urban stormwater runoff—sources associated with urban land use and development, (2) municipal and industrial waste water discharges, (3) row crop agriculture, (4) livestock production, and (5) atmospheric deposition from the production of nitrogen oxides in electric power generation and internal combustion engines.

2. Adverse Impacts of Nitrogen and Phosphorus Pollution on Aquatic Life, Human Health, and the Economy

The causal pathways that lead from human activities to excess nutrients to impacts on designated uses in lakes and reservoirs are well established in the scientific literature (*e.g.,* Vollenweider, 1968; NAS, 1969; Schindler *et al.,* 1973; Schindler, 1974; Vollenweider, 1976; Carlson, 1977; Paerl, 1988; Elser *et al.,* 1990; Smith *et al.,* 1999; Downing *et al.,* 2001; Smith *et al.,* 2006; Elser *et al.,* 2007).[7] When excessive nitrogen and phosphorus loads alter a waterbody's complement of algal and plant species, the corresponding changes in habitat and available food resources can induce cascading effects on the entire food web. Algal blooms block sunlight that submerged plants need to grow, leading to a decline in the availability of submerged aquatic vegetation and a reduction in habitat for juvenile fish and some other aquatic organisms. Algal blooms can also increase turbidity and impair the ability of sight-feeding fish and other aquatic life to find food.[8] Large concentrations of algae can also damage or clog the gills of fish and certain invertebrates.[9] Excessive algal blooms can lead to shifts in a waterbody's production and consumption of dissolved oxygen (DO) resulting in reduced DO levels that are sufficiently low to harm or kill important recreational species such as walleye, striped bass, and black bass.

Excessive algal growth also contributes to increased oxygen consumption associated with decomposition (*e.g.,* large quantities of senescing and decaying algal cells), in many instances reducing oxygen to levels below that needed for aquatic life to survive and flourish.[10 11] Mobile species, such as adult fish, can sometimes survive by moving to areas with more oxygen. However, migration to avoid hypoxia depends on species mobility, availability of suitable habitat (*i.e.,* refugia), and adequate environmental cues for migration. Less mobile or immobile species, such as mussels, cannot move to avoid low oxygen and are often killed during hypoxic events.[12] While certain mature

[2] National Academy of Sciences (U.S). 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Sciences, Washington, DC.

[3] Villanueva, C.M. *et al.,* 2006. Bladder cancer and exposure to water disinfection by-products through ingestion, bathing, showering, and swimming in pools. *American Journal of Epidemiology* 165(2):148–156.

[4] USEPA. *Environments and Contaminants: Drinking water contaminants* U.S. Environmental Protection Agency, Office of Research and Development. Accessed December 2017. *https://www.epa.gov/sites/production/files/2015-10/documents/ace3_drinking_water.pdf.*

[5] National Research Council. 2000. *Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution.* National Academies Press, Washington, DC.

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[7] Vollenweider, R.A. 1968. *Scientific Fundamentals of the Eutrophication of Lakes and Flowing Waters, With Particular Reference to Nitrogen and Phosphorus as Factors in Eutrophication* (Tech Rep DAS/CS/68.27, Organisation for Economic Co-operation and Development, Paris. National Academy of Science. 1969. *Eutrophication: Causes, Consequences, Correctives.* National Academy of Science, Washington, DC.

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[9] NOAA. 2017. Ocean Facts: Are All Algal Blooms Harmful? National Oceanic and Atmospheric Administration, National Ocean Service. <*https://oceanservice.noaa.gov/facts/habharm.html*>. Accessed December 2017.

[10] NOAA. 2017. *Ocean Facts: Are All Algal Blooms Harmful?* National Oceanic and Atmospheric Administration, National Ocean Service. *https://oceanservice.noaa.gov/facts/habharm.html.*

[11] USEPA. 2017. *What is Hypoxia and What Causes It?* U.S. Environmental Protection Agency. <*https://www.epa.gov/ms-htf/hypoxia-101*>. Accessed December 2017.

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aquatic animals can tolerate a range of dissolved oxygen levels that occur in the water, younger life stages of fish and shellfish often require higher levels of oxygen to survive.[13] Sustained low levels of dissolved oxygen cause a severe decrease in the amount of aquatic life in hypoxic zones and affect the ability of aquatic organisms to find necessary food and habitat.

In freshwater lakes and reservoirs, blooms of cyanobacteria (sometimes referred to as blue-green algae),[14] can produce toxins that have been implicated as the cause of a number of fish and bird mortalities.[15] These toxins have also been tied to the death of pets and livestock that may be exposed through drinking contaminated water or grooming themselves after bodily exposure.[16] Cyanobacterial toxins can also pass through normal drinking water treatment processes and pose an increased risk to humans or animals.[17]

Elevated nitrogen and phosphorus levels in lakes and reservoirs can impact human health and safety and otherwise detract from the outdoor recreational experience. For example, nutrient pollution in lakes typically promotes higher densities of phytoplankton, which can reduce the clarity of the water column to the detriment of swimmer safety. Cyanobacterial blooms frequently result in high algal toxin (*e.g.,* microcystin) concentrations, leading to swimming beach closures and issuance of health advisories/warnings. In areas where recreation is determined to be unsafe because of algal blooms, warning signs often are posted to discourage human contact with the affected waters.

Many other states, and countries for that matter, are experiencing problems with harmful algal blooms (HABs).[18 19] Scientific assessments and numerous studies have shown an increase of HAB occurrence, distribution and persistence in the U.S. and globally in recent years.[20 21 22] In a recent scientific assessment, reviewers found that observed increases in water temperatures alter the seasonal windows of growth and the geographic range of suitable habitat for freshwater toxin-producing harmful algae and marine toxin-producing harmful algae.[23] These changes may increase the risk of exposure to waterborne pathogens and algal toxins that can cause a variety of illnesses. In addition, runoff from more frequent and intense extreme precipitation events may increasingly compromise recreational waters, shellfish harvesting waters, and sources of drinking water through increased prevalence of toxic algal blooms. An example of an algal bloom event occurred on August 10, 2017,[24] when officials from the Oakland Country Health Division located near Detroit, Michigan issued a warning for residents and their pets to avoid two local lakes due to the presence of an algal bloom. People were advised to avoid contact with the water through recreation and to avoid drinking the water. In a July 7, 2017 article,[25] the number of reports of harmful algal blooms affecting lakes and ponds in New York, as tracked by the New York State Department of Environmental Conservation, were increasing early in the season. Reducing nutrient input is one of the strategies lake managers are employing throughout the State to address the growing problem of algal blooms. Species of cyanobacteria commonly associated with freshwater algal blooms include: *Microcystis aeruginosa, Anabaena circinalis, Anabaena flos-aquae, Aphanizomenon flos-aquae, and Cylindrospermopsis raciborskii.* Under certain conditions, some of these species can release neurotoxins (affect the nervous system), hepatotoxins (affect the liver), lipopolysaccharide compounds inimical to the human gastrointestinal system, and tumor promoting compounds.[26] One study showed that at least one type of cyanobacteria has been linked to cancer and tumor growth in animals.[27]

Human health also can be impacted by disinfection byproducts (DBPs), formed when disinfectants (such as chlorine) used to treat drinking water react with organic carbon produced by algae in source waters. Some DBPs have been linked to rectal, bladder, and colon cancers; reproductive health risks; and liver, kidney, and central nervous system problems.[28 29] In their study of 21 water supply lakes and reservoirs in New York, Callinan *et al.* (2013) concluded that ''autochthonous [algal] precursors contribute substantially to the DBP precursor pool in lakes and reservoirs and the . . . establishment of [numeric nutrient criteria] for the protection of [potable water supply] source waters is warranted and feasible.'' [30]

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uploads/2012/12/hypoxia.pdf>. Accessed December 2017.

[13] USEPA. 1986. *Ambient Water Quality Criteria for Dissolved Oxygen Freshwater Aquatic Life.* EPA–800–R–80–906. Environmental Protection Agency, Office of Water, Washington, DC.

[14] CDC. 2017. Harmful Algal Bloom (HAB)-Associated Illness. Centers for Disease Control and Prevention. <*https://www.cdc.gov/habs/*> Accessed December 2017.

[15] Ibelings, B.W. & K.E. Havens. 2008. Chapter 32: Cyanobacterial toxins: A qualitative meta-analysis of concentrations, dosage and effects in freshwater, estuarine and marine biota. *In: Cyanobacterial Harmful Algal Blooms: State of the Science and Research Needs.* From the Monograph of the September 6–10, 2005 International Symposium on Cyanobacterial Harmful Algal Blooms (ISOC–HAB) in Durham, NC. <*http://www.epa.gov/cyano_habs_symposium/monograph/Ch32.pdf*>. Accessed August 19, 2010.

[16] WHOI. 2008. *HAB Impacts on Wildlife.* Woods Hole Oceanographic Institution. <*http://www.whoi.edu/redtide/page.do?pid=9682*>. Accessed December 2009.

[17] Carmichael, W.W. 2000. *Assessment of Blue-Green Algal Toxins in Raw and Finished Drinking Water.* AWWA Research Foundation, Denver, CO.

[18] FWCC. 2017. *What is a Harmful Algal Bloom?* <*http://myfwc.com/research/redtide/general/harmful-algal-bloom/*>. Accessed December 2017.

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[20] Scientific American (2016) *https://blogs.scientificamerican.com/guest-blog/toxic-algae-blooms-are-on-the-rise/.*

[21] Lopez, C.B., Jewett, E.B., Dortch, Q., Walton, B.T., Hudnell, H.K. 2008. Scientific Assessment of Freshwater Harmful Algal Blooms. Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health of the Joint Subcommittee on Ocean Science and Technology. Washington, DC.

[22] Lopez, C.B., Dortch, Q., Jewett, E.B., Garrison, D. 2008. Scientific Assessment of Marine Harmful Algal Blooms. Interagency Working Group on Harmful Algal Blooms, Hypoxia, and Human Health of the Joint Subcommittee on Ocean Science and Technology. Washington, DC.

[23] USGCRP, 2016: *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment.* Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp.

[24] The Detroit News. *Toxic algal blooms spotted in Waterford, White Lake* by Stephanie Steinberg. August 10, 2017. *http://www.detroitnews.com/story/news/environment/2017/08/10/toxic-algal-blooms-spotted-waterford-white-lake/104463128/.*

[25] The New York Times. *Beware the Blooms: Toxic Algae Found in Some City Ponds* by Lisa W. Foderaro. July 7, 2017. *https://www.nytimes.com/2017/07/07/nyregion/beware-the-blooms-toxic-algae-found-in-some-city-ponds.html.*

[26] CDC. 2017. Harmful Algal Bloom (HAB)-Associated Illness, Centers for Disease Control and Prevention. <*https://www.cdc.gov/habs/*>. Accessed December 2017.

[27] Falconer, I.R. & A.R. Humpage. 2005. Health risk assessment of cyanobacterial (blue-green algal) toxins in drinking water. *International Journal of Research and Public Health* 2(1):43–50.

[28] USEPA. 2017. Drinking water Requirements for States and Public Water Systems, Public Water Systems, Disinfection Byproducts, and the Use of Monochloramine. U.S. Environmental Protection Agency. Accessed <*https://www.epa.gov/dwreginfo/public-water-systems-disinfection-byproducts-and-use-monochloramine*>. December 2017.

[29] National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule, 40 CFR parts 9, 141, and 142. U.S. Environmental Protection Agency, FR 71:2 (January 4, 2006). pp. 387–493. Available electronically at: <*http://www.epa.gov/fedrgstr/EPA-WATER/2006/January/Day-04/w03.htm*>. Accessed December 2009.

[30] Callinan, C.W., J.P. Hassett, J.B. Hyde, R.A. Entringer & R.K. Klake. 2011. Proposed nutrient criteria for water supply lakes and reservoirs. *Journal of the American Water Works Association* 105(4):E157–E172.

Implementation of nutrient criteria help to protect lakes and reservoirs from the negative effects of nutrient pollution, which frequently include, but are not limited to (a) the occurrence and spread of toxic algae, (b) the proliferation of certain fish species that are less desirable to sport anglers (*i.e.,* ''rough'' fish), (c) a general decline in sensitive aquatic plant and animal populations, (d) the occurrence of taste and odor problems in drinking water derived from lakes and reservoirs, (e) Safe Drinking Water Act violations related to the occurrence of disinfection by-products (*e.g.,* trihalomethanes, haloacetic acids) in finished drinking water, (f) a decline in waterbody transparency with accompanying recreational safety concerns, (g) the occurrence of unsightly scums and objectionable odors, (h) the depreciation of lakefront property values,[31] and (i) an overall reduction in the functional life expectancy of reservoirs, with a corresponding loss of return on society's economic investment in these systems.

3. Nutrient Pollution in Missouri Lakes and Reservoirs

Lake water quality impairments attributable to nutrient pollution have not been quantified with any degree of precision in Missouri. Long-term monitoring data are available for about 10 percent of the State's classified lakes and reservoirs (representing approximately 90 percent of overall lake acreage), and about 15 percent of these monitored waters already have EPA-approved numeric nutrient criteria.

Missouri adopted site-specific chlorophyll *a,* total phosphorus and total nitrogen criteria for 25 lakes and reservoirs on July 1, 2009, which were approved by EPA on August 16, 2011. Currently, eleven of these waterbodies (44 percent) are listed for nutrient pollution-related impairments. This percentage is consistent with nation-wide estimates of lakes in the most disturbed category obtained through the 2012 National Lakes Assessment (NLA). Specifically, the NLA estimates that 40 percent of all lakes and reservoirs in the conterminous U.S. are considered most disturbed based on elevated phosphorus concentrations, and 35 percent are considered most disturbed based on elevated nitrogen concentrations (*https://www.epa.gov/national-aquatic-resource-surveys/nla*).

MDNR acknowledges that lake and reservoir eutrophication is occurring at a detectable rate throughout much of the state.[32] Over the past 20 or more years, chlorophyll *a* levels in monitored waterbodies have increased by an average of 3.5, 13, 28 and 2.6 μg/L in the Glaciated Plains, Osage Plains, Ozark Border and Ozark Highlands, respectively.[33]

B. Statutory and Regulatory Background

Section 303(c) of the CWA (33 U.S.C. § 1313(c)) directs states and authorized tribes[34] to adopt WQS for their navigable waters. Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that state WQS include the designated use or uses to be made of the waters and criteria that protect those uses. EPA regulations at 40 CFR § 131.11(a)(1) provide that states and authorized tribes shall ''adopt those water quality criteria that protect the designated use'' and that such 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.''

Additionally, 40 CFR § 130.10(b) provides that ''[i]n designating uses of a waterbody and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.''

States and authorized tribes also are required to hold one or more public hearings consistent with 40 CFR § 25.5 to review their WQS at least once every three years and, as appropriate, modify or adopt new standards and to hold public hearings when revising or adopting new WQS. (*See* 33 U.S.C. § 1313 (c)(1) and 40 CFR § 131.20). Any new or revised WQS must be submitted to EPA for review and approval or disapproval. 33 U.S.C. § 303(c)(2)(A), (3)). If EPA determines a state's new or revised standard does not meet the requirements of the CWA, EPA ''must specify the changes to meet such requirements.'' § 303(c)(3). If the state does not adopt such changes within ninety days, EPA ''shall promptly prepare and publish proposed regulations'' and promulgate any revised or new standard within ninety days unless the state has adopted and EPA has approved a WQS as meeting CWA requirements. *Id.*

C. Deriving and Expressing Numeric Nutrient Criteria

Under CWA section 304(a), EPA periodically publishes criteria recommendations for use by states and authorized tribes in setting water quality criteria for particular parameters to protect the designated uses for their surface waters. Where EPA has published nationally-recommended criteria, states and authorized tribes have the option of adopting water quality criteria based on EPA's CWA section 304(a) criteria guidance, section 304(a) criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods. (*See* 40 CFR 131.11(b)(1)). For nitrogen and phosphorus pollution, EPA finalized in 2001–2002 numeric nutrient criteria recommendations (*i.e.,* total nitrogen, total phosphorus, chlorophyll *a,* and turbidity) for lakes and reservoirs, and for rivers and streams for most of the aggregated Level III Ecoregions in the United States. These were based on EPA's previously published series of peer-reviewed, water body specific technical guidance manuals regarding the development of numeric criteria for lakes and reservoirs[35] and rivers and streams.[36]

In general, there are three types of empirical analyses that provide distinctly different, independent and scientifically defensible, approaches for deriving nutrient criteria from field data. These include (1) the ''reference condition approach,'' which derives criteria based on the observed water quality characteristics of minimally disturbed or least disturbed waterbodies, (2) the ''mechanistic modeling approach,'' which employs mathematical representations of ecological systems, processes and parameters using equations that can be calibrated using site-specific data, and (3) the ''stressor-response-based

[31] USEPA. 2015. *A Compilation of Cost Data Associated with the Impacts and Control of Nutrient Pollution,* EPA 820–F–15–096, United States Environmental Protection Agency, May 2015.

[32] MDNR. 2016. *Missouri Integrated Water Quality Report and Section 303(d) List, 2016.* Missouri Department of Natural Resources, Jefferson City, Missouri. *http://dnr.mo.gov/env/wpp/waterquality/303d/docs/2016-ir-305b-report.pdf.*

[33] *Id.*

[34] Hereafter referred to as ''states and authorized tribes''. ''State'' in the CWA and in this document, refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. ''Authorized tribes'' refers to those federally recognized Indian tribes with authority to administer a CWA WQS program.

[35] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[36] USEPA. 2000b. *Nutrient Criteria Technical Guidance Manual: Rivers and Streams.* EPA–822–B–00–002. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

modeling approach,'' [37] which uses available data to estimate statistical relationships between nutrient concentrations and response (ecological, recreational, human health) measures relevant to the designated use to be protected. Each of these approaches is appropriate for deriving scientifically defensible numeric nutrient criteria. Other approaches may be appropriate depending on specific circumstances. Numeric nutrient criteria also may be based on well-established (*e.g.,* peer-reviewed, published, widely recognized) nutrient response thresholds relating to the protection of a given designated use.[38]

EPA has long recommended that states adopt numeric criteria for total nitrogen (TN) and total phosphorus (TP),[39] the nutrients that in excess can ultimately cause adverse effects on designated uses. For this reason, TN and TP are often referred to as ''causal'' parameters. However, EPA recognizes that the specific levels of TN and TP that adversely affect designated uses, including harm to aquatic life as indicated by various measures of ecological responses, may vary from waterbody to waterbody, depending on many factors, including geomorphology and hydrology among others. As a result, EPA has worked with several states as they developed a combined criterion approach that allows a state to further consider whether a waterbody is meeting designated uses when elevated TN and TP levels are detected. Under this approach, an exceedance of a causal variable, acts as a trigger to consider additional physical, chemical, and biological parameters that serve as indicators to determine protection or impairment of designated uses; these additional parameters are collectively termed ''response'' parameters.

EPA's articulation of this combined criterion approach [40] is intended to apply when states wish to rely on response parameters to determine whether a designated use is impaired, once a causal variable has been found to be above an adopted threshold. As with any criteria, states should make clear at what point it has determined that a waterbody is meeting or not meeting its designated use. EPA has expressed that numeric values for all parameters must be set at levels that protect these uses (*i.e.,* before adverse conditions occur that would require restoration).[41]

EPA has worked extensively with states that have adopted a combined criterion approach, resulting in CWA section 303(c) approvals of combined criterion approaches for Florida's streams,[42] [43] Minnesota's rivers and streams,[44] and Vermont's lakes and reservoirs.[45] Although each of these combined criterion approaches differ from one another in terms of the applicable causal parameters and suite of response parameters as applied to various waterbody types, the combined criterion construction can provide greater precision when there is heightened variability in waterbodies' responses to nutrients.

EPA notes that once appropriate numeric criteria are developed, assessment of the impairment status of individual water bodies is dependent on data; this is true for any set of numeric criteria addressing any pollutant. EPA further recognizes that it is the responsibility of States to determine the pace and prioritization of data collection, as this is primarily an implementation issue rather than a criteria development issue. However, EPA recommends that states consider such implementation issues at the time of criteria development as this may lead to a more successful water quality standards program generally. In the case of nutrient criteria, EPA has recommended that states interested in this approach develop a biological assessment program that can measure biological responses and other nutrient-related response parameters with confidence through a robust monitoring program to account for spatial and temporal variability to document the effects of nutrient pollution. EPA reiterates, however, that States have significant discretion in determining the appropriate pace and prioritization of such a monitoring program.

In developing combined criteria, States and EPA have previously identified the following as response parameters that are indicative of nutrient pollution in streams: measures of primary productivity (*e.g.* benthic chlorophyll *a,* percent cover of macrophytes), measures of algal assemblage (*e.g.* algal assemblage indices), and measures of ecosystem function (*e.g.* continuously monitored pH and dissolved oxygen). EPA recognizes that this may not be an exhaustive list of appropriate response parameters. The approach is generally applicable to lakes and reservoirs, as well as other waterbody types. For lakes and reservoirs, chlorophyll *a* has typically been measured as sestonic (open water) concentration rather than as a benthic (bottom surface) concentration. Appropriate biological response parameters should directly link nutrient concentrations to the protection of designated uses. The appropriate type and quantity of response parameters may vary by state, ecosystem, and waterbody type.

In previous guidance, EPA has recommended that a combined criterion approach should make clear the impairment status of waterbodies in the following situations.[46] Specifically, EPA has recommended that if all causal and response parameters are met, then the water quality criterion is met and the waterbody is deemed to be meeting its designated uses. If all response parameters are met, but one or more of the causal parameters is exceeded, then the criterion is met and the waterbody is deemed to be meeting its designated uses (though the state may wish to flag this water body for further scrutiny in the future). If a causal parameter is exceeded and any applicable response parameter is exceeded, then the criterion is not met and the waterbody is deemed to not be meeting its designated uses. If a causal parameter is exceeded and data are unavailable for any applicable response parameters, then the criterion is not met and the waterbody is deemed to not be meeting its designated uses. If a causal parameter is not exceeded but an applicable response variable is exceeded, then the criterion is not met and the waterbody is deemed to not be meeting its designated uses (in this scenario, further

[37] USEPA. 2010. *Using Stressor-response Relationships to Derive Numeric Nutrient Criteria.* EPA–820–S–10–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[38] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[39] *Id.*

[40] This approach is sometimes referred to as a ''bioconfirmation'' approach despite the fact that response parameters may not all be ''biological,'' although they typically do reflect biological activity.

[41] USEPA. *Guiding Principles on an Optional Approach for Developing and Implementing a Numeric Nutrient Criterion that Integrates Casual and Response Parameters.* September 2013.

[42] USEPA. Letter from James D. Giattina, Director, Water Protection Division, EPA Region 4, to Herschel T. Vinyard, Secretary, Florida Department of Environmental Protection. November 30, 2012.

[43] USEPA. Letter from James D. Giattina, Director, Water Protection Division, EPA Region 4, to Herschel T. Vinyard, Secretary, Florida Department of Environmental Protection. June 27, 2013.

[44] USEPA. Letter from Tinka Hyde, Director, Water Division, EPA Region 5, to Commissioner John Line Stine, Minnesota Pollution Control Agency. January 23, 2015.

[45] USEPA. Letter from Kenneth Moraff, Director, Office of Ecosystem Protection, EPA Region 1 to Alyssa Schuren, Commissioner, Vermont Department of Environmental Conservation. September 15, 2015.

[46] USEPA. *Guiding Principles on an Optional Approach for Developing and Implementing a Numeric Nutrient Criterion that Integrates Casual and Response Parameters.* September 2013.

investigation may be warranted to determine if nutrient pollution is the cause).

One situation deserves special consideration. If a causal parameter is exceeded and data are unavailable for any applicable response parameters, EPA has previously recommended that the criterion be deemed not met and the waterbody be deemed to not be meeting its designated uses. Under one of EPA's co-proposed approaches (which mirrors the State's 2017 proposal), such waterbodies would be deemed ''undetermined'' with respect to impairment status. Under the other co-proposed approach, which matches EPA's prior recommendations, the water body is deemed to be impaired, until all response variables have been assessed, at which point the water body status may be changed to non-impaired if no response variable is exceeded. EPA has recommended this approach in the past on the grounds that an exceedance of a causal variable will generally correlate with impairment of aquatic life uses, but we preserve the flexibility for states to conclude that a waterbody is not impaired if information indicates the absence of a response in the waterbody supporting the conclusion that the use is being protected. EPA recognizes there are alternative views of how this comports with requirements that criteria be based on a sound scientific rationale and protective of designated uses, believing if data on some response variables are missing, then it may not be known whether the water body is meeting its designated use or not, and an ''undetermined'' status with respect to impairment may be appropriate. EPA solicits comment on whether response variables are the best indicators of impairment or non-impairment, and the science policy considerations relevant to determining whether a water body is meeting its designated use if data on some or all response variables are missing.

The approach described above ensures protection of designated uses by taking into account critical information about the pollutant load in the waterbody, as well as the response. Although the terminology of the combined criterion approach more closely aligns with assessment and listing terminology, the combined criterion is also the applicable WQS for NPDES permitting purposes whereby permits must contain limits for any pollutant parameters that are or may be discharged at levels that will cause, have reasonable potential to cause, or contribute to an excursion above any WQS (40 CFR 122.44(d)(1)).

D. Missouri's 2009 Nutrient Criteria Submission and EPA's Clean Water Act Section 303(c) Action

On November 5, 2009, Missouri submitted revised WQS containing nutrient criteria for a large subset of the State's classified lakes and reservoirs. These standards contained the following language at 10 CSR 20–7.031(4)(N)2: ''This [nutrient criteria] rule applies to all lakes and reservoirs that are waters of the state and that are outside the Big River Floodplain Ecoregion and have an area of at least ten (10) acres during normal pool.'' Table G in Missouri's WQS regulations listed 453 classified lakes and reservoirs, 25 of which were deemed ''high quality'' and were assigned site-specific nutrient criteria separately in Table M. Of the remaining waters, 96 were smaller than ten acres and/or located in the Big River Floodplain Ecoregion and exempted from the application of nutrient criteria under 10 CSR 20–7.031(4)(N)2. Conversely, 332 lakes and reservoirs not listed in Table M were subject to the application of nutrient criteria under 10 CSR 20–7.031(4)(N)2 and (4)(N)3 at the time Missouri submitted its nutrient criteria to EPA. On August 16, 2011, EPA approved all nutrient criteria assigned to the 25 waterbodies listed in Table M but disapproved nutrient criteria that would have applied to the remaining waterbodies. Additionally, EPA disapproved site-specific criteria for total phosphorus assigned to the tributary arms of two large reservoirs (Lake of the Ozarks and Table Rock Lake) per 10 CSR 20–7.031(4)(N)3.A.IV.

The disapproved water quality standards defined ''prediction values,'' ''reference values'' and ''site specific-values'' and derived total phosphorus (TP) criteria based on how these values compared to one another. This approach involved a set of input variables and site-specific data requirements. For example, the regulation established that TP prediction values for lakes and reservoirs in the Plains must be calculated based on site-specific coefficients for the (a) percentage of watershed originally in prairie, (b) hydraulic residence time in years, and (c) dam height in feet. To apply the appropriate TP criterion, the State would have had to know how the TP prediction value compared to both the TP reference value *and* the actual (empirically determined) TP concentration. Total nitrogen (TN) and chlorophyll *a* criteria were calculated as multiples of the selected TP criterion.

EPA's disapproval action was based on a determination that Missouri's proposal did not include the data and other necessary information needed for EPA to independently reproduce the State's work and that the State had failed to demonstrate that the criteria would protect the designated aquatic life support and recreational uses as required by 40 CFR 131.6(b) and (c).[47]

On March 19, 2014, Missouri submitted revised water quality standards (the designated uses component) that incorporated, for the first time, the Missouri Use Designation Dataset (MUDD) (10 CSR 20–7.031(2)(E); see also Table G of WQS which references the MUDD[48]). This dataset assigned designated uses to the State's classified lakes and reservoirs (and streams) and was approved by EPA on October 22, 2014. Altogether, MUDD identified 3,081 waterbody segments, including 2,757 lakes and reservoirs, and assigned the following designated uses to these waters: aquatic life support, whole body contact recreation, secondary contact recreation, fish consumption, livestock and wildlife watering, irrigation, and industrial water supply. In addition to these uses, 123 lakes and reservoirs are also designated in the 2014 MUDD dataset for drinking water supply. Missouri also revised its water quality standards to provide that its specific criteria applies to all waters consistent with the designated uses identified in Table G and MUDD. 10 CSR 20–7.031(5). EPA approved this change on November 17, 2015. EPA's proposed rule addresses the same generic class of waters included in Missouri's disapproved rule. However, consistent with Missouri's subsequent actions, EPA's proposal would apply to a larger group of enumerated lakes and reservoirs, specifically those in Table G and MUDD that are ten acres or more, not located in the Big River Floodplain Ecoregion, and not otherwise listed in Table M of the WQS. This includes 967 waterbodies. EPA requests comment on whether this scope is appropriate for the current rule.

E. Missouri Coalition for the Environment (MCE) Lawsuit and Consent Decree

On February 24, 2016, the Missouri Coalition for the Environment Foundation (MCE) filed a lawsuit alleging that EPA failed to perform its

[47] US EPA. (2011) Letter to Sara Parker Pauley (Director, Missouri Department of Natural Resources) from Karl Brooks (USEPA Region 7), Decision document on Missouri Water Quality Standards, August 16, 2011.

[48] The Water Body Name, Missouri Use Designation Dataset Version 1.0, August 20, 2013 (8202013 MUDD V1.0), refers to all lakes in the Missouri Use Designation Dataset Version 1.0, August 20, 2013, that are not otherwise listed in Table G.

nondiscretionary duty to propose and promulgate new or revised water quality standards for lakes and reservoirs in Missouri after disapproving the State's submission in 2011. On December 1, 2016, EPA entered into a consent decree with MCE that stipulates that EPA shall sign a notice of proposed rulemaking by December 15, 2017, to address EPA's 2011 disapproval, unless the State submits and EPA approves new or revised standards that address the disapproval on or before December 15, 2017; and that EPA shall sign a notice of final rulemaking on or before December 15, 2018, unless the State submits and EPA approves new or revised standards that address the disapproval. In the years following the 2011 disapproval action, EPA has endeavored to work closely with Missouri to develop approvable nutrient criteria.

F. Missouri's 2017 Proposed Nutrient WQS

On October 16, 2017, MDNR continued to develop revised numeric nutrient criteria and formally issued its proposed WQS that are intended to address EPA's August 16, 2011 disapproval. Based on EPA's examination of the State's proposed rule, Missouri has characterized its revised nutrient WQS as a combined criterion. Missouri's proposed rule applies to lakes and reservoirs.[49] The State's lakes and reservoirs are impounded and have been assigned an aquatic life use of either: Warm water habitat, cool water habitat, or cold water habitat. Each subcategory is defined as ''waters in which naturally-occurring water quality and habitat conditions allow [for] the maintenance of a wide variety of [warm, cool or cold water] biota.'' [50] The State takes the position that ''health of sport fish populations can be interpreted as an indicator of overall ecosystem health and the presence of a ''wide variety'' of aquatic biota.'' [51] Missouri's proposed rule establishes three ecoregions and sets forth for each ecoregion chl-*a* criteria above which waters would be deemed impaired, and a combination of TN, TP, and chl-*a* ''screening values'' and five ''eutrophication impacts'' (*i.e.,* response parameters) where a waterbody would be deemed impaired if at least one screening value *and* at least one eutrophication impact are exceeded in the same year. When data are unavailable for the eutrophication impacts despite information indicating that at least one screening value is exceeded, Missouri intends waters to be listed on Category 3 of the 305(b)/303(d) Integrated Report, meaning there is insufficient information to determine impairment status. In Missouri's expression of the combined criterion approach, the chl-*a* parameter functions as both a screening value, requiring evaluation of the eutrophication impacts, and at a higher level as a stand-alone criterion that would determine in and of itself that a water body is impaired, without the need to further assess eutrophication impacts. If chl-*a* is exceeded at the screening level but there is inadequate information on the other response variables, the water is placed in category 3 and not listed as impaired.

Table 2. Excerpts From Missouri's October 16, 2017 Nutrient Proposal

TABLE L—LAKE ECOREGION CHL-*a* CRITERIA AND NUTRIENT SCREENING VALUES (µG/L)

Lake Ecoregion	Chl-*a* Criterion	Screening Values (µg/L)		
		TP	TN	Chl-*a*
Plains	30	49	843	18
Ozark Border	22	40	733	13
Ozark Highland	15	16	401	6

5. Lakes with water quality that exceed Nutrient Criteria identified in Tables L and M are to be deemed impaired for excess nutrients.
6. Lakes with water quality that exceed screening values for Chl-a, TN, or TP are to be deemed impaired for excess nutrients if any of the following eutrophication impacts are documented for the respective designated uses within the same year. Eutrophication impacts for aquatic life uses include:
(I) Occurrence of eutrophication-related mortality or morbidity events for fish and other aquatic organisms;
(II) Epilimnetic excursions from dissolved oxygen or pH criteria;
(III) Cyanobacteria counts in excess of 100,000 cells per milliliter (cells/ml);
(IV) Observed shifts in aquatic diversity attributed to eutrophication; and
(V) Excessive levels of mineral turbidity that consistently limit algal productivity during the period May 1–September 30

At the time of this proposal, Missouri's proposal is still under consideration and the State has not submitted to EPA for CWA 303(c) review a final rule with supporting information to address EPA's 2011 disapproval.

III. Proposed Nutrient Combined Criterion for Lakes and Reservoirs in Missouri

A. Proposed Combined Criterion Approaches

Today EPA is proposing two alternatives to establish nutrient criteria in a combined criterion approach to address its 2011 disapproval. Under the first alternative, EPA proposes nutrient protection values and eutrophication impact factors in a combined criterion approach. Under the second alternative, EPA proposes a combined criterion approach that would mirror the State of Missouri's October 2017 proposal for lake nutrient water quality standards. EPA seeks public comment on the two alternatives described below in light of the federal regulations at 40 CFR part 131.11 requiring that criteria must be based on a sound scientific rationale and protective of the designated uses of the waters.

B. Proposed Combined Criterion Alternative 1

Alternative 1 is presented in Table 3 below and appears as regulatory text at the end of this proposal.

[49] *See* 10 CSR 20–7.031(5) and the October 2017 draft language proposed for 10 CSR 20–7.031(5)(N)(2) (''This rule applies to all lakes that are waters of the state and have an area of at least ten (10) acres during normal pool conditions. Big River Floodplain lakes shall not be subject to these criteria'').

[50] 10 CSR 20–7.031(1)(C)1.A.VI, B.V and C.V.

[51] See Missouri Department of Natural Resources, Rationale for Missouri Reservoir Nutrient Criteria Development, November 2016, Section 6.1, pages 33–39.

TABLE 3—ALTERNATIVE 1 LAKE ECOREGION NUTRIENT PROTECTION VALUES (μG/L) AND EUTROPHICATION IMPACTS

Lake Ecoregion	TP	TN	Chl-*a*
Plains	44	817	14
Ozarks	23	500	7.1

*(1) Lake and reservoir water quality must not exceed nutrient protection values for chlorophyll-*a. *(2) Lake and reservoir water quality must also not exceed nutrient protection values for total nitrogen and total phosphorus unless each of the following eutrophication impacts are evaluated and none occur within the same three-year rolling average period: (I) Eutrophication-related mortality or morbidity events for fish and other aquatic organisms; (II) An excursion from the DO or pH criteria in Missouri water quality standards applicable for Clean Water Act purposes; (III) Cyanobacteria counts equal to or greater than 100,000 cells per ml; (IV) Observed shifts in aquatic diversity directly attributable to eutrophication; or (V) Excessive levels of mineral turbidity that consistently limit algal productivity during the period May 1–September 30, or Secchi disk measurements of turbidity equal to or less than EPA's recommended Level III Ecoregions IX (1.53 m) or IX (2.86 m).*

Alternative 1 is comprised of nutrient protection values and eutrophication impacts. Nutrient protection values are defined similarly as Missouri defines their ''screening values'': maximum ambient concentrations of TP, TN, and chl-*a* based on the three-year rolling average geometric mean of nutrient data collected April through September. EPA has chosen the term ''protection values,'' rather than ''causal'' or ''screening'' values, to emphasize that in general, lakes and reservoirs that do not exceed these values may be assumed to meet designated uses without further assessment of eutrophication impacts. However, EPA recognizes, consistent with the logic of the combined criteria approach, that exceedance of such values does not necessarily mean that a water body is impaired. Alternative 1 uses nutrient protection values for TN, TP, and chl-*a* derived using a reference condition approach for the Plains ecoregion and a combined Ozarks ecoregion described in detail in the following section. These values are based on a reference condition approach using the 75th percentile of a distribution of values from a population of least disturbed lakes in each of the two ecoregions (Plains and Ozarks). The nutrient protection values for chl-*a* in Alternative 1 function as stand-alone criteria independent from the TN and TP protection values and other eutrophication impact factors. This approach gives additional weight to chl-*a* as a key early response indicator of adverse impact from excess nitrogen and phosphorus.

Under Alternative 1, lake and reservoir water quality must not exceed protection values for TN or TP unless each of the eutrophication impacts are evaluated and data demonstrate that none occur within the same three-year rolling average period as a TN or TP exceedance. EPA included this presumption to address potential for data gaps for response parameters.[52] As such, when TN and TP levels are exceeded, the designated uses would be considered impaired unless sufficient information exists demonstrating no eutrophication impacts are occurring. Eutrophication impacts include: (I) Eutrophication-related mortality or morbidity events for fish and other aquatic organisms; (II) An excursion from the dissolved oxygen (DO) or pH criteria in Missouri water quality standards applicable for Clean Water Act purposes; (III) Cyanobacteria counts equal to or greater than 100,000 cells per ml; (IV) Observed shifts in aquatic diversity directly attributable to eutrophication; or (V) Excessive levels of mineral turbidity that consistently limit algal productivity during the period May 1–September 30, or Secchi disk measurements of turbidity equal to or less than EPA's recommended Level III Ecoregions IX (1.53 m) or IX (2.86 m). Alternative 1 does not include a qualifier of ''epilimnetic'' with respect to excursion of DO or pH criteria to reflect that aquatic habitat extends beyond the surficial layer of lakes and reservoirs, and to be consistent with the State's currently approved DO and pH criteria. Alternative 1 includes specific Secchi disk measurement thresholds as part of the turbidity component to provide a means of quantifying this eutrophication impact factor.[53]

C. Derivation of Nutrient Protection Values for Alternative 1

EPA requests comment on a set of nutrient protection values as derived below. This methodology considered the water quality characteristics of lakes and reservoirs located in watersheds with comparatively low levels of human disturbance. This methodology, known as the reference condition approach, comports with longstanding Agency guidance [54] and builds on earlier collaborative efforts in the four-state region.[55] This approach could be implemented using the State's existing water quality dataset [56] and key geographical concepts and interpretations supported previously by the State.[57]

Protecting a waterbody at reference conditions should inherently protect all designated uses, and therefore, should support the most sensitive use.[58] [59] EPA

[52] EPA recognizes that there are differences of opinion on whether addressing such data gaps is necessary in a combined criteria approach and that this presumption is not a feature of the co-proposed Alternative 2.

[53] Secchi disk measurement thresholds could be those presented in in EPA's Level III ecoregional criteria documents (1.53 m for Ecoregion IX and 2.86 for Ecoregion XI). See USEPA. December 2000. Ambient Water Quality Criteria Recommendations, Information Supporting the Development of State and Tribal Nutrient Criteria Lakes and Reservoirs in Nutrient Ecoregion IX. EPA 822–B–00–011. *https://www.epa.gov/sites/production/files/documents/lakes9.pdf* and USEPA. December 2000. Ambient Water Quality Criteria Recommendations Information Supporting the Development of State and Tribal Nutrient Criteria Lakes and Reservoirs in Nutrient Ecoregion XI. EPA 822–B–00–012. *https://www.epa.gov/sites/production/files/documents/lakes11.pdf.* An alternative Secchi disk measurement could be 1 meter based on the hypereutrophic boundary identified in Carlson, R.E. and J. Simpson. 1996. A Coordinator's Guide to Volunteer Lake Monitoring Methods. North American Lake Management Society. 96 pp., and further supported by the data used to derive reference condition values. A third set of alternatives appears in the Technical Support Document accompanying this rule describing reference condition values for Missouri lakes.

[54] USEPA. 2000. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B00–001. U.S. Environmental Protection Agency, Office of Water, Washington DC.

[55] RTAG. 2011. *Nutrient Reference Condition Identification and Ambient Water Quality Benchmark Development Process: Freshwater Lakes and Reservoirs within USEPA Region 7.* Regional Technical Advisory Group. Kansas Biological Survey, University of Kansas, Lawrence, KS.

[56] Obrecht, D. 2015. Statewide Lake Assessment Program. Quality assurance project plan. School of Natural Resources, University of Missouri, Columbia, MO.

Thorpe, A. 2015. *The Lakes of Missouri Volunteer Program.* Quality assurance project plan. School of Natural Resources, University of Missouri, Columbia, MO.

[57] Nigh, T.A. and W.A. Schroeder. 2002. *Atlas of Missouri Ecoregions.* Missouri Department of Conservation, Jefferson City, MO.

[58] USEPA. 2000a. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B–00–001. U.S. Environmental Protection Agency, Office of Water, Washington, DC.

[59] Grubbs, Geoffrey. 2001. *Development and Adoption of Nutrient Criteria into Water Quality Standards.* WQSP–01–01. Policy memorandum signed on November 14, 2001, by Geoffrey Grubbs, Director, Office of Science and Technology, U.S. Environmental Protection Agency, Washington, DC.

is unaware of compelling scientific evidence that would suggest that the reference condition approach employed here would not protect Missouri's aquatic life, recreation, and drinking water designated uses, though EPA is not suggesting that there are no other approaches to protect applicable designated uses. EPA believes that the reference condition approach described here also comports with the State's regulatory definition for the aquatic life support use. This definition recognizes three subcategories under the aquatic life support header: Warm water habitat, cool water habitat, and cold water habitat.[60] Each subcategory is described as ''waters in which naturally-occurring water quality and habitat conditions allow [for] the maintenance of a wide variety of [warm, cool or cold water] biota.'' This description is explicitly applied to lakes and reservoirs (10 CSR 20–7.031(1)(C)1.A.VI, B.V and C.V and 10 CSR 20–7.031(2)). Moreover, it links the aquatic life support use to the naturally occurring water quality condition, which is approximated by the reference condition. In the context of ambient nutrient concentrations, the accuracy of this approximation varies among regions depending on the prevailing extent of disturbance to natural land cover and other factors.[61] Given the prevailing level of disturbance to natural land cover in Missouri, this approach could use nutrient protection values based on the least disturbed reference condition, which represents the best remaining condition in Missouri, rather than the historical or minimally disturbed reference condition.[62]

In developing this Alternative 1 approach, EPA initially considered all readily available water quality data (*i.e.,* TN, TP, total chlorophyll, chlorophyll *a,* Secchi transparency data) for lakes and reservoirs in Missouri. These records were accessed using the federal Water Quality Portal (WQP), which is maintained jointly by the EPA, the U.S. Geological Survey (USGS), and the National Water Quality Monitoring Council. The WQP integrates publicly available data from the EPA Storage and Retrieval Data Warehouse, the USGS National Water Information System, and the U.S. Department of Agriculture's Agricultural Research Database System.

EPA subsequently reviewed sampling and analytical protocols employed by the various governmental agencies, academic institutions and private entities (*e.g.,* consulting firms) contributing to the above-mentioned databases. Based on this review, EPA elected to confine its analysis to data derived from the Missouri Statewide Lake Assessment Program (SLAP) and the Lakes of Missouri Volunteer Monitoring Program (LMVP), both overseen by the University of Missouri-Columbia Limnology Laboratory. This decision ensured that all water quality data used in the reference condition analysis were obtained using comparable field and analytical methods and derived from the same sampling period, 1989–2015. The dataset was narrowed further by removing data for all waters smaller than ten acres or located in the Big River Floodplain Ecoregion, consistent with the scope of waters covered by this proposal. For consistency, only data from the main body of these lakes/reservoirs (*i.e.,* from deeper, open water locations) were used in the reference condition analysis. Overall, this effort yielded suitable long-term data for 170 lakes/reservoirs in Missouri (119 located in the Plains Ecoregion and 51 located in the Ozarks Ecoregion). As explained in the Technical Support Document accompanying this proposal, EPA combined data obtained from the Ozark Border and the Ozark Highlands ecoregions identified in the State proposal because lakes in these two regions exhibited statistically similar concentrations for chlorophyll, total phosphorus and total nitrogen.

In identifying candidate (least disturbed) reference sites, EPA used the following criteria as an initial screen to identify least disturbed waters, all previously included in the State's 2009 WQS submittal.

- *Cropland and urban land combined accounted for less than twenty percent of the watershed land use.*[63] [64] This criterion was applied by EPA in all instances.
- *No point source, to include concentrated animal feeding operation (CAFO), was located in the watershed.* EPA applied this criterion to CAFOs and major wastewater treatment plants (WWTPs) permitted under the National Pollutant Discharge Elimination System (NPDES). Non-discharging facilities and smaller discharging facilities (*e.g.,* mobile home parks) were evaluated individually based on their location in the watershed and other factors.
- *If located in the Plains, more than fifty percent of the watershed was covered by grassland.*[65] In applying this threshold, EPA considered grassland and all other forms of native land cover (*e.g.,* forest, marshland).
- *If located in the Ozark Highlands, more than fifty percent of the watershed was forested.* Forests in the Ozark Highlands are the equivalent to grasslands in the Plains in terms of native land cover and associated nutrient delivery. This selection criterion was applied by EPA to the Ozark Highlands and the adjoining Ozark Border, which collectively comprise the Ozarks Ecoregion.[66]

In order to identify waters meeting this initial screening criteria, EPA obtained digital watershed polygons from USGS's National Hydrography Dataset and a separate dataset maintained by the University of Missouri-Columbia. In about five cases, polygons were not available in either dataset and had to be digitized in ArcGIS.[67] NHDPlus-V2 flowlines and medium resolution NHD (1:100,000 scale) elevation-derived catchments were used to identify the watersheds for each lake/reservoir. In cases where a watershed was represented by more than one catchment, the catchments were dissolved into one polygon. For many of the smaller lakes/reservoirs, watersheds were defined using the Water Erosion Prediction Project

[60] The same nutrient criteria apply to all three subcategories based on the way EPA aggregated data for purposes of deriving protective criteria using a reference condition approach.

[61] EPA Technical Support Document for this rule, *Nutrient Criteria Recommendations for Lakes in Missouri,* Section 2.4.

[62] Stoddard, J.L., D.P. Larsen, C.P. Hawkins, R.K. Johnson and R.H. Norris. 2006. Setting expectations for the ecological conditions of streams: The concept of reference condition. *Ecological Applications* 16:1267–1276. Stoddard et al. (2006) suggested that waters exhibiting comparatively little degradation could be placed into one of two categories: *Minimally disturbed systems* (those little affected by human actions); and *least disturbed systems* (those exhibiting the best remaining condition in a region widely impacted by human actions). The term *historical* was used by the same authors to denote a condition occurring at some specified point in the past (*e.g.,* immediately prior to European settlement).

[63] Jones, J.R., M. F. Knowlton, and D.V. Obrecht. 2008. Role of land cover and hydrology in determining nutrients in mid-continent reservoirs: implications for nutrient criteria and management. *Lake and Reservoir Management.* 24:1, 1–9, DOI:10.1080/07438140809354045.

[64] W. K. Dodds and R. M. Oakes. 2004. A technique for establishing reference nutrient concentrations across watersheds affected by humans. *Limnology and Oceanography: Methods.* 2:333–341.

[65] J.R. Jones, M.F. Knowlton, D.V. Obrecht, and E.A. Cook. 2004. Importance of landscape variables and morphology on nutrients in Missouri reservoirs. *Canadian Journal of Fisheries and Aquatic Science.* 61:1503–1512.

[66] EPA Technical Support Document for this rule, *Nutrient Criteria Recommendations for Lakes in Missouri,* Section 6.1.

[67] ArcGIS is a digital geographic information system (GIS) used for creating and using maps, compiling geographic data, analyzing mapped information, sharing and discovering geographic information, and managing geographic information in a database form.

(WEPP) model.[68] The Zonal Tabulate Area tool in ArcGIS Spatial Analyst and the 2014 edition of the 2011 National Land Cover (*www.mrlc.gov*) were used to calculate the percentage of each watershed in specific land cover types. These percentages, along with ArcGIS-generated maps depicting the locations of permitted point sources and CAFOs, were used to identify lakes/reservoirs meeting the aforementioned selection criteria.

After this initial screening exercise, EPA then subjected the identified candidate watersheds/lakes to further evaluation using aerial imagery, NPDES permit records, Missouri Department of Conservation (MDC) conservation area reports, and other available sources of information. EPA removed watersheds and lakes from further consideration if they (1) received substantial drainage from the Big River Floodplain Ecoregion (out of scope); (2) exhibited extensive shoreline residential development; (3) had received historical or recent manure applications from nearby feedlots; (4) had undergone deliberate (fisheries oriented) fertilization efforts; and (5) had been situated in an area of formerly cultivated fields.[69] The latter four reasons relate to factors relate to disturbance.

Additionally, three isolated waterbodies in the Plains exhibited median chlorophyll *a* concentrations exceeding 40 μg/L.[70] Based on earlier studies, hypereutrophic waters of this kind are not representative of the reference condition in the Central Irregular Plains [71], a region encompassing much of the Plains Ecoregion in Missouri.[72] Therefore, EPA evaluated these waters in greater detail. In one instance, historical and ongoing confined animal feeding operations (CAFOs) in an adjacent watershed likely explained the noted hypereutrophic condition.[73] The other two instances involved state-managed fishing lakes, one situated in a formerly cultivated field and the other situated in a watershed extending into the heavily cultivated Big River Floodplain. A few other lakes on state-managed lands were disqualified based on disturbance related to reported sedimentation and algal bloom issues.[74] EPA ultimately identified 21 reference lakes and reservoirs in the Plains and 27 in the Ozarks that met the criteria discussed above. EPA calculated seasonal geometric mean TN, TP, and chlorophyll *a* concentration values for each waterbody, then calculated the long-term median seasonal geometric means for each parameter/waterbody combination. These medians were partitioned by ecoregion, ranked, and used in the calculation of appropriate concentration percentiles.[75] EPA invites public comment on the methodology to select reference lakes and reservoirs for this alternative's methodology.

To assist in the identification of appropriate concentration percentiles, land cover disturbance patterns in the three ecoregions were compared to patterns reported for the conterminous United States using ArcGIS. This comparison indicated that cropland and developed (urban) land collectively comprised 21.1 percent of the cover in the lower 48 states. This is comparable to the percentage reported for the Ozark Border (22.2 percent), higher than the percentage reported for the Ozark Highlands (6.9 percent), and lower than the percentage reported for the Plains (39.9 percent). Based on its review of the applicable federal guidance,[76] EPA interpreted this to mean that application of the standard 75th percentile nutrient concentration would be appropriate for the Ozark Border, because this region has experienced a degree of land cover disturbance typifying that of the nation as a whole (excluding Alaska and Hawaii). The 75th percentile also was selected for the Ozark Highlands, and therefore appropriate for the combined Ozark ecoregion. In choosing this percentile, EPA was mindful of the limited number of potentially suitable reference waters in this region, and in turn, the difficulty in accurately estimating a higher percentile. EPA recognizes that there are higher levels of land cover disturbance in the Plains region relative to other locations in Missouri and most of the United States and considered using the 50th percentile for the Plains. However, EPA concluded that the screening criteria for reference sites (described above), already appropriately accounted for these differences by including the allowable percent of cropland and urban land in the lake watershed, is the same for each ecoregion. EPA decided to use of the 75th percentile for all ecoregions. EPA invites public comment on whether the use of the 75th percentile for these ecoregions was appropriate. EPA notes that using the 75th percentile of reference lakes to derive protection values implies that 25 percent of reference lakes would be deemed to exceed the protection values if assessed using the data used to derive the criteria. This could be interpreted to mean that 25 percent of the lakes meeting the reference condition selection criteria described above would none-the-less be determined to be impaired. This could also be interpreted as appropriately ensuring that high levels of nutrient parameters for lakes that, in fact, may or may not meet designated uses are not identified as protective for the vast majority of lakes that have much lower levels of nutrient parameters. A higher percentile value, such as the 90th or 95th percentile, would ensure that, at least based on the data used to derive the criteria, all or most of the reference lakes would in fact be found to meet designated uses. EPA invites public comment on whether the use of a higher percentile would be appropriate in the context of the selection criteria used by EPA to identify reference lakes and reservoirs for the purpose of calculating protective values indicative of meeting designated uses.

In this alternative, these concentration percentiles would serve as nutrient protection values as part of a combined criterion approach for all classified lakes and reservoirs in Missouri that (1) are listed in Table G of the State's WQS and the Missouri Use Designation

[68] Flanagan, D.C., J.R. Frankenberger, T.A. Cochrane, C.S. Renschler & W.J. Elliot. 2011. *Geospatial application of the water erosion prediction (WEPP) model.* International Symposium on Erosion and Landscape Evolution (ISELE), Anchorage, Alaska. September 18–21, 2011. ISELE Paper Number 11084.

Flanagan, D.C., J.R. Frankenberger, T.A. Cochrane, C.S. Renschler & W.J. Elliot. 2013. *Geospatial application of the water erosion prediction (WEPP) model.* Transactions of the American Society of Agricultural and Biological Engineers 50(2):591–601.

[69] EPA Technical Support Document for this rule, *Nutrient Criteria Recommendations for Lakes in Missouri,* Section 6.1.

[70] *Id.*

[71] Dodds, W.K., C. Carney and R.T. Angelo. 2006. Determining ecoregional reference conditions for nutrients, Secchi depth and chlorophyll *a* in Kansas lakes and reservoirs. *Lake and Reservoir Management* 22(2):151–159.

[72] Omernik, J. M. 1987. Ecoregions of the conterminous United States. *Annals of the Association of American Geographers* 77:118–125.

[73] The hog CAFO in question generated an amount of waste equaling a human population of about 19,000. Owing to high transportation costs, manure from such facilities generally is applied to surrounding fields and cropland.

[74] This is illustrated by the following excerpt from the ten-year management plan for one of these areas: ''Strategy 1: Sufficient phytoplankton densities will be maintained through artificial fertilization to shade and discourage the development of rooted plant growth. Successful artificial fertilization should limit the need for the extensive use of grass carp or herbicides while increasing phytoplankton blooms and zooplankton communities throughout the summer and into the early fall'' (MDC. 2015. *Lake Girardeau Conservation Area Management Plan.* Missouri Department of Natural Resources, Southeast Region, Poplar Bluff, MO.)

[75] USEPA. 2000. *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs.* EPA–822–B00–001. U.S. Environmental Protection Agency, Office of Water, Washington DC.

[76] *Id.*

Dataset (10 CSR 20–7.031(2)(E)) with respect to use designations, (2) equal or exceed ten acres, (3) are located outside of the Big River Flood Plain Ecoregion and (4) are not already listed in Table M of the State's WQS. In all instances, these values are expressed as seasonal (April through September) geometric mean values and interpreted in the context of three-year rolling averages.[77] EPA invites public comment on the use of moving averages versus fixed averaging periods.

As described in the Technical Support Document accompanying this proposal, the resulting values are comparable in magnitude to those recommended by the Regional Technical Assistance Group (RTAG) for the four-state region, to criteria developed or adopted in neighboring Kansas, Nebraska and Oklahoma, and to TMDL targets adopted previously in Missouri. As such, EPA is confident that the nutrient protection values are protective of downstream lakes and reservoirs, though EPA emphasizes that this is not the only way of developing protective values. For protection of downstream rivers and streams, lakes often act as a ''sink'' for nutrients because of the relatively longer water residence time and associated physical processes and biochemical cycling. As such, lakes retain nutrients and outflow nutrient concentrations are generally lower than inflow nutrient concentrations. In terms of level of protection needed, nutrient criteria for lakes and reservoirs are generally lower than nutrient criteria for rivers and streams in the same ecoregion (see, for example, EPA's criteria published in 2000 for Ecoregion IX). For these reasons, EPA concludes that the values are protective of downstream waters and their assigned uses. EPA invites public comment on the derivation of EPA's proposed nutrient protection values based on least disturbed reference conditions. EPA specifically requests comments on the use of the 75th percentile of the reference lake values to establish the TN, TP, and chl-*a* nutrient protection values proposed for Alternative 1.

D. Proposed Combined Criterion Alternative 2

Alternative 2 is presented in Table 4 below.

TABLE 4—ALTERNATIVE 2 LAKE ECOREGION CHL-*a* CRITERIA, NUTRIENT SCREENING VALUES (µG/L), AND EUTROPHICATION IMPACTS

Lake ecoregion	Chl-*a* criteria	Screening Values (µg/L)		
		TP	TN	Chl-*a*
Plains	30	49	843	18
Ozark Border	22	40	733	13
Ozark Highland	15	16	401	6

Lakes with water quality that exceed Chl-a Criteria are to be deemed impaired for excess nutrients.

Lakes with water quality that exceed screening values for Chl-a, TN, or TP are to be deemed impaired for excess nutrients if any of the following eutrophication impacts are documented for the respective designated uses within the same year. Eutrophication impacts for aquatic life uses include:

(I) Occurrence of eutrophication-related mortality or morbidity events for fish and other aquatic organisms;
(II) Epilimnetic excursions from dissolved oxygen or pH criteria;
(III) Cyanobacteria counts in excess of 100,000 cells per milliliter (cells/ml);
(IV) Observed shifts in aquatic diversity attributed to eutrophication; and
(V) Excessive levels of mineral turbidity that consistently limit algal productivity during the period May 1–September 30.

As of the date of this proposal, Missouri has not finalized, and EPA has not made any determination with respect to, Missouri's proposed standards. Notwithstanding this, EPA believes it is appropriate to propose standards for consideration that are essentially identical to the proposed state standards, and is doing so in Alternative 2. Alternative 2 includes chl-*a* criteria for three ecoregions (Plains, Ozark Border, and Ozark Highland) that determine impairment independent of the screening values and eutrophication impact factors. Alternative 2, similarly to Alternative 1, includes screening values for TN, TP, and chl-*a* (at a lower level than the criteria for chl-*a*) that operate in coordination with five eutrophication impact factors to determine impairment. However, as explained above, one significant distinction is that Alternative 1 would treat the lower chl-*a* screening value (called a ''protection value'' in Alternative 1) as stand-alone criteria and deem any exceedance of this value as indicative of impairment without assessment of additional eutrophication impacts. Alternative 2 includes a qualifier of ''epilimnetic'' with respect to excursion of DO or pH criteria to mirror the State's proposal. EPA seeks comment on limiting application of DO and pH criteria to the epilimnion (surface layer) of lakes.

The State of Missouri has documented a supporting rationale for the values proposed in Alternative 2 as part of a combined criterion structure.[78] This document includes maps of the three ecoregions (Plains, Ozark Border, and Ozark Highland). In this document, Missouri describes how it considered input from a stakeholder group and ''decided on an approach that provided for the most scientifically defensible protections for the underlying designated uses.'' Missouri indicates that its approach ''focuses on the biological response, considers ecoregional differences and existing trophic levels, and supplements criteria with conservative screening values coupled with weight of evidence analysis to better support determinations of impairment''. Missouri indicates that it reviewed several different sources of information to derive reservoir numeric nutrient criteria, including recent numeric nutrient criteria development activities in other states, Missouri-specific reservoir water chemistry data, literature reviews, and expert opinion.

Missouri indicated the stand-alone independent chl-*a* criterion for the Plains ''is conservatively set to support sport fisheries rather than maximizing

[77] Use of a seasonal mean and three-year averaging period is consistent with recommendations set forth in: RTAG. 2011. *Nutrient Reference Condition Identification and Ambient Water Quality Benchmark Development Process: Freshwater Lakes and Reservoirs within USEPA Region 7.* Regional Technical Advisory Group, U.S. Environmental Protection Agency Region 7, Lenexa, KS.

[78] Missouri Department of Natural Resources. 2016. *Missouri Lake Numeric Nutrient Criteria Rationale of Nov. 21, 2016.*

sport fish harvest. Missouri maintains that using sport fishery status as an indicator of aquatic life use protection is ecologically justified because sport fish are generally apex predators in reservoir systems. Therefore, the health of sport fish populations can be interpreted as an indicator of overall ecosystem health and the presence a 'wide variety' of aquatic biota, as defined in the existing regulations''.[79] For the Ozark Highlands, Missouri identified ''a lower chlorophyll concentration of 15 µg/L, which reflects the regional pattern of reservoir fertility associated with the different physiographic regions of the state''.[80] Because the Ozark Border section represents a transition zone between the Plains and Ozark Highlands, Missouri identified a chl-*a* criterion intermediate to the other two sections. Missouri proposed chl-*a* screening values equal to the 50th percentile of the distribution of growing season chlorophyll data for each ecoregion, and back calculated TN and TP screening values using regression relationships with chl-*a* presented in their rationale document.

EPA is seeking comment on whether the chl-*a* criteria in Alternative 2 would protect the State's designated uses for these lakes. EPA seeks comment on whether a different (*i.e.,* more protective) level of chl-*a* as a eutrophication impact factor is necessary to protect the designated uses for these lakes. EPA further seeks comment on whether or not the hypothetical scenario pursuant to Alternative 2 is scientifically supportable as protecting the designated use: Not identifying a lake as impaired when it (1) exceeds a screening value for TP or TN, (2) exceeds a screening value for chl-*a,* and (3) there are no documented eutrophication impacts. In other words, EPA seeks comment on whether it is sufficient or insufficient to identify impairment if a water body exceeds a screening value for TN or TP and also exceeds a screening value for chl-*a*.

The combined criterion could function in the manner proposed for Alternative 1, where a lake with water quality that exceeds protection values for TN or TP is deemed impaired for excess nutrients unless each of the eutrophication impacts are evaluated and none occur within the same evaluation period (or unless the chl-*a* protection value is exceeded). In contrast, the combined criterion could function in the manner proposed for Alternative 2, where a lake with water quality that exceeds a screening value for TN, TP, or chl-*a* (at a ''screening'' level) is deemed impaired for excess nutrients only if one or more of the eutrophication impacts are documented to occur within the same year. Using this Alternate 2 expression, a lake exceeding screening values for TN, TP, or chl-*a* (at a ''screening'' level) would not be considered to be impaired unless and until additional information is collected and evaluated to confirm the impairment. EPA has not separately prepared supporting documentation for Alternative 2 at the same level of detail as for Alternative 1, because as noted above, Alternative 2 is intended to closely mirror the State's 2017 proposed rule. Accordingly, EPA has placed documentation as provided by the State, in its own docket as an integral part of the supporting documentation for Alternative 2. EPA is asking for comment on this approach.

EPA also has not provided proposed regulatory text for Alternative 2, because the regulatory text for this option would be largely identical to the regulatory text in the State's 2017 proposed rule. Rather, the Agency is providing notice of its consideration of Alternative 2 in the preamble to today's proposed rule. The Agency recognizes that, if the Agency were to adopt this alternative in the final rule, there may need to be formatting changes to the State regulatory text to conform to requirements applicable to codification in the Code of Federal Regulations.

E. Additional Alternative Approaches Considered

This federal action fulfills EPA's commitment under the consent decree with MCE to propose criteria addressing its 2011 disapproval by December 15, 2017. EPA acknowledges that the alternatives in the current proposal are not the only possible options that EPA could promulgate or Missouri could adopt to address the 2011 disapproval action. When promulgating federal water quality standards for a state, EPA's preference is to rely on state-specific data, where available, to derive criteria to protect the state's applicable designated uses. EPA solicits comment from the public and stakeholders on the Agency's co-proposals, in addition to other scientifically defensible options, to support a well-informed and robust final rule that reflects thoughtful consideration of Missouri's regulatory structure and implementation mechanisms.

EPA considered several alternatives to the two alternatives proposed combined criterion approaches, component nutrient protection (or screening) values, and eutrophication impacts, and is interested in public comment on these approaches. First, EPA considered proposing the reference condition-derived nutrient protection values as stand-alone nutrient criteria (*i.e.,* in absence of a combined criterion structure). However, given Missouri's interest in the combined criterion approach and EPA's position that such an approach can be appropriate and protective, EPA elected to structure the two alternatives in this proposal in a similar fashion. Second, EPA considered relying on fewer response parameters to avoid use of factors that may be onerous to routinely measure and assess, may be subject to various interpretations, and may not be necessary to indicate adverse impact. For example, EPA considered using only chl-*a,* DO, and pH as eutrophication impacts. EPA instead elected to include the full set Missouri identified in recognition that Missouri had concluded each was an appropriate eutrophication impact to be included in the State's proposed rule. Lastly, for Alternative 1, EPA considered using the 50th percentile of the data from reference lakes in the Plains ecoregion for deriving nutrient protection values; these values are 9.8 µg/L chl-*a,* 39 µg/L TP, and 690 µg/L TN. EPA decided to use the 75th percentile for the Plains ecoregion for this proposal because reference lakes in both ecoregions could have no greater than 20 percent cropland and urban land in their watershed based on EPA's screening procedure. EPA specifically solicits comment on the use of the 50th percentile for the Plains. As noted above, EPA is also requesting comment on using a higher percentile, such as 90th or 95th.

F. Applicability of Combined Criterion When Final

Unless EPA approves water quality standards addressing EPA's 2011 disapproval, EPA's proposed nutrient combined criterion for Missouri's lakes and reservoirs would be effective for CWA purposes 60 days after publication of a final rule. The proposed combined criterion in this rule, if finalized would be subject to Missouri's general rules of applicability in the same way and to the same extent as are other state-adopted criteria.

EPA's proposed nutrient combined criterion, if finalized, would serve as a basis for development of new or revised National Pollutant Discharge Elimination System (NPDES) permit limits in Missouri for regulated dischargers found to have reasonable potential to cause or contribute to an

[79] *Id.*

[80] *Id.*

excursion of the proposed nutrient combined criterion. Although EPA cannot be certain of whether a particular direct or indirect discharger would change their operations if these proposed criterion were finalized, EPA acknowledges that point source dischargers would need to be assessed to determine if they have a reasonable potential for the discharge to cause or contribute to an excursion of the water quality standard, and could well be subject to additional water quality-based effluent limits as a result. Nonpoint dischargers could also be subject to additional control requirements under Missouri law, perhaps in conjunction with a TMDL. Missouri has NPDES permitting authority, and retains discretion in issuing permits consistent with CWA permitting regulations, which require that permit limits be established such that permitted sources do not cause or contribute to a violation of water quality standards, including numeric nutrient criteria.

IV. Tributary Arms

As part of its efforts to establish its water quality standards, the State of Missouri established water quality criteria in its 2009 WQS submission to address nutrient-related pollutants for certain lakes, reservoirs and tributary arms. As mentioned previously, on August 16, 2011, EPA disapproved most numeric criteria for TN, TP, and chl-*a* for Missouri lakes and reservoirs and also disapproved TP criteria for tributary arms Grand Glaize, Gravois, and Nianga to the Lake of the Ozarks, and tributary arms James River, Kings River, and Long Creek to Table Rock Lake. In Missouri's disapproved rule (10 CSR 20–7.0314)(N)(1)(D)) and current proposed rule (10 CSR 20–7.031(N)(1)(E)), it considers a tributary arm to be a substantial segment of a Class L2 lake that is primarily recharged by a source or sources other than the main channel of the lake. EPA requests public comments on applying Alternative 1, Alternative 2, or any other appropriate alternative to the respective tributary arms to address EPA's 2009 disapproval. EPA invites the public to provide any data or scientific information to inform decision-making towards this option.

V. Endangered Species Act

Section 7(a)(2) of the Endangered Species Act (ESA) requires the EPA, in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS), to ensure that any action authorized by the Agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat for such species.

Pursuant to this section, EPA intends to initiate consultation with USFWS regarding the effects that finalizing this rulemaking would have on federally-listed threatened and endangered species and designated critical habitat. EPA will subsequently conduct a biological evaluation to determine whether any federally-listed threatened or endangered species or their critical habitat are likely to be adversely affected by the finalization of this rulemaking.

VI. Under what conditions will federal standards be either not finalized or withdrawn?

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters. *See* CWA section 303(a)–(c). Although EPA is proposing nutrient criteria for Missouri's lakes and reservoirs, the State has the option of adopting and submitting revised nutrient criteria for these waters consistent with CWA section 303(c) and implementing regulations at 40 CFR part 131. Consistent with CWA section 303(c)(4) and the consent decree discussed in Section II, if Missouri adopts water quality criteria to address EPA's 2011 disapproval, and if EPA approves such criteria prior to the December 15, 2018 consent decree deadline to publish the final rule, EPA will not proceed with the final rulemaking.

Pursuant to 40 CFR 131.21(c), if EPA does promulgate final criteria, they would be applicable for the purposes of the CWA. EPA could eventually withdraw any federally promulgated criteria through a rulemaking. EPA would undertake a withdrawal action if Missouri adopts and EPA approves water quality criteria to address EPA's 2011 disapproval as meeting CWA requirements.

VII. WQS Regulatory Approaches and Implementation Mechanisms

The Federal water quality standards regulation at 40 CFR part 131 provides several tools that Missouri has available to use at its discretion when implementing or deciding how to implement these numeric nutrient criteria, if finalized. Among other things, EPA's WQS regulation: (1) Specifies how states and authorized tribes establish, modify or remove designated uses, (2) specifies the requirements for establishing criteria to protect designated uses, including criteria modified to reflect site-specific conditions, (3) authorizes and provides requirements for states and authorized tribes to adopt WQS variances that provide time to achieve the underlying WQS, and (4) allows states and authorized tribes to authorize the use of compliance schedules in NPDES permits to meet Water Quality Based Effluent Limits (WQBELs) derived from the applicable criteria. Each of these approaches is discussed in more detail in the next sections.

A. Designating Uses

Federal regulations at 40 CFR 131.10 provide regulatory requirements for establishing, modifying, and removing designated uses. If Missouri removes or modifies the aquatic life or recreational designated uses of a lake or reservoir subject to EPA's proposed nutrient criteria and adopts the highest attainable use,[81] the state must also adopt criteria to protect the newly designated highest attainable use consistent with 40 CFR 131.11. Any designated use change must meet the requirements of 40 CFR part 131 and obtain EPA approval. If EPA finds removal or modification of the designated use, the adoption of the highest attainable use and criteria to protect that use is consistent with CWA section 303(c) and the implementing regulation at 40 CFR part 131 and thus approves the revised WQS, then the new or revised use and criteria would become effective for CWA purposes. As an additional step, EPA would initiate rulemaking to withdraw its promulgation of nutrient criteria in Missouri if the criteria to protect the new use is something other than the federally promulgated criteria.

B. Site-Specific Criteria

The regulation at 40 CFR 131.11 specifies requirements for modifying water quality criteria to reflect site-specific conditions. In the context of this rulemaking, a site-specific criterion (SSC) is an alternative to a federally promulgated nutrient criterion that would be applied on a watershed, area-wide, or water body-specific basis,

[81] If a state or authorized tribe adopts a new or revised WQS based on a required use attainability analysis, then it must also adopt the highest attainable use (40 CFR 131.10(g)). Highest attainable use is the modified aquatic life, wildlife, or recreational 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 40 CFR 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)).

provided this alternative is protective of the designated use, is scientifically defensible, and provides for the protection and maintenance of downstream water quality. 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 more precisely define the concentration of a pollutant that is protective of the designated uses of a particular watershed, region, or water body. If Missouri adopts, and EPA approves, a SSC that fully meets the requirements of both section 303(c) of the CWA and EPA's implementing regulation at 40 CFR part 131, EPA would undertake a rulemaking to withdraw the corresponding federal criterion for the water(s) affected by the SSC.

C. WQS Variances

Federal regulations at 40 CFR 131.14 define a WQS variance as a time-limited designated use and criterion, for a specific pollutant or water quality parameter, that reflects the highest attainable condition during the term of the WQS variance. WQS variances adopted in accordance with 40 CFR 131.14 (including a public hearing consistent with 40 CFR 25.5) provide a flexible but defined pathway for states and authorized tribes to meet their NPDES permit obligations by allowing dischargers the time they need (as demonstrated by the state or authorized tribe) to make incremental progress toward meeting WQS that are not immediately attainable but may be in the future. When adopting a WQS variance, states and authorized tribes specify the interim requirements of the variance by identifying a quantitative expression that reflects the highest attainable condition (HAC) during the term of the variance, defining the term of the variance, and describing the pollutant control activities to achieve the HAC during the term of the variance. WQS variances will help states and authorized tribes focus on improving water quality, rather than pursuing a downgrade of the underlying water quality goals through modification or removal of a designated use, as a variance cannot lower currently attained water quality. As water quality standards, variances are submitted to EPA for review and approval under CWA section 303(c) which provides legal avenue by which NPDES permit limits can be written to derive from, and comply with, the WQS variance rather than the underlying WQS, for the term of the WQS variance. If dischargers are still unable to meet the WQBELs derived from the applicable WQS once a variance term is complete, the regulation allows the state to adopt a subsequent variance if it is adopted consistent with 131.14.

EPA's proposed nutrient criterion applies to use designations that Missouri has already established. Missouri may adopt time-limited designated uses and criteria to apply for the purposes specified in 40 CFR 131.14(a)(3).

D. NPDES Permit Compliance Schedules

EPA's regulations at 40 CFR 122.47 and 40 CFR 131.15 address how states and authorized tribes 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 that states and authorized tribes that wish to allow the use of permit compliance schedules adopt specific provisions authorizing their use and obtain EPA approval under CWA section 303(c) to ensure that a decision to allow permit compliance schedules is transparent and allows for public input (80 FR 51022, August 21, 2015). On December 11, 2012, Missouri submitted a revised compliance schedule authorizing provision at 10 CSR 20–7.031(10). This revision was partly approved by EPA on January 25, 2015. Missouri is authorized to grant permit compliance schedules, as appropriate, to permitted facilities impacted by federally promulgated numeric nutrient criteria as long as such compliance schedules are consistent with EPA's permitting regulation at 40 CFR 122.47.

VIII. Economic Analysis

At this time, EPA has prepared only a preliminary economic analysis specifically for Alternative 1. This analysis will be further refined and an updated more comprehensive economic review will be put out for comment in a Notice of Data Availability at a later time. At that time, to best inform the public of the potential impacts of this rule, EPA will evaluate the potential benefits and costs associated with implementation of EPA's proposed criterion.

The analysis of acres with BMPs to address nonpoint sources of nutrients was conducted at the HUC–12 level of resolution. Many of the potentially incrementally impaired lakes in Missouri are small, and their watersheds are smaller than the HUC–12 watershed in which they are located; thus, the estimated costs for these watersheds may be overstated. However, EPA did not initially include any costs for watersheds for which it does not have data, thus, at least some likely costs were not included in the preliminary analysis. Due to these and other limitations, EPA believes that its current draft analysis is too preliminary to adequately inform public comment on the rule. EPA will address these issues in the updated analysis provided in the NODA.

EPA also preliminarily estimated the benefits from water quality improvements resulting from implementing the nutrient protection values in Missouri Lakes and reservoirs. However, due to data and resource limitations and other challenges, EPA believes that this benefits analysis is also too preliminary to be presented at this time. EPA will also include an updated analysis of benefits in the NODA.

EPA seeks public comment to inform EPA's economic analysis. EPA is interested in public comment regarding how likely it is that lakes without water quality data may trigger the screening criteria; what practices the agricultural sector and cities may take to reduce nonpoint source discharges and the likelihood that such practices are implemented; what unit costs EPA should consider using in conducting this analysis; and what assumptions EPA should consider using for expected nutrient load reductions.

EPA intends to make the revised analysis, including pre-publication peer review, available for public comment no later than six months after the date of publication of this proposed rule. In no circumstances will EPA issue a final rule without providing an economic analysis sufficiently in advance of the final rule for public comment on the analysis to meaningfully inform EPA's development of the rule.

IX. 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 an economically 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. (Docket Id. No. EPA–HQ–OW–2009–0596) is available in the docket. A summary of the report can be found in Section VIII of this preamble.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule will be available for public comment in a subsequent Notice of Data Availability to be published no later than six months after this proposed rule (See summary at Section VIII. Economic Analysis, and full economic analysis report in the docket for this proposed rulemaking).

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not include any information collection, reporting, or record-keeping requirements.

D. Regulatory Flexibility Act

For purposes of assessing the impacts of this action on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Under the CWA, states must adopt WQS for their waters and submit these standards to EPA for approval. If the Agency disapproves a submitted standard and the state does not adopt revisions to address EPA's disapproval, EPA must promulgate standards consistent with the CWA requirements. State standards (or 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. This proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Missouri 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 Missouri'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. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA.

E. Unfunded Mandates Reform Act

This proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector.

EPA determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Moreover, WQS, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

F. Executive Order 13132 (Federalism)

This action does not have federalism implications as that term is used in EO 13132. Although section 6 of Executive Order 13132 does not apply to this action, EPA had extensive communication with the State of Missouri to discuss EPA's concerns with the State's previously submitted and disapproved criteria and the federal rulemaking process. In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have any tribal implications as specified by Executive Order 13175. As there are no federally-recognized tribes in the State of Missouri, this executive order does not apply. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045 (Protection of Children from Environmental Health and Safety Risk)

Executive Order 13045 (62 FR 19885, April 23, 1997) requires agencies to identify and assess health and safety risks that may disproportionately affect children and ensure that activities address disproportionate risks to children. This action not subject to Executive Order 13045 because the EPA does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This rule 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.

J. National Technology Transfer Advancement Act of 1995

EPA is not aware of any voluntary consensus standards that address the numeric nutrient criteria in this proposed rule.

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

EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would afford a greater level of protection to both human health and the environment if these nutrient criteria are promulgated in the State of Missouri.

List of Subjects in 40 CFR Part 131

Environmental protection, water quality standards, nutrients, Missouri.

Dated: December 15, 2017.

E. Scott Pruitt,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 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—[Amended]

■ 2. Section 131.47 is added as follows:

§ 131.47 Missouri.

(a) *Scope.* This section promulgates a combined criterion for designated uses for all lakes and reservoirs in the State of Missouri that (1) are listed in Table G and the Missouri Use Designation Dataset) in the State's water quality standards (WQS) (10 CSR 20–7.031), (2)

equal or exceed ten acres, (3) are located outside of the Big River Flood Plain Ecoregion and (4) are not listed as having site-specific criteria in Table M of the State's WQS.

(b) *Combined Criterion for Missouri lakes and reservoirs.* In all instances, nutrient protection values are maximum ambient concentrations expressed as seasonal (April through September) geometric mean values on a three-year rolling average basis.

TABLE 1—LAKE ECOREGION NUTRIENT PROTECTION VALUES (µG/L) AND EUTROPHICATION IMPACTS *

Lake Ecoregion	TP	TN	Chl-*a*
Plains	44	817	14
Ozarks	23	500	7.1

* Table 1 also applies to tributary arms Grand Glaize, Gravois, and Nianga to the Lake of the Ozarks, and tributary arms James River, Kings River, and Long Creek to Table Rock Lake.

(1) Lake and reservoir water quality must not exceed nutrient protection values for chlorophyll *a.*

(2) Lake and reservoir water quality must also not exceed nutrient protection values for total nitrogen and total phosphorus unless each of the following eutrophication impacts are evaluated and none occur within the same three-year rolling average period: (I) Eutrophication-related mortality or morbidity events for fish and other aquatic organisms, (II) An excursion from the DO or pH criteria in Missouri water quality standards applicable for Clean Water Act purposes, (III) Cyanobacteria counts equal to or greater than 100,000 cells per ml, (IV) Observed shifts in aquatic diversity directly attributable to eutrophication, or (V) Excessive levels of mineral turbidity that consistently limit algal productivity during the period May 1—September 30, or Secchi disk measurements of turbidity equal to or less than EPA's recommended Level III Ecoregions IX (1.53 m) or IX (2.86 m).

(c) Applicability

(1) The combined criterion in paragraph (b) of this section applies to waters discussed in paragraph (a) of this section and applies concurrently with other applicable water quality criteria.

(2) The combined criterion established in this section is subject to Missouri's general rules of applicability in the same way and to the same extent as state-adopted and EPA-approved water quality criteria when applied to the waters discussed in paragraph (a).

(d) *Effective date.* Section 131.47 will be in effect [date 60 days after publication of final rule].

[FR Doc. 2017–27621 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notification of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notification solicits proposals and recommendations for developing new, and modifying existing, safe harbor provisions under the Federal anti-kickback statute (§ 1128B(b) of the Social Security Act), as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 26, 2018.

ADDRESSES: In commenting, please refer to file code OIG–127–N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Patrice Drew, Office of Inspector General, Regulatory Affairs, Department of Health and Human Services, Attention: OIG–127–N, Room 5541C, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver your written comments by hand or courier before the close of the comment period to Patrice Drew, Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5541C, 330 Independence Avenue SW, Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1368.

For information on viewing public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Patrice Drew, Regulatory Affairs Liaison, Office of Inspector General, (202) 619–1368.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–127–N.

Inspection of Public Comments: All comments received before the end of the comment period are available for viewing by the public. All comments will be posted on *http://www.regulations.gov* after the closing of the comment period. Comments received in a timely manner will also be available for public inspection as they are received at the Office of Inspector General, Department of Health and Human Services, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201, Monday through Friday, from 10 a.m. to 5 p.m. To schedule an appointment to view public comments, phone (202) 619–1368.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly

and willfully offer, pay, solicit, or receive remuneration to induce or reward business reimbursable under Federal health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. OIG may also impose civil money penalties, in accordance with section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), or exclusion from Federal health care programs, in accordance with section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

Because the statute, on its face, is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements may be subject to criminal prosecution or administrative sanction. In response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 § 14, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute and would not serve as a basis for administrative sanctions. OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices will not be subject to liability under the anti-kickback statute or related administrative authorities. OIG safe harbor regulations are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG periodically issues Special Fraud Alerts to give continuing guidance to health care providers with respect to practices OIG considers to be suspect or of particular concern. The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are published in the **Federal Register** and on our website and are intended for extensive distribution.

In developing Special Fraud Alerts, OIG relies on a number of sources and consults directly with experts in the subject field, including those within OIG, other agencies of the U.S. Department of Health and Human Services (the Department), other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191 § 205 (the Act), § 1128D, 42 U.S.C. 1320a–7d, requires the Department to develop and publish an annual notification in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, OIG thoroughly reviews the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover potential opportunities for fraud and abuse. Only then can OIG determine, in consultation with the U.S. Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting Federal health care programs and their beneficiaries from abusive practices.

II. Solicitation of Additional New Recommendations and Proposals

In accordance with the requirements of section 205 of HIPAA, OIG last published a **Federal Register** solicitation notification for developing new safe harbors and Special Fraud Alerts on December 28, 2016 (81 FR 95551). As required under section 205 of the Act, a status report of the proposals OIG received for new and modified safe harbors in response to that solicitation notification is set forth in Appendix F of OIG's Fall 2017 *Semiannual Report to Congress.*[1] OIG is not seeking additional public comment on the proposals listed in Appendix F at this time. Rather, this notification seeks additional recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in Appendix F.

A detailed explanation of justifications for, or empirical data supporting, a suggestion for a safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

- Access to health care services,
- the quality of health care services,
- patient freedom of choice among health care providers,
- competition among health care providers,
- the cost to Federal health care programs,
- the potential overutilization of health care services, and
- the ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will consider other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may take into account their decisions whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: December 12, 2017.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2017–27117 Filed 12–26–17; 8:45 am]

BILLING CODE 4152–01–P

[1] The OIG *Semiannual Report to Congress* can be accessed through the OIG website at *http://oig.hhs.gov/publications/semiannual.asp.*

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2017–0047; 4500090024]

RIN 1018–BC83

Endangered and Threatened Wildlife and Plants; Listing the Yangtze Sturgeon as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a proposed rule and a 12-month finding on a petition to list the Yangtze sturgeon (*Acipenser dabryanus*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). Loss of individuals due to overharvesting on the Yangtze River is the main factor that contributed to the historical decline of the species. Despite conservation efforts, this species is still currently in decline due primarily to the effects of dams and bycatch. If we finalize this rule as proposed, it would extend the Act's protections to this species. We seek information from the public on this proposed rule and the status review for this species.

DATES: We will consider comments and information received or postmarked on or before February 26, 2018. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by February 12, 2018.

ADDRESSES: *Document availability:* This finding is available on the internet at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2017–0047.

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

(1) Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2017–0047, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2017–0047; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Branch of Foreign Species, Ecological Services, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone, 703–358–2171; facsimile, 703–358–2499. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

Our intent, as required by the Act (16 U.S.C. 1531 *et seq.*), is to use the best available scientific and commercial data as the foundation for all endangered and threatened species classification decisions. Further, we want any final rule resulting from this proposal to be as accurate and effective as possible. Therefore, we invite the range country, governmental agencies, the scientific community, industry, and other interested parties to submit comments regarding this proposed rule. Comments should be as specific as possible.

Before issuing a final rule to implement this proposed action, we will take into account all comments and any additional relevant information we receive. Such communications may lead to a final rule that differs from our proposal. For example, new information or analysis may lead to a threatened status instead of an endangered status for this species, or we may determine that this species does not warrant listing based on the best available information when we make our determination. All comments, including commenters' names and addresses, if provided to us, will become part of the administrative record. For this species, we particularly seek comments concerning:

(1) The species' biology, ranges, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to the species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of the species, including the locations of any additional populations of the species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Headquarters Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date listed above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited the expert opinion of six appropriate and independent specialists for peer review of the Species Status Assessment (SSA) that provides the biological basis for this proposed listing determination. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, assumptions, and analyses. Their comments and suggestions can be found at (*https://www.fws.gov/endangered/improving_ESA/peer_review_process.html*).

Previous Federal Actions

On March 12, 2012, the National Marine Fisheries Service (NMFS) received a petition dated March 8, 2012, from WildEarth Guardians and Friends of Animals to list as endangered or threatened under the Act the following 15 sturgeon species: Adriatic sturgeon (*Acipenser naccarii*); Baltic sturgeon (*A. sturio*); Russian sturgeon (*A. gueldenstaedtii*); ship sturgeon (*A. nudiventris*); Persian sturgeon (*A. persicus*); stellate sturgeon (*A. stellatus*); Siberian sturgeon (*A. baerii*); Yangtze sturgeon (*A. dabryanus*); Chinese sturgeon (*A. sinensis*); Sakhalin sturgeon (*A. mikadoi*); Amur sturgeon (*A. schrenckii*); Kaluga sturgeon (*Huso dauricus*); Syr Darya sturgeon (*Pseudoscaphirhynchus fedtschenkoi*); dwarf sturgeon (*P. hermanni*); and Amu Darya sturgeon (*P. kaufmanni*). The petition states that all 15 petitioned sturgeon species are affected by similar threats, which are primarily: Legal and illegal harvest for meat and/or roe; habitat loss and degradation, including dams or dam construction; and water pollution. The petition is available at *https://www.regulations.gov/document?D=FWS-HQ-ES-2013-0051-0003.*

NMFS acknowledged receipt of this petition in a letter dated April 14, 2012, and informed the petitioners that NMFS would determine, under section 4 of the Act, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Although the petition was initially sent to NMFS, as a result of subsequent discussions between NMFS and the Service regarding the August 28, 1974, Memorandum of Understanding pertaining to ''Jurisdictional Responsibilities and Listing Procedures Under the Endangered Species Act of 1973,'' we have determined that 10 of the 15 petitioned sturgeon species are within the jurisdiction of the Service. Therefore, in April 2012, the Service notified WildEarth Guardians that we have jurisdiction over the 10 sturgeon species, listed below.

On September 24, 2013, we published in the **Federal Register** (78 FR 58507) a 90-day finding that found that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted for the following 10 sturgeon species included in the petition: Siberian sturgeon (*Acipenser baerii*), Yangtze sturgeon (*A. dabryanus*), Russian sturgeon (*A. gueldenstaedtii*), ship sturgeon (*A. nudiventris*), Persian sturgeon (*A. persicus*), Amur sturgeon (*A. schrenckii*), stellate sturgeon (*A. stellatus*), Syr-Darya sturgeon (*Pseudoscaphirhynchus fedtschenkoi*), dwarf sturgeon (*P. hermanni*), and Amu Darya sturgeon (*P. kaufmanni*). This document constitutes our review and determination of the status of the Yangtze sturgeon, our publication of our 12-month finding on this species, and our proposed rule to list this species.

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the Yangtze sturgeon is presented in the Species Status Assessment (SSA) for the Yangtze sturgeon (Service 2017; available at *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2017–0047). The SSA documents the results of the comprehensive biological status review for the Yangtze sturgeon and provides an account of the species' overall viability through forecasting of the species' condition in the future (Service 2017, entire). In the SSA, we summarize the relevant biological data and a description of past, present, and likely future stressors and conduct an analysis of the viability of the species. The SSA provides the scientific basis that informs our regulatory decision regarding whether this species should be listed as an endangered or threatened species under the Act. This decision involves the application of standards within the Act, its implementing regulations, and Service policies (see Determination, below). The SSA contains the risk analysis on which this determination is based, and the following discussion is a summary of the results and conclusions from the SSA. We solicited peer review of the draft SSA from six qualified experts. We received responses from one of the reviewers, and we modified the SSA as appropriate.

Species Description

The Yangtze sturgeon is a freshwater fish species that attains a maximum size of around 130 centimeters (4.3 feet (ft)) and a maximum weight of about 16 kilograms (35 pounds) (Billiard and Lecointre 2000, p. 368; Zhuang *et al.* 1997, pp. 257, 259). The species has a triangular head, an elongated snout, and large blowholes (Gao *et al.* 2009b, p. 117). Yangtze sturgeons have tactile barbels at the front of their mouths that they use to dig for food. On the dorsal side, the Yangtze sturgeons are dark gray, brownish-gray, or yellow-gray in color. The rest of the body is milky white in color (Zhuang *et al.* 1997, p. 259).

Taxonomy

Historically, the Yangtze sturgeon coexisted alongside the Chinese sturgeon in the Yangtze River. Initial attempts to differentiate the two species included using morphological measures. However, morphological characteristics can be influenced by differences in environmental conditions. For example, wild Yangtze sturgeon display grey color on the sides of their bodies while those bred in captivity sometimes display a darker color (Li *et al.* 2015, p. 186).

Due to similarities in their morphology, the two sturgeons were not identified as separate species until 1869, based on collection of specimens obtained from the Yangtze River (Zhuang *et al.* 1997, p. 257). Multiple studies since have shown the Yangtze and Chinese sturgeons are very closely related and can be considered to be sister species (Krieger *et al.* 2008, p. 41; Zhu *et al.* 2008, p. 32; Zhang *et al.* 2000, p. 136). A study of mitochondrial DNA found that Yangtze and Chinese sturgeon have a divergence value of 0.3 percent. This is in contrast to Chinese sturgeon and starry sturgeon (*Acipenser stellatus*), which have a divergence value of 7.7 percent (Zhang *et al.* 2000, pp. 133–134). While these results suggest that Yangtze and Chinese sturgeon are closely related species, taxonomic confusion regarding the two species continued well into the 1960s (Li J. *et al.* 2015, p. 186). In addition to genetic similarities, Yangtze and Chinese sturgeon share the same habitat and multiple studies suggest that Yangtze sturgeon may be a landlocked ecotype of the Chinese sturgeon (Kynard 2016, pers. comm.; Li J. *et al.* 2015, p. 186; Krieger *et al.* 2008, p. 42; Zhang *et al.* 2000, p. 136).

Despite similarities between Yangtze and Chinese sturgeon, there are differences between the two species.

Yangtze and Chinese sturgeon can be differentiated by the different ecoregion they inhabit. The Chinese sturgeon is an anadromous species (species that spawn in freshwater and spend most of its life at sea) that migrates between coastal feeding grounds and spawning grounds in both the Yangtze River and the Pearl River. On the other hand, the Yangtze sturgeon is a potamodromous species (a species that conducts its entire life cycle in freshwater) that migrates between feeding grounds and spawning grounds entirely within the Yangtze River basin (Kynard *et al.* 2003, p. 28; Zhuang et al. 1997, pp. 257–295).

In addition to differences in their life history, these two species can also be differentiated based on their mitochondrial and nuclear DNA (Li J. *et al.* 2015, pp. 185, 194). Therefore, despite possessing morphological and genetic similarities, there are differences in the habitat, life history characteristics, and genetic makeup between the two species. We thus accept the Yangtze sturgeon as a separate species as classified below:

Class: Actinopterygii
Order: Acipenseriformes
Family: Acipenseridae
Species: *Acipenser dabryanus* Duméril, 1869

Biology and Life History

Although the Yangtze sturgeon's life history is similar to other sturgeon species, there are key differences. Based on the best available information, much of what is known about the Yangtze sturgeon's life history comes from research on the more numerous and studied Chinese sturgeon due to similarities in morphology, taxonomy, and life history between the two species. Yangtze sturgeons spawn in the spring from March to April, with a smaller late fall/early winter spawning period occurring from October to December (Qiwei 2010, p. 3; Gao *et al.* 2009b, p. 117; Kynard *et al.* 2003, p. 28). Spawning migration begins when water level, flow velocity, and silt content enters a downward trend (Zhang H. *et al.* 2012, p. 4).

At the spawning site, female Yangtze sturgeons can lay between 57,000 to 102,000 eggs. These eggs, when mature, are gray to black and range from 2.7 to 3.4 millimeters (0.11 to 0.13 inches) in diameter. The eggs are sticky and firmly adhere to the space between pebbles and boulders, known as the ''interstitial'' space, on the riverbed (Gao *et al.* 2009b, p. 117; Zhuang *et al.* 1997, p. 261). Larvae emerge from the eggs about 115 to 117 hours after fertilization, and they remain at the spawning ground for around 12 to 30 days before dispersing downstream (Kynard *et al.* 2003, pp. 33–34; Zhuang *et al.* 1997, p. 262). Yangtze sturgeons do not start their migration downriver until they become juveniles.

Juvenile sturgeons disperse around 100 to 200 kilometers (km) (62 to 124 miles (mi)) downstream from their spawning ground and arrive in backwater pools and sandy shallows with low velocity flow and rich mud and sand substrate where they feed on insects, aquatic plants, and small fish (Zhang *et al.* 2011, p. 184; Zhuang *et al.* 1997, p. 259). During the spring flood on the main stem of the Yangtze River, juveniles will move to the tributaries to feed. Young sturgeons will remain in these feeding reaches until they reach maturity (4 to 6 years for males and 6 to 8 years for females) after which they begin migrating upstream towards the spawning ground during the spring flood (Zhuang *et al.* 1997, p. 261).

Habitat

The Yangtze sturgeon is found in sandy shoal with silt ground and gentle to moderate water flow (Bemis and Kynard 1997, p. 169; Zhuang *et al.* 1997, p. 259). The spawning habitat for the Yangtze sturgeon is a riverbed that contains larger boulders, pebbles, clear water with a velocity of 1.2 to 1.5 meters (m) per second (3.9 to 4.9 ft per second), and a depth of 5 to 15 m (16 to 49 ft) (Zhuang *et al.* 1997, p. 261). The presence of large boulders ensures there is sufficient interstitial space between the rocks for eggs to adhere to. At the same time, smaller pebbles and gravel fill in the interstitial space so that water flowing through the space is not too high to prevent adherence (Du *et al.* 2011, p. 257). Sufficient velocity is also needed to prevent excess buildup of gravel in the interstitial space (Du *et al.* 2011, p. 262). If there is insufficient interstitial space, eggs will not adhere to the boulders on the riverbed. If there is too much space, the water current will be too strong and the eggs will be washed away. Therefore, suitable sturgeon habitat has specific requirements for velocity and riverbed composition to ensure successful spawning.

Distribution

Historical Range

As its name implies, the Yangtze sturgeon is found in the Yangtze River (Wu *et al.* 2014, p. 5). The river is more than 6,397 km (3,975 mi) in length and is divided into three segments. The upper reach, which span a total of about 4,300 km (2,671 mi), is further sub-divided into two segments: the Jinsha River segment, which stretches from the headwater in Yushu in the Tibetan Plateau to Yibin, a distance of about 2,300 km (1,429 mi), and the upper Yangtze River, which stretches from Yibin to the Three Gorges region at Yichang, a distance of about 1,000 km (621 mi) (Cheng *et al.* 2015, p. 571; Jiang *et al.* 2008, p. 1471; Fu *et al.* 2003, p. 1651). Four major tributaries feed into the upper Yangtze. They are: the Min, Tuo, Jialing, and the Wu River (Chen Z. *et al.* 2001, p. 78). The middle reach is from Yichang to Hukou, a distance of about 950 km (590 mi). The Yangtze River widens in this segment and is identified by multiple large lakes, including Lake Dongting and Lake Poyang. The lower reach stretches from Hukou to the mouth of the river at Shanghai, a distance of about 930 km (577 mi) (Fu *et al.* 2003, p. 1651).

Historically, the Yangtze sturgeon was found in the lower portion of the Jinsha River and the upper, middle, and lower reaches of the Yangtze River, a distance of about 1,300 km (807 mi) (Wu *et al.* 2014, p. 5). The majority of historical sightings occurred in the lower Jinsha and upper Yangtze River with occasional sightings in the middle and lower Yangtze (Zhuang *et al.* 1997, p. 259). The species has also been found in major tributaries that feed into the upper Yangtze including the Min, Tuo, and Jialing (Artyukhin *et al.* 2007, p. 370). There have also been sightings of the species in Dongting Lake and Poyang Lake in the middle and lower reaches, respectively (Zhuang *et al.* 1997, p. 259). One sighting took place as far downstream as Anhui province, a distance of more than 2,000 km (1,242 mi) downstream from Yibin (Zhuang *et al.* 1997, p. 261). The species' spawning reach is understood by Yangtze sturgeon researchers to have occurred from Maoshui in the lower Jinsha River to Hejiang in the upper Yangtze River (Zhang *et al.* 2011, p. 184).

Current Range

The Yangtze sturgeon's current range is limited to the upper Yangtze River and its tributaries in the reaches between Yibin and Yichang, a distance of about 1,000 km (Wu *et al.* 2014, p. 5; Dudgeon 2010, p. 128; Huang *et al.* 2011, p. 575; Zhang *et al.* 2011, p. 181; Artyukhin *et al.* 2007, p. 370). The completion of the Gezhouba Dam in 1981 at Yichang prevented the upstream migration of adults to the species' spawning ground (Zhuang *et al.* 1997, p. 261). As a result of the construction of Gezhouba Dam, the species may have been extirpated in reaches below the dam (Li *et al.* 2015, p. 186; Zhu *et al.* 2008, p. 30). That said, from 2014–2017,

fishermen below Gezhouba Dam accidently captured four adult Yangtze sturgeons, suggesting the presence of a very small remnant population (Du 2017, pers. comm.). Due to Gezhouba Dam's smaller size, the reservoir for the Gezhouba Dam is relatively small (Kynard 2017, pers. comm.) However, the Three Gorges Dam, located slightly upstream from Gezhouba Dam, and its reservoir changed the hydrology of the Yangtze. Construction on the Three Gorges Dam began in 2003 and was completed in 2009. The reservoir, which extends 600 km (372 mi) upstream, further reduced the species' range by modifying reaches above Three Gorges Dam to a lentic (still water) system (Chen D. *et al.* 2009, p. 341; Fu *et al.* 2003, p. 1650). Loss of lotic (rapidly moving water) ecosystem reduces the quality of remaining habitat for the species (Kynard 2016, pers. comm.; Cheng *et al.* 2015, pp. 570, 576). On the lower Jinsha River, in the upstream portion of the species' historical range, the construction of the Xiangjiaba Dam, which was completed in 2008, limited the species' spawning ground to areas below the dam (Zhang *et al.* 2011, pp. 183–184). The species continues to ascend the major tributaries in the upper Yangtze, including the Min, Tuo, and Jialing River (Huang *et al.* 2011, p. 575; Artyukhin *et al.* 2007, p. 370).

Historical and Current Population

The Yangtze sturgeon was historically abundant and was commercially harvested up to the 1970s (Lu *et al.* 2015, p. 89; Zhang *et al.* 2013, p. 409; Kynard *et al.* 2003, p. 27). The majority (80 percent) of harvest of Yangtze sturgeon took place during the 1950s to the 1970s. However, overharvesting during this time period led to a sharp decline in the population size (Kynard *et al.* 2003, p. 27).

While there may have been natural recruitment of the species in the 1990s, no natural recruitment has been observed in the wild since the 2000s (Du *et al.* 2014, p. 1; Wu *et al.* 2014, p. 1). The population is currently being sustained by artificial restocking. Between the years of 2010–2013, 7,030 Yangtze sturgeon juveniles were released into the middle and upper Yangtze River in two to three batches each year (Wu *et al.* 2014, p. 3). Restocking efforts have been ongoing in the reaches below Gezhouba Dam since 2014 (Hu 2017, pers. comm.). However, restocked sturgeons suffer from low fitness; most notably, they lack the ability to survive to reproductive age. Capture data obtained from the releases in 2010–2013 found that 95 days after restocking, no restocked sturgeons were caught either by researchers or by fishermen in the upper Yangtze River (Wu *et al.* 2014, pp. 3–5). These results indicate that restocked sturgeon have a very low survival rate. Although we do not have population estimates for the species, based on the fact that there has been no observable natural reproduction since the 2000s and the low survival rate of restocked sturgeon, the species population in the Yangtze River is likely to be very low when compared to historical numbers (Du *et al.* 2014, p. 1; Wu *et al.* 2014, p. 4).

Summary of Threats and Conservation Measures That Affect the Species

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. We completed a comprehensive assessment of the biological status of the Yangtze sturgeon, and prepared a report of the assessment, which provides a thorough account of the species' overall viability. In this section, we summarize the conclusions of that species status assessment, which can be accessed at Docket No. FWS–HQ–ES–2017–0047 on *http://www.regulations.gov.*

Dams on the Yangtze River and Its Effects

The topography of the upper Yangtze River basin is characterized by mountains of varying heights. The change in elevation between the upper Yangtze to the lower Yangtze amounts to 3,280 m (10,761 ft), which makes the upper Yangtze River an ideal place for hydroelectric projects (Fan *et al.* 2006, p. 33). The growth of dam construction in China has accelerated during the past decades. From the 1970s to the 1990s, an average of 4.4 large reservoirs (capacity greater than 0.1 km^3) were constructed per year. By the 2000s, this number had increased to an average construction rate of 11.8 large reservoirs per year. By 2011, China possessed 552 large reservoirs, 3,269 medium reservoirs (capacity of 0.01–0.1 km^3), and 84,052 small reservoirs (capacity of 0.0001–0.01 km^3); of this number, the Yangtze River basin contained 45,000 dams and reservoirs, including 143 dams having large reservoirs, or a quarter of all large reservoirs in China (Miao *et al.* 2015, p. 2350; Mueller *et al.* 2008, p. 233). The construction of dams and reservoirs have multiple and broad effects on the Yangtze sturgeon and its habitat, including limiting connectivity between spawning and feeding reaches; altering water temperature, water discharge, and velocity rates; and changing sediment concentration.

Connectivity

Dam construction on Yangtze River limits the ability of the Yangtze sturgeon to migrate between spawning and feeding reaches. Dam construction on the Yangtze occurs on both the upper and lower end of the species' current range. In the middle Yangtze River, the construction of Gezhouba Dam in 1981 prevented migration of adults downstream of the dam from being able to migrate to the species' spawning ground in the upper Yangtze near Yibin (Miao *et al.* 2015, p. 2351; Dudgeon 2010, p. 128; Fang *et al.* 2006, p. 375; Zhuang *et al.* 1997, p. 261). Although the reaches below Gezhouba Dam might be suitable for the species, at present there has been no observed natural reproduction below Gezhouba Dam (Du 2017, pers. comm.). The construction of Three Gorges Dam created a reservoir, which affected individuals of the species upstream. The Three Gorges Dam reservoir, which extended 600 km upstream from the dam, transformed the area into unsuitable habitat (Kynard 2016, pers. comm.; Cheng *et al.* 2015, p. 570; Miao *et al.* 2015, p. 2351). After the construction of the reservoir, the species rarely moves to reaches below Chongqing, a distance of approximately 500 km (Wu *et al.* 2015, p. 5).

Meanwhile, the construction of Xiangjiaba Dam on the lower Jinsha River segment occurred on part of the historical spawning reach of the species. Xiangjiaba Dam is a barrier to all fish species and prevents the migration to areas above or the below the dam (Wu *et al.* 2014, p. 2). However, the species may be able to use spawning reaches below the dam (Fan *et al.* 2006, p. 36). That said, a dam located upstream from the species' habitat affects the species downstream by altering water temperature and sedimentation rate, which we discuss below (Fan *et al.* 2006, p. 36).

In addition to dams currently present on the lower Jinsha and upper Yangtze River, in the early 2000s, a proposal was presented for the construction of the Xiaonanhai Dam, which is to be located upstream from Chongqing. If built, this dam will create a barrier between the species' last known spawning ground and feeding reach, which, depending on design, could have a negative impact on the species (Cheng *et al.* 2015, p. 579). However, at present, China's Ministry of Environmental Protection has rejected the proposal and any future dam projects on the last stretch of free-flowing Yangtze River due to environmental impacts (Chang 2016, pers. comm.; Kynard 2016, pers. comm.; Mang 2015, unpaginated).

While the rejection of the proposal to construct the Xiaonanhai Dam is good for Yangtze sturgeon, the country's twelfth 5-year plan stated that renewable resources should make up 15 percent of all energy generated in China with 9 percent coming from hydroelectric source. This plan translates to an additional 230 gigawatt (GW) of power generated via hydroelectric dam. This target is a very ambitious one, given that Three Gorges Dam generates 18 GW of power per year (Dudgeon 2011, p. 1496). Furthermore, although the plan to construct the Xiaonanhai Dam has been rejected, plans to construct dams on the Jinsha River as part of a 12-dam cascade are still proceeding (Dudgeon 2010, p. 129).

Water Temperature

Historically, dams negatively affect the reproductive success of Yangtze sturgeon by altering water temperature flowing through the species' habitat. Water temperature influences the reproductive success of the Yangtze sturgeon at two stages in its life cycle: Commencement of spawning migration and egg survival. Spawning migration of the Yangtze sturgeon will not start until the water temperatures reach 18 degrees Celsius (°C) (64.4 degrees Fahrenheit (°F)) (Cheng *et al.* 2015, p. 578). Historically, before the construction of the Xiangjiaba and other dams on the lower Jinsha, water temperature reached 18 °C (64.4 °F) around April. However, the construction of the dams stratified the water table. As most dams on the Yangtze are designed to release cold water located at the bottom of the dams, the spawning season for the Yangtze sturgeon could be delayed by more than a month (Deng *et al.* 2006 and Wang *et al.* 2009, as cited in Cheng *et al.* 2015, p. 578). This delay shortens the maturing season for juveniles and is likely to reduce the species' survival rate. Additionally, if the water remains too cold for too long, sturgeon eggs will not mature, resulting in total loss of reproduction for that season (Kynard 2016, pers. comm.).

Water Discharge and Velocity

By altering discharge rates, dams affect the Yangtze sturgeon's reproductive success by affecting the timing of spawning migration. The species' spawning migration begins when flow rate increases during the spring flood (Zhuang *et al.* 1997, p. 261). At Yichang, the most downstream portion of the Yangtze sturgeon's current range, the mean discharge rate from 1983 to 2004 (before the construction of Three Gorges Dam) was between 10,000 m^3/s and 17,000 m^3/s. After the construction of the Three Gorges Dam, mean flow rate varies between 12,780 m^3/s in high flow years and 6,414 m^3/s in low flow years (Chen and Wu 2011, p. 384). For Chinese sturgeon, successful spawning occurs when water discharge is between 7,000 and 26,000 m^3/s. This means that although flow rate during high flow years remains in the optimal discharge rate for Chinese sturgeon spawning, discharge rates during low flow years could have a negative impact on spawning success rates of both sturgeon species (Chen and Wu 2011, p. 385).

While we do not have long-term historical data for water discharge rate for the Yangtze sturgeon at Yibin, the flow rate at Chongqing during the years 1950–2000 was between 4,540 m^3/s and 11,000 m^3/s (Zhang *et al.* 2011, p. 183). Since Chongqing is farther upstream from Yichang, this flow rate may be the river's natural rate at this section of the Yangtze. However, following the impoundment by the Xiangjiaba Dam in October 2012 and the Xiluodo Dam in May 2013, discharge in the lower Jinsha has declined more than 50 percent, suggesting that current flow rate is likely to be lower than the flow rate between 1950 and 2000 (Cheng et al 2015, p. 577). The Jinsha River feeds into the upper Yangtze River. This means that reduction in flow rate on the Jinsha will also reduce the flow rate on the upper Yangtze River. Given that the Yangtze sturgeon is closely related to the Chinese sturgeon, a reduction of flow rate by over 50 percent could have a significant negative impact on the reproductive success rate of the Yangtze sturgeon given its already tenuous biological status.

Sedimentation Concentration

In addition to affecting spawning of Yangtze sturgeon, dams affect the condition of the species' spawning ground through changes in the water velocity and sedimentation load. Because reproductive success of sturgeon is tied to the amount of suitable habitat, a reduction in habitat area can reduce the reproductive success of the species (Ban *et al.* 2011, p. 96; Bemis and Kynard 1997, p. 169). Specifically, flow rates affect the Yangtze sturgeon by affecting the sedimentation concentration in the water and on the riverbed. As noted before, Yangtze sturgeon lay their eggs on the interstitial spaces between rocks and boulders. The makeup of the riverbed needs to contain the right concentration of small pebbles and larger boulders to provide sufficient space for adherence and aeration of the eggs (Du *et al.* 2011, pp. 261–262; Bemis and Kynard 1997, p. 169).

Historically, discharge rates and sedimentation load were in alignment with precipitation rates. A low discharge rate results in low sedimentation load. High discharge rates lead to higher sediment load, as high flows are able to transport more sediments downstream (Chen Z. *et al.* 2001, pp. 88–89). However, dams cause discharge and sedimentation rates to go out of alignment. While discharge rates remain aligned with precipitation rate, the sedimentation load pattern displays a 2-month delay due to sediment being trapped behind the dams. When the spring flood occurs, numerous dams release highly concentrated sediment downstream all at once, resulting in an asymmetrical sediment load pattern (Chen Z. *et al.* 2001, p. 90). The effects of sediment load patterns on the species' habitat occur at two stages: Release of sediments during high river stages and reduced sediment size and load over time (Dudgeon 2011, pp. 1488, 1495).

The Jinsha River dams trap up to 82 percent of the sediment during the winter months, resulting in ''clean'' (*i.e.,* sediment-free) water flowing downstream. This ''clean'' water lacks nutrients and may decrease the food supply of the Yangtze sturgeon over the winter months (Cheng *et al.* 2015, p. 578). During the subsequent spring flood, the release of concentrated sediment by dams likely results in sediments filling in all the interstitial spaces in spawning habitat, thereby reducing available spawning habitat for that season.

Despite the spring release of concentrated sediments, sediment load is expected to decline over time. At Yichang, sediment load per year has decreased from 530 mega tons (Mt) per year in the 1950s–1960s, to 60 Mt per year after 2003. Additionally, suspended sediment at Yichang below Three Gorges Dam has decreased in size from 8–10 micrometers in 1987–2002 to 3 micrometers after 2003 (Yang *et al.* 2011, pp. 16–17). Reduction in sediment size can lead to increased embeddedness of available interstitial space. At the reaches below Gezhouba Dam, sedimentation has reduced available interstitial space by up to 50 to 70 percent (Du *et al.* 2011, p. 262). This prevents the adherence of eggs to the river bottom and reduces the quality of remaining spawning habitats.

Summary of Effects of Dams on the Yangtze Sturgeon

Dam construction in the middle Yangtze and lower Jinsha has restricted

the species' range to the reaches of the Yangtze between Yibin and Yichang (Wu *et al.* 2014, p. 5). These projects prevented the migration of the species upstream and downstream of the dams. Although there is currently access between the species' remaining spawning and feeding grounds, the condition of remaining habitat is likely to be negatively affected by changes to the river flow and sedimentation rate. The formation of the Three Gorges reservoir has transformed the 600-km reach above the dam into a lentic system, resulting in unsuitable habitat for the species (Kynard 2016, pers. comm.; Cheng *et al.* 2015, pp. 570, 576). As a result, Yangtze sturgeon rarely use habitat downstream from Chongqing (Wu *et al.* 2014, p. 5).

Upstream from the species' current range, the construction of the Xiluodu and Xiangjiaba Dam is likely to negatively affect the reproductive success of the Yangtze sturgeon. Through the release of cold water during the spring flood, the dam can delay the spawning migration of the sturgeon, which will either shorten the maturation time for juveniles or prevent the successful maturation of eggs altogether (Kynard 2016, pers. comm.; Cheng *et al.* 2015, p. 578). Alteration to sediment concentration in both the short term and long term reduces the quality of remaining habitat (Du *et al.* 2011, p. 262). Given the lack of observed natural reproduction of the species in the upper Yangtze, dams significantly affect the viability of the species.

Overfishing (historical) and Bycatch (current)

Historically, the Yangtze sturgeon was commercially harvested on the Yangtze River. In the 1960s, harvest of Yangtze sturgeon accounted for 10 percent of total harvest. In the 1970s, 5,000 kilograms (5.5 tons) of Yangtze sturgeons were caught in the spring season at Yibin (Zhuang *et al.* 1997, p. 262). Since then however, the population of Yangtze sturgeon has declined significantly (Zhang *et al.* 2013, p. 409). This decline is due to multiple reasons. Fishermen use fine mesh nets that prevent smaller fish, weighing as little as 50 grams (1.7 ounces), from being able to escape. The number of fishing boats increased from 500 in 1950s to 2,000 by 1985. More than 140,000 fishermen currently depend on the river for a living. Furthermore, the fishing season overlapped with the main spawning season of the Yangtze sturgeon (Yi 2016, p. 1; Fan *et al.* 2006, p. 37; Zhuang *et al.* 1997, p. 262). The replacement of bamboo and reed gear with gear made from synthetic fibers further contributed to a higher catch rate of sturgeons (Chen D. *et al.* 2009, p. 346).

Despite attempts to help conserve the species by restocking, restocked juveniles experience very low survival rates (Wu *et al.* 2014, p. 4). From 2010 to 2013, restocking operations released 7,030 juveniles into the upper Yangtze River main stem. Subsequent bycatch between 2010 and 2013 recorded a total of 112 sturgeons caught, indicating a very low survival rate of stocked juveniles (Wu *et al.* 2014, p. 3). These results suggest very low survivability of restocked sturgeon, and the subsequent impacts from bycatch are too high for the species to persist (Wu 2016, pers. comm.; Wu *et al.* 2014, p. 4).

Riverbed Modification

The Yangtze sturgeon requires river substrate to contain suitable concentration to reproduce successfully (Du *et al.* 2011, p. 257). Alteration to the riverbed has reduced the reproductive success of this species. To improve navigation on the lower Jinsha and upper Yangtze River, multiple projects, including sand and gravel extraction operations, were implemented on the reaches between Shuifu and Yibin and Yibin and Chongqing (Zhang *et al.* 2011, p. 184). Between 2005 and 2009, $44 million (converted to U.S. dollars) were invested to improve the navigation between Yibin and Chongqing. These investments have led to the modification of 22 riffles (a shallow section of a stream or river with rapid current and a surface broken by gravel, rubble or boulders) on the upper Yangtze and the deepening of the channel from 1.8 m (5.9 ft) to 2.7 m (8.8 ft) (Zhang *et al.* 2011, p. 184). Additionally, up to 10, 6, and 3 river dredge ships operate in the Yangtze River, the Jinsha River, and the Min River, respectively. The operations of these ships alters the bottom topography of the riverbeds, which results in the loss of benthic habitat and spawning ground for many fish species, including the Yangtze sturgeon (Fan *et al.* 2006, p. 37). These projects are occurring on or near current Yangtze sturgeon spawning and feeding grounds from Yibin to Hejiang. Thus these operations will continue to reduce the quality and quantity of remaining habitat (Zhang *et al.* 2011, p. 184).

Industrial Pollution

As a benthic predator, the Yangtze sturgeon is exposed to higher concentrations of industrial pollution than many other fish species (Yujun *et al.* 2008, pp. 341–342). While we are not aware of any studies that analyze the impacts of industrial pollution on Yangtze sturgeon specifically, there have been studies on Chinese sturgeon and other sturgeon species. Industrial pollutants such as triphenyltin (TPT) affect reproductive success of the Chinese sturgeon. TPT, used in paint on ship hulls and in fishnets in China, can be absorbed into the eggs of Chinese sturgeon, resulting in increased deformities including abnormal development and skeletal and morphological deformities in embryos (Hu *et al.* 2009, pp. 9339–9340).

A study on TPT exposure to 2- to 3-day-old Chinese sturgeon larvae found that 6.3 percent showed skeletal/morphological deformities and 1.2 percent had no eyes or only one eye. At the same time, larvae from spawning hatches of captured adults showed skeletal/morphological deformities of 3.9 percent and 1.7 percent that had only one eye or no eyes. Given the rate of deformities found in this study, the capability for the studied Chinese sturgeon to reproduce was reduced by 58.4 to 75.9 percent (Hu *et al.* 2009, p. 9342). Because the Yangtze and Chinese sturgeon are closely related species, the presence of TPT in the upper Yangtze River is likely reducing the reproductive success of the Yangtze sturgeon by a similar rate.

In addition to TPT, the presence of endocrine disruptors compound (EDC) affects Chinese sturgeon by inducing declining sperm activity, intersex testis-ova, and a decline in male to female ratio in the population (An and Hu 2006, p. 381). A study on EDC found that the concentration of EDC in the Yangtze River (1.55 to 6.85 micrograms per liter) is very high and could have a detrimental impact on sturgeon in the river. This result suggests that industrial discharge of EDC is occurring in the Yangtze.

As a result of rapid industrialization on the Yangtze River, higher concentration of heavy metals are found in the Yangtze River (Yujun *et al.* 2008, p. 338). High concentration of heavy metals leads to greater accumulation in all aquatic organisms (Yujun *et al.* 2008, p. 339). The toxicity effect of heavy metal accumulation is especially pronounced in zoobenthic predators, like the Yangtze sturgeon, because they occupy a higher position in the food chain. The result is that by consuming smaller prey species that have absorbed heavy metal, zoobenthic predator build up heavy metal accumulation inside their bodies (Yujun *et al.* 2008, p. 346). Given that heavy metal concentration is highest in benthic animals, especially zoobenthic predators like the sturgeon, the effect of heavy metals on the

sturgeon could be more pronounced than other aquatic species (Yujun *et al.* 2008, p. 341; An and Hu 2006, p. 381). Despite the known impacts on captured Chinese sturgeon, we currently do not have evidence of population-level impacts of EDC or heavy metal on the wild Yangtze sturgeon population. That said, even though we have no evidence of morphological deformities in wild sturgeon, it is likely that industrial pollution does have an effect on the reproductive success of wild sturgeon.

Hybridization With Displaced Native and Nonnative Sturgeon

Despite decline in wild fishery yields, the Yangtze basin remains one of the major centers of China's aquaculture industry. Fishery yields from the basin accounts for 65 percent of total freshwater fisheries production in China (Shen *et al.* 2014, p. 1547; Chen D. *et al.* 2009, p. 338). In the past 30 years, sturgeon aquaculture in China has risen significantly. Although commercial aquaculturing of sturgeon only started in the 1990s, by 2006, production had reached 17,424 tons, which accounts for 80 percent of the world total production (Shen *et al.* 2014, p. 1548). The growth of the aquaculture industry in China saw aquaculture farms constructed across all branches of the Yangtze River (Li R. *et al.* 2009, p. 636). Sturgeon species that are commonly used in the aquacultural industry include *A. schrenckii, Huso dauricus,* and other Amur River sturgeon hybrids (Li R. *et al.* 2009, p. 636). However, none of these commonly cultured species are native to the Yangtze River. Additionally, there is a lack of regulation and enforcement of regulation to properly manage hybridization of sturgeon species. There is also the problem of aquaculture sturgeon escaping from sturgeon farms into the wider river system (Li R. *et al.* 2009, p. 636). The result is a comingling of native, exotic, and hybrid sturgeon species which could have a negative impact on the Yangtze sturgeon (Shen *et al.* 2014, p. 1549; Li R. *et al.* 2009, p. 636).

There is currently no native-strain farm (farm that raises native species) for sturgeons in China. Because no farms in China focus on raising native stock in large enough number, this system creates shortages of parental stock of native sturgeons. In response to this shortage, farmers crossbreed wild-caught sturgeon with any sturgeon species available including nonnative species (Xiong *et al.* 2015, p. 658; Li R. *et al.* 2009, p. 636). For example, in 2006, there was a shortage of Siberian sturgeon in China (*Acipenser baerii*). Farmers then started crossbreeding Siberian sturgeon with Russian sturgeon (*A. gueldenstaedtii*), Sterlet sturgeon (*A. ruthenus*), and Amur sturgeon (*A. schrenckii*) (Li R. *et al.* 2009, p. 636). Crossbreeding of sturgeon species in China alters the wild population makeup. A study on the lower Yangtze River in 2006 found that of the 221 young sturgeons captured, 153 were hybrids, which accounted for 69.9 percent of total sturgeons caught (Li R. *et al.* 2009, p. 636). This information indicates that farmed hybrids are escaping into the river system. Although this study was conducted in the lower Yangtze River, because sturgeon aquaculture occurs across the Yangtze River system, it is likely that hybridization is occurring in the upper Yangtze River as well.

The uncontrolled hybridization of native and nonnative species on the Yangtze alters the population dynamics between hybrids and native stocks. Hybridization may reduce the fitness of the overall population or replace a population of native fish with hybrids (Shen *et al.* 2014, p. 1549; Li R. *et al.* 2009, p. 636). Hybridization may also result in hybrids with better fitness than wild stock that outcompete wild native stock of Yangtze sturgeon for habitat and resources. When native fish are unavailable, farmers tend to import nonnative fish that have better characteristics, such as higher growth rate and better adaptability. These non-native sturgeons are bred with available native sturgeon to produce hybrids. These hybrids oftentimes escape or are accidentally introduced into the wild and then compete with the Yangtze sturgeon for resources (Xiong *et al.* 2015, pp. 657–658). Although hybridization is likely to be occurring all along the Yangtze River, we currently do not have information on the rates of hybridization of sturgeon in the upper Yangtze or how significant the effects are on the Yangtze sturgeon. That said, given that hybridized sturgeons make up 69.9 percent of sturgeons found in the studied area, it is likely that sturgeon hybrids are competing, and will likely continue to compete, with native stocks for habitat and resources throughout the Yangtze River system.

Management Efforts

As a result of overfishing and the construction of Gezhouba Dam in 1981, the population of Yangtze sturgeon has declined (Du *et al.* 2014, p. 1; Wu *et al.* 2014, p. 1; Zhang H. *et al.* 2011, p. 181). In response to the decline of the species, national and local officials have embarked on a number of initiatives to help conserve the species. These initiatives include increasing legal protection for the Yangtze sturgeon, creating and designating part of the species' range as a protected area, and repopulating the species in the wild through restocking (Zhang H. *et al.* 2011, p. 181; Fan *et al.* 2006, p. 35; Wei *et al.* 2004, p. 322).

Legal Protections

In response to the decline of the Yangtze sturgeon, in 1989, China's State Council added the Yangtze sturgeon to the National Red Data Book for Threatened Chinese Fish as a Class I Protected Animal (Wu *et al.* 2014, p. 1; Zhang H. *et al.* 2011, p. 181; Dudgeon 2010, p. 128; Wei *et al.* 2004, p. 322; Zhuang *et al.* 1997, p. 258). Animals listed as a Class I species are protected from certain activities, including hunting, capturing, or killing, for both commercial and personal uses. Scientific research, domestication, breeding, and exhibition are exempted (Wei *et al.* 2004, p. 322). Transportation of Class I-listed species requires approval from the Department of Wildlife Administration. Import or export of Class I aquatic species is regulated by the Fisheries Bureau of the Minister of Agriculture (Wei *et al.* 2004, p. 323).

In addition to its listing under national law, the species has also been included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1998 (Ludwig 2008, p. 5; CITES 1997, pp. 152–153). The CITES trade database has recorded no international trade of this species going as far back as 1975 (the oldest date on CITES database) (CITES 2017). International trade in CITES species is regulated via a permit system. Under Article IV of CITES, export of an Appendix-II specimen requires the prior grant and presentation of an export permit. Export permits for Appendix-II specimens are only granted if the Management Authority of the State of export is satisfied that the specimens were lawfully obtained and if the Scientific Authority of the State of export has advised that the trade is not detrimental to the survival of the species in the wild. For any living specimen, the Management Authority of the State of export must also be satisfied that the specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment. Re-export of an Appendix-II specimen requires the prior grant and presentation of a re-export certificate, which is only granted if the Management Authority of the State of re-export is satisfied that the specimen

was imported into that State in accordance with CITES and, for any living specimen, that the specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment. Certain exemptions and other special provisions relating to trade in CITES specimens are also provided in Article VII of CITES. In the United States, CITES is implemented through the Act and regulations at 50 CFR part 23.

Additionally, since 2003, a fishing ban on all fish species has been implemented in the upper Yangtze River from February 1 to April 30. Starting in 2017, the fishing ban was extended from March to June (Du 2017, pers. comm.). One of the side effects of this ban is a reduction in the bycatch of Yangtze sturgeon since the time period of the ban coincides with the spawning season of the Yangtze sturgeon (Chen D. *et al.* 2012, p. 532; Chen D. *et al.* 2009, p. 348).

Despite the implementation of legal protection for the species, there are several shortcomings with the current regulatory mechanisms for the species. China currently does not have a specialized, dedicated agency to manage fisheries resources across the country. Riverine resource management is maintained at local levels which are often located in major population center, far away from the fishery resource (Chen D. *et al.* 2012, p. 541). In the case of Yangtze sturgeon, these different jurisdictions have variations in regulation and conservation goals for the Yangtze River ecosystem, which limits coordination of species-conservation efforts and the overall effectiveness in managing species conservation across the Yangtze River basin (Chen D. *et al.* 2012, p. 541).

In addition to a lack of a specialized body or other effective basin-wide conservation efforts, lack of funding is major problem for local jurisdictions. Enforcement officers often lack basic equipment, such as boats, to carry out fishing regulations within the fishery (Chen D. *et al.* 2012, p. 541). Additionally, while commercial harvesting of the species is prohibited, bycatch is still occurring and may still be too high to sustain a wild breeding population (Zhang H. *et al.* 2011, p. 184). The new fishing ban implemented in 2017 has the potential to reduce bycatch (Du 2017, pers. comm.). However, the positive effects from a fishing ban on the Yangtze may be limited, given the importance of the Yangtze to the economic well-being of riverside communities as entire stretches of the river cannot be closed off to fishing (Fan *et al.* 2006, p. 38).

Protected Areas

To offset the effects of habitat loss due to dams, China's State Department established in 2000 the National Reserve of Hejiang-Leibo Reaches of the Yangtze River for Rare and Endangered Fishes (Zhang H. *et al.* 2011, p. 181; Fan *et al.* 2006, p. 35). The reserve is located on the upper Yangtze River on the reaches between Xiangjiaba Dam and the city of Chongqing. This reserve is intended to protect three imperiled fish species, the Yangtze sturgeon, the Chinese paddlefish (*Psephurus gladius*), and the Chinese high-fin banded shark (*Myxocyprinus asiaticus*), as well as 37 other endemic fish species (Fan *et al.* 2006, p. 35). In 2005, the reserve was expanded to mitigate the impact from current and future hydroelectric projects (Zhang H. *et al.* 2011, pp. 181–182). While the reserve plays an important role in protecting wildlife within its borders, expansion of the hydroelectric project in the lower Jinsha River and upper Yangtze outside the protected area is likely to undermine the effectiveness of the reserve. In order to facilitate economic growth, China has decentralized authority for infrastructure development from the state to local municipalities. This decentralized model has resulted in provincial governments prioritizing economic growth over environmental impacts (Dudgeon 2011, p. 1496).

Since 2003, hydroelectric projects in China are subjected to environmental assessments and approval from the Ministry of Environmental Protection (Ministry) (Dudgeon 2011, p. 1496). However, this approval is routinely ignored even by nationally owned corporations. For example, in 2004, China Three Gorges Corporation (CTGC) began construction of the Xiluodu Dam in the Lower Jinsha without obtaining permission from the Ministry (Dudgeon 2011, pp. 1496–1497). In response, the Ministry suspended work on the dam in 2005. However, despite initial reservation about the lack of an environmental impact assessment, the Ministry quickly compiled reports and allowed the dam construction to proceed (Dudgeon 2011, p. 1499). Additionally, in 2009 the Ministry gave the authority to build two additional dams on the Jinsha segment to other dam construction companies after a brief suspension (Dudgeon 2010, p. 129). Overall, these temporary suspensions of construction have done little to slow down the pace of dam development. In 2011, CTGC began constructing the Xiangjiaba Dam on the Lower Jinsha. The location of this dam would have occurred within the 500-km boundary of the National Reserve of Hejiang-Leibo Reaches. The CTGC successfully petitioned the State Council to redraw the boundaries of the reserve to exclude the section of the river where the Xiangjiaba Dam is located (Dudgeon 2011, p. 1500; Dudgeon 2010, p. 129). The reserve, now renamed the National Natural Reserve Area of Rare and Special Fishes of the Upper Yangtze River, encompasses the reaches below the Xiangjiaba Dam from Yibin to Chongqing as well the tributaries that feed into the Yangtze (Zhang H. *et al.* 2011, p. 182; Fan *et al.* 2006, p. 35). The redrawing of the area of the reserve to accommodate the construction of Xiangjiaba Dam lends further evidence that local governments are prioritizing growth over environmental impacts. The construction of the Xiangjiaba Dam led to the impoundment of the reach upriver, which will affect the flow and sedimentation rate downstream (Cheng *et al.* 2015, p. 577; Dudgeon 2011, p. 1500). Given the lack of natural reproduction of the Yangtze sturgeon and future impacts from the dam, it is unlikely that the current boundary of the reserve will be sufficient to maintain a wild breeding population of this species (Kynard 2016, pers. comm.; Dudgeon 2011, p. 1500).

Restocking

As a result of the decline of the species, controlled reproduction and release of juvenile Yangtze sturgeon has occurred every year since 2007 (Zhang H. *et al.* 2011, p. 181). Between 2007 and 2012, more than 10,000 Yangtze sturgeon juveniles were released into the upper Yangtze on reaches downstream from Xiangjiaba Dam (Wu *et al.* 2014, p. 1). In 2014, restocking was started on the reaches below Gezhouba Dam (Du 2017, pers. comm.). While this number pales in comparison to the six million Chinese sturgeon that have been released since 1983, the restocking of the Yangtze sturgeon represent an attempt by local and state officials to try to maintain the species in the wild (Chen D. *et al.* 2009, p. 349).

Despite the efforts to restock the Yangtze sturgeon in the wild, current restocking efforts are unsuccessful (Wu *et al.* 2014, p. 4). No juveniles were caught 95 days after release, indicating that released sturgeon experienced a very high mortality rate (Wu *et al.* 2014, p. 4). There are multiple possible reasons for the limited success of current restocking efforts, including poor breeding and rearing techniques that result in progeny with low survival rates in the wild, high bycatch rate, and loss or deterioration of remaining

habitats (Cheng *et al.* 2015, pp. 579–580; Du *et al.* 2014, p. 2; Shen *et al.* 2014, p. 1549; Zhang H. *et al.* 2011, p. 184). Thus, despite attempts to conserve the species in the wild through restocking, with all the other forces acting on the Yangtze sturgeon it is unlikely that current restocking efforts are adequate to improve the species' condition in the wild.

Stochastic (Random) Events and Processes

Species endemic to small regions, or known from few, widely dispersed locations, are inherently more vulnerable to extinction than widespread species because of the higher risks from localized stochastic (random) events and processes, such as industrial spills and drought. These problems can be further magnified when populations are very small, due to genetic bottlenecks (reduced genetic diversity resulting from fewer individuals contributing to the species' overall gene pool) and random demographic fluctuations (Lande 1988, p. 1455–1458; Pimm *et al.* 1988, p. 757). Species with few populations, limited geographic area, and a small number of individuals face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors, in a process described as an extinction vortex (a mutual reinforcement that occurs among biotic and abiotic processes that drives population size downward to extinction) (Gilpin and Soulé 1986, pp. 24–25). The negative impacts associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes can be further magnified by synergistic interactions with other threats.

The Yangtze sturgeon is known from a single geographic population in the upper Yangtze River and its tributaries (Zhang *et al.* 2011, pp 181–182; Zhuang *et al.* 1997, p. 259). As a result, the species is highly vulnerable to stochastic processes and is highly likely negatively affected by these processes. In March 2000, for example, the Jinguang Chemical Plant, located on the Dadu River (a tributary of the Yangtze River), was found to be releasing yellow phosphorous into the Yangtze. This substance is highly toxic to aquatic organisms including the Yangtze sturgeon (Chen D. *et al.* 2009, p. 343). Another spill in 2006 on the Yuexi River, which also feeds into the Yangtze, saw mercury being released into the river (Worldwatch Insitute 2006, npn). These and other incidents combined with the fact that the Yangtze River system is home to a large number of chemical plants suggest that risk of industrial spills is quite high. Therefore, it is likely that stochastic processes have negative impacts on the species in combination with other factors such as habitat modification and loss and bycatch.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

We have carefully assessed the best scientific and commercial information available on the Yangtze sturgeon. While we do not know the exact population size of the Yangtze sturgeon, the species was historically abundant enough to be commercially viable up to the 1970s, after which it experienced a significant decline (Kynard *et al.* 2003, p. 27). Loss of individuals due to overharvesting by fishermen on the Yangtze (Factor B) is the main factor that contributed to the historical decline of the species. Subsequent construction of dams on the Yangtze prevented the migration in the middle Yangtze and lower Jinsha, which prevented recovery of the species in these areas (Miao *et al.* 2015, p. 2351; Wu *et al.* 2014, p. 2; Dudgeon 2010, p. 128; Fang *et al.* 2006, p. 375; Zhuang *et al.* 1997, p. 261). Additionally, dams affect the quality of the species' habitat through changes in discharge, temperature, and sedimentation rate (Zhang G. *et al.* 2012, p. 445; Du *et al.* 2011, p. 262; Chen Z. *et al.* 2001, p. 90). In addition to dams, the species' habitat is also adversely affected by riverbed modification to accommodate increasing boat traffic. The combined effects of dams and riverbed modification on the Yangtze include the loss and reduction in quality of remaining habitat (Factor A).

Despite conservation efforts undertaken by local and national authorities such as fishing bans and restocking, current efforts do not appear to be successful in conserving the species. No natural reproduction has been documented in the wild since the 2000s (Wu *et al.* 2014, p. 1). Additionally, restocked juvenile sturgeon experience very high mortality rates due to a high bycatch rate and an inability to survive in wild conditions (Du *et al.* 2014, p. 1; Wu *et al.* 2014, p. 4).

Industrial pollution and hybridization with displaced native and nonnative sturgeon species are also acting on the species (Factor E). Although we do not have information on the impact of industrial pollution on the species in the wild, studies in a laboratory environment found that pollutants such as TPT and EDC can reduce the reproductive success rate of adult sturgeons (Hu *et al.* 2009, p. 9342; An and Hu 2006, pp. 379–380). Additionally, there are high concentrations of TPT and EDC in the Yangtze River. While we do not have data on the hybridization of Yangtze sturgeon with other species, surveys conducted in the lower Yangtze River found that 69.9 percent of sturgeon species caught were hybrids (Li R. *et al.* 2009, p. 636). These results suggest that industrial pollution and hybridization, in tandem with other factors, are affecting the species.

Therefore, for the following reasons we conclude that this species has been and continues to be significantly reduced to the extent that the viability of the Yangtze sturgeon is significantly compromised:

(1) The species is limited to a single geographic population in the upper Yangtze main stem and its tributaries. There is also some evidence of a small remnant population in the middle Yangtze.

(2) Loss of habitat and connectivity between the spawning and feeding reaches is having a significant adverse effect on the species, which appears to have low to no reproduction.

(3) The cumulative effects of habitat modification and loss due to dams and riverbed projects, bycatch, industrial pollution, and hybridization are adversely affecting the species.

(4) Current restocking and management efforts are inadequate to maintain the species' presence in the wild.

(5) Stochastic events, such as industrial spills or drought, can reduce the survival rate of the species

In section 3(6), the Act defines an ''endangered species'' as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and in section 3(20), a ''threatened species'' as any species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of

its range.'' We find that the Yangtze sturgeon is presently in danger of extinction throughout its range based on the severity and immediacy of threats currently adversely affecting the species. The populations and distributions of the species have been significantly reduced to the point where there is no current reproduction in the wild which is indicative of a very high risk of extinction, and the remaining habitat and populations are threatened by a variety of factors acting alone and in combination to reduce the overall viability of the species.

Based on the factors described above and their impacts on the Yangtze sturgeon, we find the following factors to be threats to this species (*i.e.,* factors contributing to the risk of extinction of this species): Loss and modification of habitat due to dams and riverbed expansion (Factor A), bycatch (Factor C), and cumulative effects (Factor E) of these and other threats including industrial pollution and hybridization. Furthermore, current legal and management efforts over these practices are inadequate to conserve the species (Factor D).

Therefore, on the basis of the best available scientific and commercial information, we propose listing Yangtze sturgeon as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for this species because of its restricted range, limited distribution, and vulnerability to extinction; and because the threats are ongoing throughout its range at a level that places this species in danger of extinction now.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. Because we have determined that the Yangtze sturgeon is endangered throughout all of its range, we do not need to conduct an analysis of whether there is any significant portion of its range where the species is in danger of extinction or likely to become so in the foreseeable future. This is consistent with the Act because when we find that a species is currently in danger of extinction throughout all of its range (*i.e.,* meets the definition of an ''endangered species''), the species is experiencing high-magnitude threats across its range or threats are so high in particular areas that they severely affect the species across its range. Therefore, the species is in danger of extinction throughout every portion of its range and an analysis of whether there is any significant portion of the range that may be in danger of extinction or likely to become so would not result in a different outcome.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of conservation status, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal and State governments in the United States, foreign governments, private agencies and groups, and individuals.

Our regulations at 50 CFR part 402 implement the interagency cooperation provisions found under ESA Section 7. Under section 7(a)(1) of the ESA, federal agencies are to utilize, in consultation with and with the assistance of the Service, their authorities in furtherance of the purposes of the Act. Section 7(a)(2) of the Act, as amended, requires Federal agencies to ensure, in consultation with the Service, that ''any action authorized, funded, or carried out'' by such agency is not likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of its critical habitat. An ''action'' that is subject to the consultation provisions of section 7(a)(2) has been defined in our implementing regulations as ''all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States or upon the high seas.'' 50 CFR 402.02. With respect to this species, there are no ''actions'' known to require consultation under ESA Section 7(a)(2). Given the regulatory definition of ''action,'' which clarifies that it applies to ''activities or programs . . . in the United States or upon the high seas,'' the species is unlikely to be the subject of section 7 consultations, because the species conducts its entire life cycle in freshwater outside of the United States and is unlikely to be affected by U.S. Federal actions. Additionally, because the Yangtze sturgeon is not native to the United States, no critical habitat is being proposed for designation with this rule. 50 CFR 424.12(g).

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered or threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign listed species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act and our implementing regulations at 50 CFR 17.21 set forth a series of general prohibitions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or upon the high seas. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. In addition, it is illegal for any person subject to the jurisdiction of the United States to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits under section 10 of the Act to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered species are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

Required Determination

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Branch of Foreign Species, Ecological Services (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Branch of Foreign Species, Ecological Services, Falls Church, VA.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add an entry for ''Sturgeon, Yangtze'' to the List of Endangered and Threatened Wildlife in alphabetical order under FISHES to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
FISHES				
* * * * * * *				
Sturgeon, Yangtze	*Acipenser dabryanus*	Wherever found	E	[*Insert **Federal Register** citation when published as a final rule*].
* * * * * * *				

* * * * *

Dated: November 15, 2017.

James W. Kurth,

Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2017–27954 Filed 12–26–17; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170720688–7688–01]

RIN 0648–BH07

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Management Measures; Amendment 47

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in Amendment 47 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council) (Amendment 47). For vermilion snapper, this proposed rule would revise the stock annual catch limit (ACL). Additionally, Amendment 47 would establish a proxy for the estimate of the stock maximum sustainable yield (MSY). The purpose of this proposed rule is to revise the stock ACL for vermilion snapper in the Gulf of Mexico (Gulf) consistent with the most recent stock assessment.

DATES: Written comments must be received on or before January 26, 2018.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2017–0106'' by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0106,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Lauren Waters, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Electronic copies of Amendment 47, which includes an environmental assessment,

a fishery impact statement, a Regulatory Flexibility Act (RFA) analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office website at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/am47/docs/PDFs/gulf_reef_am47_vermilion_final.pdf*.

FOR FURTHER INFORMATION CONTACT: Lauren Waters, Southeast Regional Office, NMFS, telephone: 727–824–5305; email: *Lauren.Waters@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery, which includes vermilion snapper, under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires the Council to specify the MSY for managed stocks. The National Standard 1 Guidelines state that the Council should adopt a reasonable proxy for MSY if data are insufficient to estimate MSY directly.

Status of the Vermilion Snapper Stock

Amendment 23 to the FMP established MSY for vermilion snapper as the yield associated with F_{MSY} when the stock is at equilibrium, where F is defined as fishing mortality (70 FR 109; June 8, 2005). The final rule for the Generic Annual Catch Limit (ACL) and Accountability Measures (AM) Amendment established the vermilion snapper stock ACL and set it equal to the ABC at 3.42 million lb (1.55 million kg), round weight (76 FR 82044, December 29, 2011).

In 2016, a standard assessment for vermilion snapper was conducted (SEDAR 45) and the stock status was evaluated using several MSY proxies. Under all proxies evaluated in SEDAR 45, overfishing was not occurring and the stock was not overfished. The Council's Scientific and Statistical Committee (SSC) determined that the most appropriate proxy for MSY is the yield when fishing at a mortality rate corresponding to 30 percent spawning potential ratio ($F_{30\%}$ SPR).

SEDAR 45 also included projections for the overfishing limit and the ABC. The SSC provided the Council two recommendations for ABC: one that is derived from fishing at 75 percent of the MSY proxy ($F_{30\%}$ SPR) and results in a declining ABC from 2017 through 2021, and one that is derived using the average of 2017–2021 ABCs and results in a constant ABC. The two ABC recommendations are equivalent in terms of maintaining the stock status and the Council selected the constant catch scenario that yielded an ABC of of 3.11 million lb (1.41 million kg).

Management Measure Contained in This Proposed Rule

This proposed rule would revise the stock ACL for Gulf vermilion snapper consistent with the results of SEDAR 45 and the SSC's new ABC recommendation. The current ACL of 3.42 million lb (1.55 million kg), round weight, exceeds the ABCs recommended by the Council's SSC. Therefore, the Council determined that the ACL for vermilion snapper should be decreased to equal the constant catch ABC and this proposed rule would set the stock ACL at 3.11 million lb (1.41 million kg), round weight.

The current accountability measures for vermilion snapper require NMFS to close the commercial and recreational fishing seasons if the combined commercial and recreational landings reach or are projected to reach the stock ACL. Since 2013, combined landings have been less than 3.00 million lb (1.36 million kg), round weight, every year. Therefore, NMFS does not expect the combined landings of vermilion snapper to reach the proposed stock ACL and result in a closure before the end of the fishing year.

Measures in Amendment 47 Not Codified Through This Proposed Rule

In addition to the measure proposed to be implemented through this proposed rule, Amendment 47 would establish a proxy for vermilion snapper MSY.

For vermilion snapper, the Council's SSC recommended that a proxy be used for MSY. The Council's SSC recommended $F_{30\%}$ SPR as the MSY proxy for SEDAR 45, and the Council agreed. Under this proxy, the stock is not overfished or undergoing overfishing.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 47, the FMP, the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this proposed rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this proposed rule and its purpose and need are contained in the **SUMMARY** section of the preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

This proposed rule would directly affect commercial and recreational fishing for vermilion snapper in the Gulf exclusive economic zone (EEZ). Anglers (recreational fishers) are not considered small entities as that term is defined in 5 U.S.C. 601(6). Consequently, estimates of the number of anglers directly affected by the rule and the impacts on them are not provided here.

Any commercial fishing business that operates a commercial fishing vessel that harvests vermilion snapper in the Gulf EEZ must have a valid Federal commercial Gulf reef fish permit that is specifically assigned to that vessel. The Gulf reef fish permit is a limited access permit. As of February 21, 2017, 848 vessels had a Federal Gulf reef fish permit and 795 of the permits were valid. NMFS estimates that 631 businesses own the 848 vessels with a Federal permit, and the size of their individual Gulf reef fish fleets vary from 1 to 17 vessels.

The number of federally permitted vessels that land vermilion snapper is substantially less than the number of vessels with a Gulf reef fish permit. From 2011 through 2015, approximately 35 percent to 40 percent of the vessels with a Federal permit landed vermilion snapper in any given year. During that same 5-year period, an annual average of 342 federally permitted vessels landed vermilion snapper. NMFS estimates these 342 vessels are operated by 252 businesses.

The 342 vessels landed an average of 4,914 lb (2,229 kg), gutted weight, of vermilion snapper with a dockside value of $15,293 (2015 dollars) annually. This average annual dockside revenue from landings of vermilion snapper represents approximately 12 percent of the average vessel's annual dockside revenue from all species. However, there are considerable differences in average annual landings of vermilion snapper by gear type from 2011 through 2015. For example, the average longline vessel annually landed 72 to 73 lb (32 to 33 kg), gutted weight, of the species, whereas the average

hook-and-line vessel landed over 7,000 lb, (3,175 kg) gutted weight, annually. Hook-and-line is the primary gear type used by the commercial sector. The average federally permitted hook-and-line vessel landed 7,078 lb (3,211 kg), gutted weight, of vermilion snapper annually with a dockside value of $22,276 (2015 dollars), and those vermilion snapper landings represent approximately 17 percent of that average vessel's annual dockside revenue from all landings.

For RFA purposes, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily involved in commercial fishing (NAICS 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $11 million for all of its affiliated operations worldwide. Based on the average annual revenue for a federally permitted vessel that lands vermilion snapper, regardless of gear used, it is concluded that most to all of the businesses that harvest vermilion snapper from the Gulf EEZ are small.

Amendment 47 would establish an MSY proxy for vermilion snapper and that has no direct impact on any small business.

This proposed rule would decrease the stock ACL of vermilion snapper. The stock ACL is currently 3.42 million lb (1.55 million kg), round weight, and has been in place since 2012. This proposed rule would decrease the stock ACL to 3.11 million lb (1.41 million kg), round weight.

If combined landings reach or are projected to reach the stock ACL, the commercial and recreational fishing seasons are closed early as a result of accountability measures being triggered. Since 2012, there have been no early closures because combined commercial and recreational landings of vermilion snapper have been less than the stock ACL. From 2012 through 2015, combined landings varied from approximately 2.54 million lb (1.15 million kg) to 3.17 million lb (1.44 million kg), round weight, annually and averaged approximately 2.73 million lb (1.24 million kg). Since 2013, combined landings have been less than 3.00 million lb (1.36 million kg), round weight, every year, and preliminary data for 2016 indicate combined landings of approximately 2.63 million lb (1.19 million kg), round weight. Preliminary landings data for 2016 indicate combined landings of approximately 2.6 million lb (1.18 million kg), round weight. Moreover, as of November 27, 2017, for commercial landings and through the third wave for recreational landings, combined landings for 2017 are approximately 2.4 million lb (1.09 million kg), round weight. Based on recent landings data, it is expected that combined landings of vermilion snapper would be less than the proposed stock ACL of 3.11 million lb (1.41 million kg), round weight, and there would be no early closures. Therefore, NMFS expects the reduction of the stock ACL would have no economic impact on small businesses that harvest vermilion snapper from the Gulf EEZ.

No new reporting, record-keeping, or other compliance requirements are introduced by this proposed rule. Accordingly, this proposed rule does not implicate the Paperwork Reduction Act.

In conclusion, NMFS expects this proposed rule would not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gulf, Recreational, Vermilion snapper.

Dated: December 21, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.41, revise the last sentence of paragraph (j) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(j) * * * The stock ACL for vermilion snapper is 3.11 million lb (1.41 million kg), round weight.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 170621579–7579–01]

RIN 0648–BG96

Fisheries of the Exclusive Economic Zone Off Alaska; Nontrawl Lead Level 2 Observers

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to modify specific provisions of the North Pacific Observer Program. The first two elements of this proposed rule would modify the requirements for an observer to obtain a nontrawl lead level 2 (LL2) deployment endorsement and implement a pre-cruise meeting requirement for vessels required to carry an observer with a nontrawl LL2 deployment endorsement. These elements are intended to increase the number of observers that qualify for a nontrawl LL2 deployment endorsement and maintain observer safety and data quality. The third element of this proposed rule would make editorial changes, and modify observer coverage and reporting requirements for vessels when participating in the Western Alaska Community Development Quota (CDQ) Program. This element is intended to promote operational efficiency, and remove unnecessary requirements for specific vessels participating in the CDQ Program. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska, and the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Comments must be received no later than January 26, 2018.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0071 by either of the following methods:

- *Federal e-Rulemaking Portal.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0071,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the draft Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT:
Alicia M Miller, 907–586–7228 or *alicia.m.miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone under the Fishery Management Plan for Groundfish of the Gulf of Alaska and under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background

Regulations at subpart E of 50 CFR part 679 require that most vessels fishing for groundfish or halibut must carry an observer onboard their vessel for some, or all, fishing activities to ensure the collection of data necessary to manage the groundfish and halibut fisheries. The following sections describe (1) the North Pacific Observer Program, (2) nontrawl lead level 2 observer requirements, (3) the need for this action, and (4) this proposed rule.

North Pacific Observer Program

The North Pacific Observer Program (Observer Program) is an integral component in the management of North Pacific fisheries. The Observer Program was created with the implementation of the Magnuson-Stevens Act in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. Regulations at subpart E of 50 CFR part 679 implement the Observer Program and prescribe how NMFS-certified observers (observers) will be deployed on board vessels and in processing plants to obtain information necessary for the conservation and management of the groundfish and halibut fisheries off Alaska. The information collected by observers contributes to the best available scientific information used to manage the fisheries in furtherance of the purposes and national standards of the Magnuson-Stevens Act.

Observers collect biological samples and gather information on total catch, including bycatch, and interactions with protected species. Fishery managers use data collected by observers to manage groundfish catch and bycatch limits established in regulation and to document fishery interactions with protected species. Fishery managers also use data collected by observers to inform the development of management measures that minimize bycatch and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

On January 1, 2013, the Observer Program was restructured to establish two observer coverage categories: Partial and full (77 FR 70062; November 21, 2012). Regulations at 50 CFR 679.50 identify that all vessels and processors that participate in federally managed or parallel groundfish and halibut fisheries off Alaska, except catcher vessels delivering unsorted codends to mothership vessels, are subject to observer coverage in one of these two categories. Regulations at 50 CFR 679.51 require vessels and processors in the full coverage category to carry an observer at all times when fish are caught or processed. Importantly for this proposed rule, the full coverage category includes most catcher/processors (*i.e.,* vessels that catch and process their own catch at-sea), and all motherships (*i.e.,* those vessels that receive unsorted catch from other vessels and process that catch at-sea). Owners of vessels or processors in the full coverage category must contract directly with a permitted observer provider and pay for required observer coverage. Vessels affected by these proposed changes to nontrawl LL2 observer deployment endorsement requirements are in the full coverage category.

Regulations at 50 CFR 679.51 describe the vessels and processing plants that are in the partial coverage category. Most catcher vessels using nontrawl gear are in the partial coverage category. NMFS, in consultation with the Council, develops an annual deployment plan for the Observer Program to determine when and where observer coverage is needed for vessels and processors in the partial coverage category. NMFS contracts with an observer provider to deploy observers based on the scientific sampling plan described in the annual deployment plan.

Nontrawl Lead Level 2 Observer Requirements

Two groups of vessels are required to carry an observer with a nontrawl LL2 deployment endorsement. The first group of vessels includes vessels named on a License Limitation Program (LLP) license with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both the Bering Sea and Aleutian Islands. These vessels are subject to monitoring requirements at 50 CFR 679.100 and are referred to as ''freezer longline vessels'' throughout this proposed rule. Pursuant to 50 CFR 679.100, a freezer longline vessel must carry an observer with a nontrawl LL2 deployment endorsement when the vessel (1) operates in either the BSAI or Gulf of Alaska groundfish fisheries and directed fishing for Pacific cod is open in the BSAI, or (2) when the vessel participates in the CDQ groundfish fisheries. These monitoring requirements for freezer longline vessels were implemented in 2012 and require freezer longline vessel owners and operators to select between one of two monitoring options: Either carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated flow scale to weigh Pacific cod before it is processed. Both monitoring options require the vessel to carry one observer endorsed as a nontrawl LL2 observer. (77 FR 59053; September 26, 2012).

The second group of vessels that are required to carry an observer with a nontrawl LL2 deployment endorsement

includes catcher/processors that use pot gear when participating in the CDQ groundfish fisheries (groundfish CDQ fishing) (77 FR 6492; February 8, 2012). These pot catcher/processors are required to carry an observer with a nontrawl LL2 deployment endorsement when groundfish CDQ fishing and may participate in other fisheries that do not require a nontrawl LL2 observer. Regulations at 50 CFR 679.32 describe the specific monitoring requirements for vessels when participating in the sablefish CDQ, pollock CDQ, groundfish CDQ, and other CDQ fisheries.

Regulations at 50 CFR 679.53 define the requirements for an observer to receive a nontrawl LL2 deployment endorsement. An observer obtains a nontrawl LL2 deployment endorsement when the observer meets minimum experience requirements for a level 2 deployment endorsement (has completed 60 days of data collection and met the Observer Program's performance expectations on their most recent evaluation) and has completed two cruises of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear. This means that prior to gaining a nontrawl LL2 deployment endorsement, an observer must first deploy on a nontrawl vessel that is not required to carry a nontrawl LL2 observer and sample at least 30 sets.

Need for This Action

In 2014, observer providers and representatives of freezer longline vessels reported shortages of nontrawl LL2 observers for deployment on freezer longline vessels and that, in some cases, shortages delayed fishing operations (See section 3.3.4 of the Analysis). Since 2012, all active freezer longline vessels, except one, have chosen the option to carry one LL2 observer and weigh Pacific cod on a flow scale. This means that only one freezer longline vessel subject to the nontrawl LL2 observer requirement has chosen to carry two observers—one observer with a nontrawl LL2 endorsement, and one observer who will gain sampling experience to count toward the requirements for a nontrawl LL2 deployment endorsement. In addition, since 2013, there are few other nontrawl vessels in the full observer coverage category that do not require an LL2 observer. Therefore, the few observers deployed in the full coverage category are able to gain the sampling experience necessary to gain the nontrawl LL2 deployment endorsement. Observer providers contracted by vessels in the full coverage category have reported that they have been unable to create and retain an adequate pool of qualified nontrawl LL2 observers since 2014.

In contrast, observers deployed on vessels in the partial coverage category have opportunities to gain nontrawl sampling experience to count toward the requirements for a nontrawl LL2 deployment endorsement on catcher vessels in the partial coverage category. However, until August 2016, the observer provider contracted to deploy observers in the partial coverage category did not have a permit to deploy observers in the full coverage category pursuant to regulations at 50 CFR 679.52. These conditions from 2013 through August 2016 resulted in a diminishing pool of qualified observers employed by permitted observer providers in the full coverage category (See Tables 11, 12, and 13 in the Analysis).

Since 2014, NMFS, observer providers, and freezer longline vessels have undertaken a series of non-regulatory actions designed to build and retain a pool of qualified nontrawl LL2 observers available for the freezer longline vessels. For example, NMFS modified its policy on how sampled sets are credited to observers when determining the number of sampled sets for a nontrawl LL2 deployment endorsement, and some members of the freezer longline fleet voluntarily deployed a second observer on some freezer longline vessels to allow those observers to gain sampling experience necessary to receive a nontrawl LL2 deployment endorsement (See Section 3.3.5 of the Analysis for additional detail). However, these non-regulatory actions resulted in additional costs to the freezer longline fleet and did not fully address the industry's concerns about the limited availability of nontrawl LL2 observers.

Between 2014 and 2017, the Council and its Observer Advisory Committee discussed and analyzed potential solutions to address industry concerns about the limited availability of nontrawl LL2 observers in the full coverage category. In June 2017, the Council recommended changes to regulations that would (1) allow trawl sampling experience to count toward a nontrawl LL2 deployment endorsement and authorize the observer program to require additional training as necessary to adequately prepare observers to perform data collection duties when deployed as a nontrawl LL2 observer, and (2) require the operator or manager of a vessel required to carry an observer with a nontrawl LL2 deployment endorsement to participate in a pre-cruise meeting with the observer if notified by NMFS to do so. These regulatory changes are intended to minimize additional costs to industry while also maintaining observer safety and data quality.

This Proposed Rule

This proposed rule includes three elements. The first element of this proposed rule would modify regulations at § 679.53(a)(5)(v)(C) to allow 100 sampled hauls on trawl catcher/processor or mothership vessel (equivalent to the required sampling experience for an observer to obtain a trawl LL2 deployment endorsement) to count toward a nontrawl LL2 deployment endorsement and authorize the observer program to require additional training for observers as necessary to adequately prepare them to safely perform data collection duties relevant to the nontrawl LL2 deployment endorsement.

These changes are intended to reduce the potential for a shortage of nontrawl LL2 observers, because many observers deployed in the full coverage category qualify for a trawl LL2 deployment endorsement. This would allow observers that qualify as a trawl LL2 observer to potentially qualify as a nontrawl LL2 observer (See Table 11 and Section 3.3.3 of the Analysis for more information), and reduce the pressure for freezer longline vessels to voluntarily carry second observers for the purpose of providing opportunities for observers to gain sampling experience to count toward a nontrawl LL2 deployment endorsement. An observer with sampling experience on a trawl catcher/processor or mothership would be familiar with the pressures of data collection on vessels participating in a catch share program and would also be familiar with the use of a flow scale to weigh catch. These skills are important to successfully performing data collection duties when deployed as a nontrawl LL2 observer. Because these observers may not have nontrawl sampling experience, additional training and a pre-cruise meeting may be necessary to ensure that these observers are adequately prepared to handle the safety and sampling challenges that are unique to nontrawl LL2 deployments (See Section 4.3.2.2 of the Analysis).

This proposed rule would implement regulations to authorize the Observer Program to require additional training for observers as necessary to adequately prepare them to perform data collection duties relevant to the nontrawl LL2 deployment endorsement. The Observer Program would develop and implement an observer training and also determine when this training would be required prior to receiving a nontrawl LL2

deployment endorsement. Potentially, NMFS would require observers without sampling experience on a nontrawl catcher/processor to attend a two or three day training class prior to receiving a nontrawl LL2 deployment endorsement for the first time.

The Observer Program would use this training class to adequately prepare observers with different types of qualifying sampling experience to complete sampling duties when deployed as a nontrawl LL2 observer (See section 4.3.2 of the Analysis for additional detail). The nontrawl LL2 training class would be designed to address common safety and sampling challenges that are unique to nontrawl LL2 observer deployments. This training would prepare observers who do not have sampling experience on nontrawl catcher/processors for deployment on these vessels as a nontrawl LL2 observer. At a minimum, through existing trainings and briefings, the Observer Program would continue to train observers to follow the safety and data collection protocols established in the Observer Sampling Manual.

The second element of this proposed rule would require the operator or manager of a vessel that carries nontrawl LL2 observers to participate in a pre-cruise meeting with the observer assigned to the vessel if notified to do so by NMFS. This proposed rule would add a paragraph at §§ 679.32(c)(3)(i)(E) and 679.100(b)(1) and (2) to require freezer longline vessels and pot catcher/processors when groundfish CDQ fishing to notify the Observer Program prior to embarking on a trip with a nontrawl LL2 observer who has not deployed on that vessel in the past 12 months. The Observer Program may contact the vessel and require the vessel operator or manager and the observer assigned to the vessel to participate in a pre-cruise meeting prior to embarking on a trip.

This regulatory change would authorize the Observer Program to require a pre-cruise meeting as needed to address safety or sampling challenges on a specific vessel. Because vessel operations and individual observer's sampling history will vary, this would give the Observer Program the flexibility necessary to evaluate whether a pre-cruise meeting is necessary on a case-by-case basis between the observer and the vessel operator or manager to ensure the nontrawl LL2 observer is adequately prepared to collect high quality data in a safe manner. The Observer Program may consider the observer's deployment history or sampling experience, vessel specific information, or other relevant information to determine whether a pre-cruise meeting is necessary, and if so, the Observer Program would contact the vessels to arrange the pre-cruise meeting prior to the start of a trip (See section 4.3 of the Analysis for additional detail). This action would impose additional administrative costs for NMFS to process pre-cruise notifications, contact a vessel if a pre-cruise meeting is necessary, and participate in pre-cruise meetings if staff are available. Section 2.3.1 of the Analysis describes that these administrative costs are minimal relative to other alternatives considered.

In addition to the two elements recommended by the Council, NMFS proposes the third element of this proposed rule to remove duplicative and unnecessary regulatory reporting requirements and make minor changes to observer coverage requirements for specific vessels participating in the CDQ Program. These proposed revisions are intended to (1) align regulations with Magnuson-Stevens Act section 305(i)(1)(B)(iv), (2) reduce observer coverage costs, (3) improve operational efficiency, and (4) reduce the reporting burden for catcher/processors and motherships when participating in CDQ fisheries (See Section 2.4 in the Analysis).

This proposed rule would define the terms ''cruise'' and ''Observer Program'' in § 679.2. The term ''cruise'' is used to describe the minimum experience requirements for an observer to obtain LL2 deployment endorsements in § 679.53. This proposed rule would define a ''cruise'' to mean an observer deployment with a unique cruise number. This proposed definition would clarify that a cruise begins when an observer receives an endorsement to deploy and ends when the observer completes all debriefing responsibilities. The term ''Observer Program'' would replace and update the definition of ''Observer Program Office,'' because that term does not describe the Observer Program. This proposed rule would update corresponding references throughout part 679.

This proposed rule would remove provisions at § 679.32(c)(3)(i) that require operators of catcher/processors and motherships to provide observers with prior notification of CDQ catch and CDQ group number associated with the CDQ catch before the CDQ catch is brought on board the vessel. This provision would be removed for all catcher/processors and motherships when participating in the pollock CDQ or groundfish CDQ fisheries. These notification requirements were implemented in 1998 (63 FR 30381; June 4, 1998) when observer sampling methods for CDQ hauls and sets were different than observer sampling methods for non-CDQ hauls and sets. At that time, an observer needed to know if a haul would be designated as a CDQ haul before it was brought on board the vessel so that they could apply the appropriate sampling methods. With implementation of other catch share programs since 1998 and overlap of vessel participation between CDQ and other catch share programs, observer sampling methods have been made consistent between CDQ and non-CDQ hauls and sets. Therefore, these prior notification requirements are unnecessary and duplicative. An observer does not need prior notice of CDQ haul designation to appropriately sample CDQ catch, and other regulations ensure that an observer has access to this information.

This proposed rule would modify the heading for subpart E to part 679 from ''Groundfish and Halibut Observer Program'' to ''North Pacific Observer Program'' in order to be consistent with the term as used in the new definition of the Observer Program.

This proposed rule also would modify § 679.50(a)(2) to clarify that a catcher vessel is not subject to the requirements of subpart E when delivering unsorted codends to a mothership. The existing wording is more restrictive than intended, and this proposed rule would clarify that a catcher vessel which, for some of its fishing activity, delivers unsorted codends to a mothership, would not be subject to the requirements of subpart E only during the fishing activity that results in delivering unsorted codends to a mothership.

This proposed rule would modify § 679.51(a)(2)(vi)(A)(*5*) to update the observer coverage requirement for motherships that receive unsorted codends from catcher vessels groundfish CDQ fishing. This coverage requirement would be modified to no longer require that both observers deployed have a level 2 deployment endorsement. A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing would be required to carry two observers, one of which must have a LL2 deployment endorsement for a catcher/processor using trawl gear or a mothership. This would make observer coverage requirements for motherships participating in the groundfish CDQ fishery consistent with observer coverage requirements for catcher/processors participating in the Amendment 80 Program.

This proposed rule would update the phone number that is currently provided in §§ 679.84(c)(7) and 679.93(c)(7) for notifying the Observer

Program as required under regulations governing the Rockfish Program and Amendment 80 Program, in order to allow vessel operators or managers to contact the Dutch Harbor or Kodiak field offices directly.

To improve clarity and consistency, this proposed rule would remove the term ''certified'' and replace it with the term ''endorsed'' when used to describe observer deployment endorsements throughout § 679.51. This proposed rule would also remove the provision at § 679.53(a)(5)(v)(B) that describes sampling experience requirements for an observer to obtain an LL2 deployment endorsement for a catcher vessel using trawl gear. This LL2 deployment endorsement is not required for any vessels that operate in the commercial groundfish or halibut fisheries, which makes this regulation unnecessary.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR or Analysis)

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). The Council and NMFS recommend this action based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis related to the impact of the proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate observers and owners and operators of the following vessels: (1) Freezer longline vessels that participate in the BSAI hook-and-line Pacific cod fishery; and (2) pot catcher/processors, trawl catcher/processors, nontrawl catcher/processors, and motherships when groundfish CDQ fishing. Observer providers are impacted by the limited availability of nontrawl LL2 observers, but the proposed rule would not modify regulations that directly apply to observer provider firms. Observers are individuals and not entities, so they do not meet the Small Business Administration (SBA) definition of a small entity. Therefore, neither observer providers nor observers are considered directly regulated entities in this IRFA.

This proposed rule would directly regulate the activities of 29 BSAI freezer longline vessels, two pot catcher/processors, and 22 trawl catcher/processors and motherships. Two questions must be considered in classifying catcher/processors under the RFA. First, are the individual vessels independently owned and operated and not dominant in their field of operation, or are these vessels affiliated under the RFA? Second, which industry classification is appropriate to use for vessels that conduct both fish harvesting and fish processing?

Freezer longline vessels directly regulated by this action are all members of the Freezer Longline Conservation Cooperative (FLCC), a voluntary fishing cooperative operating through a contract among all parties, whose members have a de facto catch share program because they effectively control fishing for the freezer longline vessel subsector's allocation of Pacific cod in the BSAI. NMFS has determined that vessels that are members of a fishing cooperative, including members of the FLCC, are affiliated when classifying them for the RFA analyses. In making this determination, NMFS considered SBA's ''principles of affiliation'' at 13 CFR 121.103. Specifically, in § 121.103(f), SBA refers to ''[A]ffiliation based on identity of interest,'' which states ''[A]ffiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.'' If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis.

In addition, distinct from their affiliation through the FLCC, vessels regulated by this proposed rule also may be affiliated through ownership. NMFS has reviewed cooperative membership and available ownership data to assess ownership and affiliations among vessels. Based on this information, NMFS estimates that the 29 active FLCC vessels and two pot catcher/processors affected by this action are owned and operated by no more than 11 separate entities. Of these 11 entities, 6 entities own 26 freezer longline vessels and one pot catcher/processor vessel.

The thresholds applied to determine if an entity or group of entities are ''small'' under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of $11.0 million for all affiliated operations worldwide (81 FR 4469; January 26, 2016). Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations worldwide. Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of $11.0 million in annual gross receipts is appropriate.

By applying the $11.0 million annual gross receipts threshold collectively to the vessels affiliated through the FLCC, all of the members of the FLCC are considered large entities under the RFA. The two pot catcher/processors are affiliated with additional vessels that, when interests are aggregated, exceed the $11.0 million threshold and are considered large entities under the RFA. NMFS considered vessel affiliation independent of the FLCC contracts and concluded that if not for FLCC affiliation, five vessels owned by four

entities would be considered small entities under the SBA. Additional detail about data sources used to prepare this IRFA and the analysis of vessel affiliation independent of FLCC contract are available in Section 4.6 of the RIR prepared for this proposed rule (see **ADDRESSES**).

The proposed regulatory change to modify observer coverage requirements for motherships receiving unsorted codends from catcher vessels groundfish CDQ fishing and to remove prior notification of CDQ catch and CDQ number would affect 19 nontrawl catcher/processors and 22 trawl catcher/processors, 4 of which also act as a mothership to receive unsorted codends from catcher vessels groundfish CDQ fishing. As described above, the 19 nontrawl catcher/processors are considered large entities under the RFA. All of the trawl catcher/processors and motherships affected by this proposed rule are affiliated as members of either an American Fisheries Act or an Amendment 80 cooperative with a combined average annual gross revenue above the $11.0 million threshold, classifying them as large entities under the RFA.

Based on this analysis, NMFS preliminarily determines that there are no small entities that would be affected by this proposed rule. However, due to the complexity of the affiliation among the entities and the overlay of affiliation due to ownership and affiliation based on the contractual relationship among members of cooperatives, NMFS has prepared this IRFA. This provides potentially affected entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

To the degree that this proposed rule would increase the pool of available nontrawl LL2 observers, the primary economic impact of this proposed rule would be to reduce costs to vessel owners. Costs would be reduced by the amount vessel owners would otherwise pay to deploy second observers on some freezer longline vessels to allow those observers to gain sampling experience to count toward a nontrawl LL2 deployment endorsement. In addition, an increase in the number of available nontrawl LL2 observers would reduce the potential costs associated with a shortage of nontrawl LL2 observers. This proposed rule would add new costs for freezer longline vessels and pot catcher/processors to comply with pre-cruise meeting requirements. NMFS estimates the cost savings associated with the increase in the pool of qualified nontrawl LL2 observers is expected to exceed the relatively small costs that would be associated with the pre-cruise meeting requirements.

The proposed regulatory change to modify observer coverage requirements for motherships receiving unsorted codends from catcher vessels groundfish CDQ fishing could reduce costs by allowing less experienced observers to deploy, and would increase operational flexibility for vessels that operate in the CDQ and non-CDQ fisheries. The proposed regulatory change to remove the prior notification of CDQ catch and CDQ number would reduce costs to the owners of catcher/processors when pollock CDQ fishing, catcher/processors and motherships when groundfish CDQ fishing, and catcher/processors using nontrawl gear when groundfish CDQ fishing. All vessels affected by this action would benefit by reducing recordkeeping and reporting requirements with no negative impacts on affected entities.

Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule adds additional reporting, recordkeeping, and other compliance requirements for freezer longline vessels and pot catcher/processors that are required to carry a nontrawl LL2 observer. Vessel operators would be responsible to ensure that the Observer Program is notified by phone 24 hours prior to departure when a vessel will be carrying a nontrawl LL2 observer that has not previously been deployed on that vessel in the last 12 months. Vessel operators contract directly with permitted observer providers to procure observer coverage. The Observer Program could be notified by anyone with knowledge of the upcoming observer assignment, including the vessel operator, a crew member, or the observer provider. The person notifying the Observer Program would need knowledge of the vessel's prior observer assignment history and the upcoming observer assignment 24 hours in advance of a trip.

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities. No unique professional skills are needed for the vessel operators to comply with any of the reporting and recordkeeping requirements associated with this proposed rule.

Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for placing observers on fishing vessels, are consistent with applicable statutes, and that would reduce costs to potentially affected small entities more than the proposed rule. The Council and NMFS considered three alternatives. Alternative 1, the no action alternative, would not reduce the potential for a shortage of nontrawl LL2 observers and would continue to impose additional costs on the industry. Alternative 2 would create a process to allow a vessel to go fishing without a nontrawl LL2 observer if there were no nontrawl LL2 observers available. Alternative 3 included two options. Option 1 would allow a vessel required to carry one LL2 observer to choose between carrying two level 2 observers or one LL2 observer. Option 2 would modify the training and experience requirements necessary for an observer to obtain the nontrawl LL2 deployment endorsement.

The preferred alternative, Alternative 3 Option 2 was designed to minimize the impacts to small entities from the status quo requirement by increasing the pool of qualified observers and reducing the need for vessels to voluntarily carry second observers for the purpose of gaining the necessary experience to obtain a nontrawl LL2 deployment endorsement. Alternative 3 Option 2 includes additional observer training and a pre-cruise meeting as necessary to ensure that observers are adequately prepared to fulfill the data collection responsibilities.

Relative to Alternative 1, the preferred alternative would increase the recordkeeping burdens on small entities by requiring the Observer Program be notified prior to a vessel embarking on a trip with an observer who has not previously deployed on that vessel in the past 12 months, and by requiring, if necessary, the vessel operator or manager to participate in a pre-cruise meeting with the observer, which could delay fishing activity by the amount of time necessary to complete a pre-cruise meeting.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements

subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB control number 0648–0318 (North Pacific Observer Program). The public reporting burden for the collection-of-information requirements in this proposed rule includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This proposed rule would require that the Observer Program be notified by phone at least 24 hours prior to departure when a vessel will carry an observer who had not deployed on that vessel in the past 12 months. Public reporting burden per response to notify the Observer Program by phone is estimated to be five minutes.

Public comment is sought regarding (1) whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and to OIRA by email to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 21, 2017.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2,

■ a. Remove the definition for ''Observer Program Office''; and

■ b. Add the definitions for ''Cruise'' and ''Observer Program'' in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Cruise means an observer deployment with a unique cruise number. A cruise begins when an observer receives an endorsement to deploy and ends when the observer completes all debriefing responsibilities.

* * * * *

Observer Program means the administrative office of the North Pacific Observer Program located at the Alaska Fisheries Science Center (See § 679.51(c)(3) for contact information).

* * * * *

■ 3. In § 679.32,

■ a. Remove and reserve paragraphs (c)(3)(i)(B)(*2*), (c)(3)(i)(C)(*2*), and (c)(3)(i)(E)(*2*); and

■ b. Add paragraph (c)(3)(i)(E)(*4*) to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) * * *

(*4*) Notify the Observer Program by phone at 1 (907) 581–2060 (Dutch Harbor, AK) or 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

* * * * *

■ 4. In part 679, revise subpart E heading to read as follows:

Subpart E—North Pacific Observer Program

■ 5. In § 679.50, revise paragraph (a)(2) to read as follows:

§ 679.50 Applicability.

(a) * * *

(2) *Exceptions.* A catcher vessel is not subject to the requirements of this subpart when delivering unsorted codends to a mothership.

* * * * *

■ 6. In § 679.51, revise paragraph (a)(2)(vi)(A)(*5*) to read as follows:

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) * * *

(2) * * *

(vi) * * *

(A) * * *

(*5*) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

* * * * *

■ 7. In § 679.53,

■ a. Remove and reserve paragraph (a)(5)(v)(B); and

■ b. Revise paragraph (a)(5)(v)(C) to read as follows:

§ 679.53 Observer certification and responsibilities.

(a) * * *

(5) * * *

(v) * * *

(C) A lead level 2 observer on a vessel using nontrawl gear must have completed the following:

(*1*) Two observer cruises (contracts) of at least 10 days each; and

(*2*) Successfully completed training or briefing as prescribed by the Observer Program; and

(*3*) Sampled at least 30 sets on a vessel using nontrawl gear; or

(*4*) Sampled 100 hauls on a catcher/processor using trawl gear or on a mothership.

* * * * *

■ 8. In § 679.84, revise paragraph (c)(7) to read as follows:

§ 679.84 Rockfish Program Recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(c) * * *

(7) *Pre-cruise meeting.* The Observer Program is notified by phone at 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification,

but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

* * * * *

■ 9. In § 679.93, revise paragraph (c)(7) to read as follows:

§ 679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *

(c) * * *

(7) *Pre-cruise meeting.* The Observer Program is notified by phone at 1 (907) 581–2060 (Dutch Harbor, AK) or 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

* * * * *

■ 10. In § 679.100, add paragraphs (b)(1)(v) and (b)(2)(i)(E) to read as follows:

§ 679.100 Applicability.

* * * * *

(b) * * *

(1) * * *

(v) The Observer Program is notified by phone at 1 (907) 581–2060 (Dutch Harbor, AK) or 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(2) * * *

(i) * * *

(E) The Observer Program is notified by phone at 1 (907) 581–2060 (Dutch Harbor, AK) or 1 (907) 481–1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

* * * * *

■ 11. In the table below, for each section indicated in the ''Location'' column, remove the phrase indicated in the ''Remove'' column and replace it with the phrase indicated in the ''Add'' column from wherever it appears in the ''Frequency'' column.

Location	Remove	Add	Frequency
§ 679.51(a)(2)(vi)(B)(*1*), (a)(2)(vi)(B)(*3*),(a)(2)(vi)(B)(*4*), (a)(2)(vi)(C), (a)(2)(vi)(D)(*1*), (a)(2)(vi)(D)(*2*), and (a)(2)(vi)(E)(*1*).	certified	endorsed	1
§ 679.51(c)(3), (a)(2), (b)(1)(iii)(A), (b)(2)(iv), (b)(3)(ii)(B), and (b)(8) introductory text.	Observer Program Office	Observer Program	1
§ 679.52(b)(11) introductory text	Observer Program Office	Observer Program	2
§ 679.52(b)(11)(i) introductory text, (b)(11)(ii), (b)(11)(iii), and (b)(11)(vi) introductory text.	Observer Program Office	Observer Program	1
§ 679.52(b)(11)(vii) introductory text	Observer Program Office	Observer Program	3
§ 679.52(b)(11)(viii) introductory text, (b)(11)(viii)(A), (b)(11)(ix), (b)(11)(x) introductory text, and (b)(12).	Observer Program Office	Observer Program	1
§ 679.53(a)(1)	Observer Program Office	Observer Program	1
§ 679.53(a)(5)(v) introductory text, and (a)(5)(v)(A)	''lead''	lead	1
§ 679.53(b)(2)(i)	Observer Program Office	Observer Program	1

[FR Doc. 2017–27935 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 82, No. 247

Wednesday, December 27, 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 Montana 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 Montana Advisory Committee (Committee) to the Commission will be held at 11:00 a.m. (Mountain Time) Friday, January 5, 2018. The purpose of the meeting is for the Committee to discuss preparations to hear testimony on border town discrimination.

DATES: The meeting will be held on, Friday, January 5, 2018 at 11:00 a.m. MT.

Public Call Information

Dial: 877–856–1956.
Conference ID: 5797044.

FOR FURTHER INFORMATION CONTACT: Angelica Trevino at *atrevino@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 877–856–1956, conference ID number: 5797044. 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 1–800–877–8339 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 (213) 894–0508, or emailed Angelica Trevino at *atrevino@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 *https://facadatabase.gov/committee/meetings.aspx?cid=259.*

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 website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Rollcall
II. Approval of minutes from December 14, 2017 meeting
III. Discussion of panelists and logistics for hearing testimony on border town discrimination
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstance of the committee needing to plan a briefing on border town discrimination.

Dated: December 21, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–27941 Filed 12–26–17; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the South Dakota Advisory Committee to the Commission will convene at 2:00 p.m. (CST) on Wednesday, January 10, 2018 and Wednesday, January 24, 2018, via teleconference. The purpose of the meeting on Jan 10 is review an advisory memorandum culminating from the subtle racism briefing in March 2017. The purpose of the meeting on January 24 is to vote on aforementioned advisory memorandum.

DATES: Wednesday, January 10, 2018, at 3:00 p.m. (CST) and Wednesday, January 24, 2018, at 3:00 p.m. (CST).

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number for both meetings: 1–888–267–6301, Conference ID: 8658344.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: David Mussatt, DFO, *dmussatt@usccr.gov,* 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–267–6301; Conference ID: 8658344. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS)

at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–888–267–6301; Conference ID: 8658344. Members of the public are invited to submit written comments; the comments must be received in the regional office by Friday, February 24, 2018. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://database.faca.gov/committee/meetings.aspx?cid=274* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Jan 10, 2018 Agenda

- Welcome and Roll-call
- Review Advisory Memorandum on Subtle Racism in South Dakota
- Public Comment
- Adjourn

Jan 24, 2018 Agenda

- Welcome and Roll-call
- Vote on Advisory Memorandum on Subtle Racism in South Dakota
- Public Comment
- Adjourn

Dated: December 21, 2017.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2017–27940 Filed 12–26–17; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–105–2017]

Approval of Subzone Status; R.W. Smith & Co/TriMark USA, LLC; Lewisville, Texas

On July 11, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Metroplex International Trade Development Corporation, grantee of FTZ 168, requesting subzone status subject to the existing activation limit of FTZ 168, on behalf of R.W. Smith & Co/TriMark USA, LLC, in Lewisville, Texas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (82 FR 32530, July 14, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board's Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 168C was approved on August 25, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 168's 1,909-acre activation limit.

Dated: December 20, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–27883 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–164–2017]

Approval of Subzone Status; North American Hoganas Company Johnstown, Hollsopple and St. Mary's, Pennsylvania

On October 19, 2017, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Pennsylvania Foreign Trade Zone Corporation, grantee of FTZ 295, requesting subzone status subject to the existing activation limit of FTZ 295, on behalf of North American Hoganas Company, in Johnstown, Hollsopple and St, Mary's, Pennsylvania.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (82 FR 49586–49587, October 26, 2017). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 295B was approved on December 19, 2017, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 295's 2,000-acre activation limit.

Dated: December 20, 2017.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2017–27881 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–56–2017]

Foreign-Trade Zone (FTZ) 122—Corpus Christi, Texas; Authorization of Production Activity, Voestalpine Texas, LLC, Subzone 122T (Hot Briquetted Iron and By-Products) Portland, Texas

On August 18, 2017, the Port of Corpus Christi Authority, grantee of FTZ 122, submitted a notification of proposed production activity to the FTZ Board on behalf of voestalpine Texas, LLC, within Subzone 122T, in Portland, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (82 FR 42647–42648, September 11, 2017). On December 18, 2017, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 21, 2017.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2017–27882 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–860]

100- to 150-Seat Large Civil Aircraft From Canada: Final Affirmative Countervailing Duty Determination

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

SUMMARY: The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of 100- to 150-seat large civil aircraft (aircraft) from Canada. The period of investigation (POI) is January 1, 2016, through December 31, 2016. For information on the estimated subsidy

rates, *see* the ''Final Determination'' section of this notice.

DATES: Applicable December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987, or (202) 482–4952, respectively.

SUPPLEMENTARY INFORMATION:

Background

The petitioner in this investigation is The Boeing Company. In addition to the Governments of Canada, Quebec and the United Kingdom, the mandatory respondent in this investigation is Bombardier Inc. (Bombardier).

The events that occurred since the Department published the *Preliminary Determination* [1] on October 2, 2017, are discussed in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] The Issues and Decision Memorandum also details the changes we made since the *Preliminary Determination* to the subsidy rates calculated for the mandatory respondent and all other producers/exporters. 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 *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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Scope of the Investigation

The scope of the investigation is aircraft from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues that parties raised, and to which we responded in the Issues and Decision Memorandum, is attached to this notice as Appendix II.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), during September and October 2017, the Department verified the subsidy information reported by the Governments of Canada, Quebec and the United Kingdom, and Bombardier. We used standard verification procedures, including an examination of relevant accounting records and original source documents provided by the respondents.[3]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, and minor corrections presented at verification, we made certain changes to Bombardier's subsidy rate calculations since the *Preliminary Determination.* As a result of these changes, the Department has also revised the ''all-others'' rate. For a discussion of these changes, *see* the Issues and Decision Memorandum and the Final Analysis Memorandum.[4]

Final Determination

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we calculated a rate for Bombardier (the only individually investigated exporter/producer of subject merchandise). Section 705(c)(5)(A)(i) of the Act states that, for companies not individually investigated, we will determine an ''all others'' rate equal to the weighted-average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. Where the rates for investigated companies are zero or *de minimis,* or based entirely on facts otherwise available, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an ''all others'' rate using ''any reasonable method.''

Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, in accordance with 705(c)(5)(A)(i) of the Act, the rate calculated for Bombardier is assigned as the all-others rate. We determine the total estimated net countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Bombardier, Inc.[5]	212.39
All-Others	212.39

Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 703(d) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of subject merchandise entered, or withdrawn from warehouse, on or after October 2, 2017, the date of publication of the *Preliminary Determination.*

International Trade Commission (ITC) Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our

[1] *See 100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 45807 (October 2, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum from James P. Maeder, Senior Director performing the duties of the Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to P. Lee Smith, Deputy Assistant Secretary for Policy and Negotiations performing the duties of Deputy Assistant Secretary for Enforcement and Compliance, entitled, ''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of 100- to 15-Seat Large Civil Aircraft from Canada,'' dated concurrently with this notice (Issues and Decision Memorandum).

[3] *See* Memorandum ''Verification of the Questionnaire Responses of Caisse de dépôt et placement du Québec (CDPQ, or Caisse),'' dated October 17, 2017; Memorandum ''Verification of the Questionnaire Responses of the Government of Canada (GOC),'' dated October 23, 2017; Memorandum ''Verification of the Questionnaire Responses of Bombardier, Inc. Pertaining to Short Brothers PLC,'' dated November 1, 2017; Memorandum ''Verification of the Questionnaire Responses of the Government of Québec (GOQ),'' dated November 3, 2017; Memorandum ''Verification of the Questionnaire Responses of the Government of the United Kingdom,'' dated November 3, 2017; and Memorandum ''Verification of the Questionnaire Responses of Bombardier, Inc. and the C Series Aircraft Limited Partnership,'' dated November 7, 2017.

[4] *See* Memorandum ''Countervailing Duty Investigation of 100- to 150-Seat Large Civil Aircraft from Canada: Final Determination Calculation Memorandum for Bombardier, Inc. and the C Series Aircraft Limited Partnership,'' dated concurrently with this notice (Final Analysis Memorandum).

[5] The Department found the following companies to be cross-owned with Bombardier: C Series Aircraft Limited Partnership; Short Brothers PLC (Shorts); and BT (Investment) UK Limited. Additionally, the Department found that Bombardier and Short Brothers PLC comprise an international consortium within the meaning of section 701(d) of the Act.

determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of aircraft from Canada no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, the Department will issue a CVD order directing CBP to assess, upon further instruction by the Department, countervailing duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to the APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/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 determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 18, 2017.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations performing the duties of Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

''Standard 100- to 150-seat two-class seating capacity'' refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. ''Pitch'' is the distance between a point on one seat and the same point on the seat in front of it.

''Standard 100- to 150-seat two-class seating capacity'' does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A ''minimum 2,900 nautical mile range'' means:

(i) Able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or

(ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
  Case History
  Period of Investigation
  Scope of the Investigation
I. Scope Comments
Subsidies Valuation Information
  A. Allocation Period
  B. Attribution of Subsidies
  C. Denominators
  D. Creditworthiness
  E. Equityworthiness
  F. Loan Benchmarks and Interest Rates
Analysis of Programs
  A. Programs Determined To Be Countervailable
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  Comment 1: Countervailability of the CDPQ Equity Infusion
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  Comment 3: Whether the Department Should Accept the Petitioner's Rebuttal Factual Information Regarding the CDPQ Verification Report
  Comment 4: Equityworthiness of IQ's Investment in CSALP
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  Comment 6: Whether the International Consortia Provision of the Act Applies to This Investigation
  Comment 7: Creditworthiness of Bombardier, Shorts, and the C Series Program
  Comment 8: Whether the U.K. Launch Aid Provides a Market Rate of Return
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  Comment 11: Capping the Launch Aid Benefit Amounts
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  Comment 18: Bombardier's Federal SR&ED Tax Credit
  Comment 19: Specificity and Benefits of U.K. Tax Credits
  Comment 20: Specificity of INI, Resource Efficiency, Innovate UK and ATI Grants
  Comment 21: Removal of the Nautical Mile Range Criterion
  Comment 22: Revision of the Seating Capacity
  Comment 23: Bombardier-Airbus Transaction
Conclusion

[FR Doc. 2017–27875 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meetings.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for public meetings of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meetings will be held on January 17, 2018, from 12:00 p.m. to 3:00 p.m., and January 18, 2018, from 9:00 a.m. to 4:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meetings on January 17 and 18 will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Research Library (Room 1894), Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services (OSCPBS), International Trade Administration. (Phone: (202) 482–1135 or Email: *richard.boll@trade.gov.*)

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness designed to support U.S. export growth and national economic competitiveness, encourage innovation, facilitate the movement of goods, and improve the competitiveness of U.S. supply chains for goods and services in the domestic and global economy; and provides advice to the Secretary on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *http://trade.gov/td/services/oscpb/supplychain/acscc/.*

Matters To Be Considered: Committee members are expected to continue to discuss the major competitiveness-related topics raised at the previous Committee meetings, including trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agendas on its website, *http://trade.gov/td/services/oscpb/supplychain/acscc/,* at least one week prior to the meeting.

The meetings will be open to the public and press on a first-come, first-served basis. Space is limited. The public meetings are physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Richard Boll, at (202) 482–1135 or *richard.boll@trade.gov* five (5) business days before the meeting.

Interested parties are invited to submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to the Office of Supply Chain, Professional & Business Services, 1401 Constitution Ave. NW, Room 11014, Washington, DC 20230, or email to *richard.boll@trade.gov.*

For consideration during the meetings, and to ensure transmission to the Committee prior to the meetings, comments must be received no later than 5:00 p.m. EST on January 10, 2018. Comments received after January 10, 2018, will be distributed to the Committee, but may not be considered at the meetings. The minutes of the meetings will be posted on the Committee website within 60 days of the meeting.

Dated: December 20, 2017.

Maureen Smith,

Director, Office of Supply Chain.

[FR Doc. 2017–27866 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–859]

100- to 150-Seat Large Civil Aircraft From Canada: Final Affirmative Determination of Sales at Less Than Fair Value

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

SUMMARY: The Department of Commerce (the Department) determines that 100- to 150-seat large civil aircraft (aircraft) from Canada are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is April 1, 2016, through March 31, 2017. The final estimated dumping margins of sales at LTFV are listed below in the section entitled ''Final Determination.''

DATES: Applicable December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Drew Jackson or Lilit Astvatsatrian, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4406 or (202) 482–6412, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 13, 2017, the Department published the *Preliminary Determination* in this LTFV the investigation, as provided by section 733 of the Tariff Act of 1930, as amended (Act), in which the Department found that aircraft from Canada were sold at LTFV.[1] A summary of the events that have occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2] 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 directly at *http://enforcement.trade.gov/frn/.*

[1] *See 100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 82 FR 47697 (October 13, 2017) (*Preliminary Determination*) and accompanying memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of 100- to 150-Seat Large Civil Aircraft from Canada,'' dated October 4, 2017 (Preliminary Decision Memorandum).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Determination in the Less Than Fair Value Investigation of 100- to 150-Seat Large Civil Aircraft from Canada'' dated concurrently with this notice (Issues and Decision Memorandum).

Scope of the Investigation

The products covered by this investigation are aircraft from Canada. For a complete description of the scope of the investigation, *see* Appendix I.

Scope Comments

Since issuing the *Preliminary Determination,* the Department received scope comments from interested parties, including scope comments in case briefs. Although certain parties requested that the Department modify the scope, the Department has not revised the scope of this investigation.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is attached to this notice at Appendix II.

As discussed in the Issues and Decision Memorandum, for the final determination the Department continues to base Bombardier Inc's estimated weighted-average dumping margin on facts otherwise available with an adverse inference (AFA), pursuant to sections 776(a)–(b) of the Act.[3]

All-Others Rate

As discussed in the *Preliminary Determination,* the Department based the ''All-Others'' rate on the dumping margin alleged in the Petition in accordance with section 735(c)(5)(B) of the Act.[4]

Final Determination

The Department determines that the following estimated weighted-average dumping margins exist:

Exporter/ producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Bombardier, Inc.	79.82	Not Applicable.
All-Others	79.82	Not Applicable.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of aircraft from Canada, as described in Appendix I of this notice, which were entered, or withdrawn from warehouse, for consumption on or after October 13, 2017, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act and 19 CFR 351.210(d), CBP shall require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed above will be equal to the company-specific estimated weighted-average dumping margin determined in this final determination; (2) if the exporter is not the respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin.

The Department normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) proceeding, when CVD provisional measures are in effect. However, because the Department did not make an affirmative determination for countervailable export subsidies in the companion CVD proceeding, the Department has not adjusted the estimated weighted-average dumping margin to offset countervailable export subsidies.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because the Department applied total AFA to the individually examined company, Bombardier Inc., in accordance with section 776 of the Act, and the applied AFA rate is based solely on the Petition, there are no calculations to disclose.

International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department will notify the U.S. International Trade Commission (ITC) of the its final determination of sales at LTFV. As the final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days of the final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports, or sales (or the likelihood of sales) for importation, of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

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

Notification to Interested Parties

This determination and notice are issued and published in accordance with sections 735(d) and 777(i) of the Act.

Dated: December 18, 2017.

P. Lee Smith,

Deputy Assistant Secretary for Policy and Negotiations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aircraft, regardless of seating configuration, that have a standard 100- to 150-seat two-class seating capacity and a minimum 2,900 nautical mile range, as these terms are defined below.

''Standard 100- to 150-seat two-class seating capacity'' refers to the capacity to accommodate 100 to 150 passengers, when eight passenger seats are configured for a 36-inch pitch, and the remaining passenger seats are configured for a 32-inch pitch. ''Pitch'' is the distance between a point on one seat and the same point on the seat in front of it.

''Standard 100- to 150-seat two-class seating capacity'' does not delineate the number of seats actually in a subject aircraft or the actual seating configuration of a subject aircraft. Thus, the number of seats actually in a subject aircraft may be below 100 or exceed 150.

A ''minimum 2,900 nautical mile range'' means:

[3] *See* Issues and Decision Memorandum.

[4] *See Preliminary Determination.*

(i) Able to transport between 100 and 150 passengers and their luggage on routes equal to or longer than 2,900 nautical miles; or

(ii) covered by a U.S. Federal Aviation Administration (FAA) type certificate or supplemental type certificate that also covers other aircraft with a minimum 2,900 nautical mile range.

The scope includes all aircraft covered by the description above, regardless of whether they enter the United States fully or partially assembled, and regardless of whether, at the time of entry into the United States, they are approved for use by the FAA.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8802.40.0040. The merchandise may alternatively be classifiable under HTSUS subheading 8802.40.0090. Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

Appendix II

List of Topics in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Discussion of the Issues:
Comment 1: Application of Adverse Facts Available
Comment 2: Whether Sales or Likely Sales Occurred During the POI
Comment 3: Adequacy of Petition
Comment 4: Revision of the Seating Capacity
Comment 5: Removal of Nautical Mile Range Criterion
Comment 6: Airbus-Bombardier Transaction
VI. Recommendation

[FR Doc. 2017–27874 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 171205999–7999–01]

National Cybersecurity Center of Excellence (NCCoE) Privileged Account Management for the Financial Services Sector

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Privileged Account Management for the Financial Services sector. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Financial Services sector program. Participation in the use case is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than January 26, 2018. When the use case has been completed, NIST will post a notice on the NCCoE Financial Services sector program website at *https://nccoe.nist.gov/projects/use-cases/privileged-account-management* announcing the completion of the use case and informing the public that it will no longer accept letters of interest for this use case.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *Financial_NCCoE@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *http://nccoe.nist.gov/node/138.*

FOR FURTHER INFORMATION CONTACT: James Banoczi via email to *Financial_NCCoE@nist.gov;* by telephone 301–975–0200; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Financial Services sector program are available at *https://nccoe.nist.gov/projects/use-cases/privileged-account-management.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the Privileged Account Management for the Financial Services Sector. The full use case can be viewed at: *https://nccoe.nist.gov/projects/use-cases/privileged-account-management.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the use case objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this use case. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Use Case Objective: Privileged Account Management (PAM) is a domain within Identity and Access Management (IdAM) that focuses on monitoring and controlling the use of privileged accounts. Privileged accounts are the IT system accounts that include local and domain administrative accounts, emergency accounts, application management, and service accounts. These powerful accounts provide elevated, often nonrestricted access to the underlying IT resources

and technology, which is why attackers or malicious insiders seek to gain access to them. Hence, it is critical to monitor, audit, control, and manage privileged account usage. Many organizations, including financial sector companies, face challenges managing privileged accounts. To address these challenges, the National Cybersecurity Center of Excellence (NCCoE) plans to demonstrate a PAM capability that effectively protects, monitors, and manages privileged account access. The project addresses privileged account life cycle management, authentication, authorization, auditing, and access controls.

A detailed description of the Privileged Account Management is available at: *https://nccoe.nist.gov/projects/use-cases/privileged-account-management*.

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the Privileged Account Management for the Financial Services sector use case (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

- Privileged account control
- Privileged account command filtering (allow or deny specific comments, such as disk formatting)
- Multifactor authentication capability
- Access logging/database system
- Password management
- Separation of duties management
- Support least privileged policies
- Password obfuscation (hiding passwords from PAM users)
- Temporary accounts
- Log management (analytics, storage, alerting)

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 3 of the Privileged Account Management for the Financial Services sector use case (for reference, please see the link in the PROCESS section above):

1. Is easy to use for both PAM system administrators and PAM system users.
2. Provides protection for data at rest and data in transit.
3. Is complementary to existing access management.
4. Integrates with directories.
5. Provides account use control (policy enforcement and decision making).
6. Provides system command control.
7. Counters password obfuscation (hidden passwords).
8. Supports password management (vaults, changes, storage).
9. Supports activity logging (textual and video).
10. Supports real time activity monitoring.
11. Includes support functions needed by the typical user.
12. Supports privilege escalation management.
13. Supports forensic investigation data management.
14. Provides support for workflow management.
15. Enables emergency (break glass) scenario support.
16. Includes policy management support.
17. Supports single sign-on.
18. Permits system and privileged account discovery.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components
2. Support for development and demonstration of the Privileged Account Management for the Financial Services sector use case in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: FIPS 140–2, FIPS 199, FIPS 200, FIPS 201, SP 800–53, and SP 800–63.

Additional details about the Privileged Account Management for the Financial Services sector use case are available at: *https://nccoe.nist.gov/projects/use-cases/privileged-account-management*.

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Privileged Account Management for the Financial Services sector capability. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations to the Financial Services community. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Privileged Account Management for the Financial Services sector use case. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Privileged Account Management for the Financial Services sector capability will be announced on the NCCoE website at least two weeks in advance at *http://nccoe.nist.gov/*. The expected outcome of the demonstration is to improve privileged account management across an entire Financial Services sector enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *http://nccoe.nist.gov/*.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27869 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 171108999–7999–01]

National Cybersecurity Center of Excellence (NCCoE) Transport Layer Security (TLS) Server Certificate Management Building Block

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Transport Layer

Security (TLS) Server Certificate Management Building Block. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the TLS Server Certificate Management Building Block. Participation in the building block is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than January 26, 2018. When the building block has been completed, NIST will post a notice on the NCCoE TLS Server Certificate Management Building Block website at: *https://nccoe.nist.gov/projects/building-blocks/tls-server-certificate-management* announcing the completion of the building block and informing the public that it will no longer accept letters of interest for this building block.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *tls-cert-mgmt-nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *http://nccoe.nist.gov/node/138*.

FOR FURTHER INFORMATION CONTACT: Tim Polk, William Haag, Jr. and Murugiah Souppaya via email to *tls-cert-mgmt-nccoe@nist.gov;* by telephone 301–975–0239; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the TLS Server Certificate Management Building Block are available at: *https://nccoe.nist.gov/projects/building-blocks/tls-server-certificate-management*.

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate security platforms for the TLS Server Certificate Management Building Block. The full building block can be viewed at: *https://nccoe.nist.gov/projects/building-blocks/tls-server-certificate-management*.

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the building block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the number of participants in each category necessary to carry out this building block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into a National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Building Block Objective: The building block objective is to improve the overall security of TLS certificates and private keys. A detailed description of the TLS Server Certificate Management Building Block is available at: *https://nccoe.nist.gov/projects/building-blocks/tls-server-certificate-management*.

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the TLS Server Certificate Management Building Block (for reference, please see the link in the Process section above) and include, but are not limited to:

- TLS servers in the Cloud.
- Public Certification Authority (CA).
- TLS Servers including webservers, application servers, or other services.
- TLS Load Balancers.
- DevOps Frameworks including application containers.
- Internal CAs.
- Certificate Management systems.
- Certificate Network Scanning Tools including vulnerability scanning.

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in Section 3 of the TLS Server Certificate Management Building Block (for reference, please see the link in the Process section above):

1. External Systems—The architecture will include the following components that typically reside outside the organizational firewall:

- TLS Servers in the Cloud Environment: The cloud environment will include multiple cloud instances acting as TLS servers. Certificates will be deployed and managed on these systems.
- Public CA: A publicly trusted CA will be used to issue one or more of the certificates used on TLS servers on the internal or external systems.

2. Internal Systems—The architecture will include several systems that are typically deployed within organizational network environments.

- TLS Servers: Multiple systems will be configured as TLS servers (*e.g.,* webserver, application server, or other service). Certificates will be deployed and managed on these systems.
- Load Balancer: A load balancer will act as a TLS server with a certificate and will facilitate the load balancing of traffic to the other TLS servers.
- DevOps Framework(s): One or more DevOps frameworks (*e.g.,* Docker) will be used to automate the management of cloud instances and the deployment of certificates on those instances.
- Internal CA: An internal CA will be used to issue certificates to some of the TLS servers.

• Certificate Manager: A certificate management system will be used to inventory and manage TLS server certificates deployed in the environment.

• Certificate Network Scanning Tool: A tool, such as a vulnerability scanning or other tool, will be used to facilitate the discovery of TLS server certificates via network scanning.

3. Stakeholders/Roles—Humans play an important part in the management of TLS server certificates in enterprises; therefore, the following roles will be represented:

• Line of Business/Application Owner: People in leadership positions who are responsible for the line of business or application and who will drive the need for certificates to be deployed.

• System Administrators: Responsible for managing TLS servers and ensuring that the load balancer will be represented.

• DevOps Developer: Responsible for programming/configuring and managing the DevOps framework.

• Approver: One or more stakeholders who will review and approve/reject certificate management operations.

• PKI Team: One or more individuals who will manage the certificate management system and public/internal CAs.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the TLS Server Certificate Management Building Block in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: OMB Circular A–130; FIPS 200; FIPS 140–2; NIST Special Publications 800–52, 800–57, 800–63–3, 800–77, 800–177; NIST Framework for Improving Critical Infrastructure Cybersecurity; and internet Engineering Task Force (IETF) Requests for Comments (RFCs) 2246, 4346, 5280 and 5246. The project will also be informed by two in-progress IETF standards draft-ietf-tls-tls13–21 The Transport Layer Security (TLS) Protocol Version 1.3 and draft-ietf-acme-acme-07 Automatic Certificate Management Environment (ACME).

Additional details about the TLS Server Certificate Management Building Block are available at: *https://nccoe.nist.gov/projects/building-blocks/tls-server-certificate-management*.

NIST cannot guarantee that all the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the TLS Server Certificate Management Building Block. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the TLS Server Certificate Management Building Block. These descriptions will be public information. Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the TLS Server Certificate Management Building Block capability will be announced on the NCCoE website at least two weeks in advance at *http://nccoe.nist.gov/*. The expected outcome of the demonstration is to improve security of TLS certificates and private keys within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *http://nccoe.nist.gov/*.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27893 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Localization and Tracking System Testing Consortium

AGENCY: National Institute of Standards and Technology

ACTION: Notice of Research Consortium Deadline Extension.

SUMMARY: On November 1, 2017, the National Institute of Standards and Technology (NIST) published a **Federal Register** notice regarding the establishment of the Localization and Tracking System (LTS) Testing Consortium, inviting organizations to participate in this Consortium. The purpose of this **Federal Register** notice is to extend the deadline for acceptance of letters of interest for participation in the LTS Testing Consortium, as indicated in the **DATES** section below, from December 15, 2017, to January 31, 2018.

DATES: Letters of interest for participation in this LTS Testing Consortium will be accepted until January 31, 2018. LTS testing is expected to occur in May or June 2018, with a pre-event workshop in March. Dates are subject to change, however.

ADDRESSES: Letters of interest and requests for additional information can be directed to the NIST LTS Testing Consortium Manager, Nader Moayeri, of the Advanced Network Technologies Division of NIST's Information Technology Laboratory. Nader Moayeri's contact information is NIST, 100 Bureau Drive, Stop 8920, Gaithersburg, MD 20899–8920, USA, email: *nader.moayeri@nist.gov,* and telephone: +1 301–975–3767.

FOR FURTHER INFORMATION CONTACT: For further information regarding the terms and conditions of NIST's CRADA, please contact Jeffrey DiVietro, CRADA and License Officer, NIST's Technology Partnerships Office, by mail to 100 Bureau Drive, Mail Stop 2200, Gaithersburg, Maryland 20899–2200, by email to *jeffrey.divietro@nist.gov,* or by telephone at +1 301–975–8779.

SUPPLEMENTARY INFORMATION:

On November 1, 2017, NIST published a **Federal Register** notice, 82 FR 50626, regarding the establishment of the LTS Testing Consortium and inviting organizations to participate in this Consortium. The purpose of this new **Federal Register** notice is to extend the deadline for acceptance of letters of interest for participation in the LTS Testing Consortium from December 15, 2017 to January 31, 2018. Participants in

the Consortium will be required to sign a Cooperative Research and Development Agreement (CRADA).

Authority: 15 U.S.C. 3710a.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27889 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures Interim Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The Interim Meeting of the National Conference on Weights and Measures (NCWM) will be held in St. Pete Beach, Florida, from Sunday, January 21, 2018, through Wednesday, January 24, 2018. This notice contains information about significant items on the NCWM Committee agendas but does not include all agenda items. As a result, the items are not consecutively numbered.

DATES: The meeting will be held from Sunday, January 21, 2018, through Wednesday, January 24, 2018, on Sunday through Tuesday, from 8:00 a.m. to 5:00 p.m. Eastern Time, and on Wednesday, from 9:00 a.m. to 12:00 p.m. Eastern Time. The meeting schedule is available at *www.ncwm.net*.

ADDRESSES: This meeting will be held at the Sirata Beach Resort and Conference Center, 5300 Gulf Boulevard, St. Pete Beach, Florida 33706.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Olson, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Dr. Olson at (301) 975–2956 or by email at *douglas.olson@nist.gov*. The meeting is open to the public, but a paid registration is required. Please see the NCWM website (*www.ncwm.net*) to view the meeting agendas, registration forms, and hotel reservation information.

SUPPLEMENTARY INFORMATION: Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals or other information contained in this notice or in the publications produced by the NCWM.

The NCWM is an organization of weights and measures officials of the states, counties, and cities of the United States, and representatives from the private sector and federal agencies. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to encourage cooperation between federal agencies and the states in the development of legal metrology requirements. NIST also promotes uniformity in state laws, regulations, and testing procedures used in the regulatory control of commercial weighing and measuring devices, packaged goods, and for other trade and commerce issues.

The NCWM has established multiple committees, task groups, and other working bodies to address legal metrology issues of interest to regulatory officials, industry, consumers, and others. The following are brief descriptions of some of the significant agenda items that will be considered by some of the NCWM Committees at the NCWM Interim Meeting. Comments will be taken on these and other issues during several public comment sessions. At this stage, the items are proposals. This meeting also includes work sessions in which the Committees may also accept comments, and where recommendations will be developed for consideration and possible adoption at the NCWM 2018 Annual Meeting. The Committees may withdraw or carryover items that need additional development.

These notices are intended to make interested parties aware of these development projects and to make them aware that reports on the status of the project will be given at the Interim Meeting. The notices are also presented to invite the participation of manufacturers, experts, consumers, users, and others who may be interested in these efforts.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of products or services sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of Legal Metrology and Engine Fuel Quality'' and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods.''

NCWM S&T Committee

The following items are proposals to amend NIST Handbook 44:

GEN—General Code

Item GEN–3 G–A.1. Commercial and Law-Enforcement Equipment and G–S.2. Facilitation of Fraud

These paragraphs currently specify that all weighing and measuring equipment and all mechanisms, software, and devices that are attached or used in conjunction therewith must be designed, constructed, assembled, and installed for use so that they do not facilitate the perpetration of fraud.

The S&T Committee will consider a proposal that would expand the application of paragraph G–A.1. Commercial and Law-Enforcement Equipment to include accessory equipment that can be used to defraud or collect unauthorized personal or financial information from a user (*e.g.,* credit/debit card ''skimmers). The proposal would also expand paragraph G–S.2. Facilitation of Fraud by requiring credit/debit card readers and other devices capable of customer initiated electronic financial transactions that are used in conjunction with weighing and measuring equipment to: (1) Be designed and constructed to restrict access and tampering by unauthorized persons; and (2) include an event counter that records the date and time of access.

SCL—Scales

Item SCL–6 S.1.2.2.3. Deactivation of a ''d'' Resolution

In 2017, the NCWM adopted a proposal requiring the value of the scale division (d) and verification scale interval (e) to be equal on Class I and Class II scales installed into commercial service as of January 1, 2020, when used in a direct sale application (*i.e.,* both parties of a weighing transaction are present when the quantity is determined). The S&T Committee will now consider a new proposal that, if adopted, would prohibit the deactivation of a ''d'' resolution on a Class I or II scale equipped with a value of ''d'' that differs from ''e'' if by such action it causes the scale to round improperly.

Item SCL–7 S.1.8.5. Recorded Representations, Point of Sale Systems

The S&T Committee will consider a proposal requiring additional sales information to be recorded by cash

registers interfaced with a weighing element for items that are weighed at a checkout stand. These systems are currently required to record the net weight, unit price, total price, and the product class, or in a system equipped with price look-up capability, the product name or code number. The change proposed would add ''tare weight'' to the list of sales information currently required. This change has been proposed as a nonretroactive requirement with an enforcement date of January 1, 2020, which means if the proposal is adopted, the additional information (*i.e.,* the tare weight) would be required to appear on the sales receipt for items weighed at a checkout stand (Point of Sale Systems) on equipment installed into commercial service as of January 1, 2020. This proposed change would not affect equipment already in service.

Item SCL–8 Sections Throughout the Code To Include Provisions for Commercial Weigh-In-Motion Vehicle Scale Systems

The S&T Committee will consider a proposal drafted by the NCWM's Weigh-In-Motion (WIM) Task Group (TG) to amend various sections of the NIST Handbook 44, Scales Code to address WIM vehicle scale systems used for commercial applications. The TG is made up of representatives of WIM equipment manufacturers, the U.S. Department of Transportation Federal Highway Administration, NIST Office of Weights and Measures, truck weight enforcement agencies, state weights and measures agencies, and others.

The WIM TG was first formed in February 2016 to consider a proposal to expand the NIST Handbook 44, Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code to also apply to legal-for-trade (commercial) and law enforcement applications. Members of the TG agreed during their first face-to-face meeting at the 2016 NCWM Annual Meeting to eliminate from the proposal any mention of a law enforcement application and focus solely on WIM vehicle scale systems intended for use in commercial applications. Members of the TG later agreed that commercial application WIM vehicle scale systems should be addressed by the Scales Code of NIST Handbook 44, rather than the Weigh-In-Motion Systems Used for Vehicle Enforcement Screening—Tentative Code.

The focus of the TG since July 2016 has been to concentrate on the development of test procedures that can be used to verify the accuracy of a WIM vehicle scale system given the different axle and tandem axle configurations of vehicles that will typically be weighed by a system and a proposed maintenance and acceptance tolerance of 0.2 percent on gross (total) vehicle weight. Members of the TG, to date, have been unsuccessful in agreeing on test procedures, and, as a result, the TG recently developed a ''White Paper'' during the summer of 2017, which it distributed to the different regional weights and measures associations requesting feedback from their fall 2017 conferences on some different draft test procedures being considered and some other concerns.

Liquefied Petroleum Gas and Anhydrous Ammonia Liquid-Measuring Devices

Item LPG–3 S.2.5. Zero-Setback Interlock, Stationary and Vehicle Mounted Meters, Electroinic

The S&T Committee will consider a proposal to add a new nonretroactive paragraph (effective date yet to be determined) that requires both stationary and vehicle mounted electronic LPG and anhydrous ammonia liquid-measuring devices be designed with an automatic interlock system that must engage following completion of a delivery. The proposal specifies that the interlock system must prevent a subsequent delivery from occurring until such time the indicating elements and recording elements, if so equipped, have been reset to zero. The proposal also requires the automatic interlock system to activate within three minutes of product flow cessation and that this ''timeout'' feature be sealable at the indicator.

Block 4, Items (B4) Terminology for Testing Standards and Block 5, Items (B5) Define ''Field Reference Standard''

Block 4 Items (B4) and Block 5 Items (B5) include all of the following items:

B4: Item SCL–4 N.2. Verification (Testing) Standards [Scales Code]

B4: Item ABW–1 N.2. Verification (Testing) Standards [Automatic Bulk Weighing Systems]

B4: Item AWS–1 N.1.3. Verification (Testing) Standards, N.3.1. Official Tests; UR.4. Testing Standards [Automatic Weighing Systems]

B4: Item CLM–1 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Cryogenic Liquid-Measuring Devices]

B4: Item CDL–1 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Carbon Dioxide Liquid-Measuring Devices]

B4: Item HGM–1 N.4.1. Master Meter (Transfer) Standard Test; T.4. Tolerance Application on Test Using Transfer Standard Test Method [Hyrdogen Gas-Metering Devices]

B4: Item GGM–1 Section 5.56.(a) [Grain-Moisture Meters ''a''] N.1.1. Air Oven Reference Method Transfer Standards, N.1.3. Meter to Like-Type Meer Method Transfer Standards, and Section 5.56.(b) [Grain-Moisture Meters ''b''] N.1.1. Transfer Standards, T. Tolerances

B4: Item LVS–1 N.2. Testing Standards [Electronic Livestock, Meat, and Poultry Evaluation Systems and/or Devices]

B4: Item OTH–2 Appendix A—Fundamental Considerations, 3.2. Tolerances for Standards; 3.3. Accuracy of Standards

B4: Item OTH–3 Appendix D—Definitions: fifth-wheel, official grain samples, transfer standard; standard, field

B5: Item CLM–2 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Cryogentic Liquid-Measuring Devices]

B5: Item CDL–2 N.3.2. Transfer Standard Test; T.3. On Tests Using Transfer Standards [Carbon Dioxide Liquid-Measuirng Devices]

B5: Item HGM–2 N.4.1. Master Meter (Transfer) Standard Test; T.4. Tolerance Application on Test Using Transfer Standard Test Method [Hydrogen Gas Metering-Systems]

B5: Item OTH–4 Appendix D—Definitions: field reference, standard meter; transfer standard

Block 4 and Block 5 items are considered related agenda items, and it

is likely the S&T Committee will take comments at the 2018 NCWM Interim Meeting on these two groups of items at the same time. These two groups of items are intended to: (1) Make clear the qualifying conditions in which a standard intended for use in testing (*i.e.,* evaluating the performance of) a commercial weighing or measuring device or system can be used to conduct an official test; and (2) harmonize the terminology used to identify a suitable test standard in each of the Handbook 44 codes.

NCWM L&R Committee

The following items are proposals to amend NIST Handbook 130 or NIST Handbook 133:

NIST Handbook 130—Section on Uniform Regulation for the Method of Sale of Commodities

Item MOS–10 Section 2.XX. Pet Treats or Chews

The L&R Committee is recommending adoption of a uniform method of sale for Pet Treats or Chews. If adopted, the proposal will require sellers to follow labeling guidance under the Food and Drug Administration and 21 CFR 501, which defines these types of products that shall be sold by weight. This will also allow consumers to make a value comparison for similar like items.

NIST Handbook 133—''Checking the Net Contents of Packaged Goods''

Item NET–4 Section 4.XX. Plywood and Wood-Based Structural Panels

Currently, there is no test procedure in NIST Handbook 133 for Plywood and Wood-Based Structural Panels. This item will provide a test procedure for these products that follows good measuring practices for products sold by linear measure. The L&R Committee is seeking further comment and is recommending this test procedure be considered for addition to the handbook.

Authority: 15 U.S.C. 272(b).

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27890 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 171115999–7999–01]

National Cybersecurity Center of Excellence (NCCoE) Mitigating Internet of Things (IoT) Based Distributed Denial of Service (DDoS) Building Block

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) invites organizations to provide products and technical expertise to support and demonstrate security platforms for the Mitigating IoT-Based DDoS Building Block. This notice is the initial step for the National Cybersecurity Center of Excellence (NCCoE) in collaborating with technology companies to address cybersecurity challenges identified under the Mitigating IoT-Based DDoS Building Block. Participation in the building block is open to all interested organizations.

DATES: Interested parties must contact NIST to request a letter of interest template to be completed and submitted to NIST. Letters of interest will be accepted on a first come, first served basis. Collaborative activities will commence as soon as enough completed and signed letters of interest have been returned to address all the necessary components and capabilities, but no earlier than January 26, 2018. When the building block has been completed, NIST will post a notice on the NCCoE Mitigating IoT-Based DDoS Building Block website at: *https://nccoe.nist.gov/projects/building-blocks/mitigating-iot-based-ddos* announcing the completion of the building block and informing the public that it will no longer accept letters of interest for this building block.

ADDRESSES: The NCCoE is located at 9700 Great Seneca Highway, Rockville, MD 20850. Letters of interest must be submitted to *mitigating-iot-based-ddos-nccoe@nist.gov* or via hardcopy to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Organizations whose letters of interest are accepted in accordance with the process set forth in the **SUPPLEMENTARY INFORMATION** section of this notice will be asked to sign a consortium Cooperative Research and Development Agreement (CRADA) with NIST. An NCCoE consortium CRADA template can be found at: *http://nccoe.nist.gov/node/138.*

FOR FURTHER INFORMATION CONTACT: Tim Polk, William Haag and Murugiah Souppaya via email to *mitigating-iot-based-ddos-nccoe@nist.gov;* by telephone 301–975–0239; or by mail to National Institute of Standards and Technology, NCCoE; 9700 Great Seneca Highway, Rockville, MD 20850. Additional details about the Mitigating IoT-Based DDoS Building Block are available at: *https://nccoe.nist.gov/projects/building-blocks/mitigating-iot-based-ddos.*

SUPPLEMENTARY INFORMATION:

Background: The NCCoE, part of NIST, is a public-private collaboration for accelerating the widespread adoption of integrated cybersecurity tools and technologies. The NCCoE brings together experts from industry, government, and academia under one roof to develop practical, interoperable cybersecurity approaches that address the real-world needs of complex Information Technology (IT) systems. By accelerating dissemination and use of these integrated tools and technologies for protecting IT assets, the NCCoE will enhance trust in U.S. IT communications, data, and storage systems; reduce risk for companies and individuals using IT systems; and encourage development of innovative, job-creating cybersecurity products and services.

Process: NIST is soliciting responses from all sources of relevant security capabilities (see below) to enter into a Cooperative Research and Development Agreement (CRADA) to provide products and technical expertise to support and demonstrate platforms for the Mitigating IoT-Based DDoS Building Block. The full building block can be viewed at: *https://nccoe.nist.gov/projects/building-blocks/mitigating-iot-based-ddos.*

Interested parties should contact NIST using the information provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. NIST will then provide each interested party with a letter of interest template, which the party must complete, certify that it is accurate, and submit to NIST. NIST will contact interested parties if there are questions regarding the responsiveness of the letters of interest to the building block objective or requirements identified below. NIST will select participants who have submitted complete letters of interest on a first come, first served basis within each category of product components or capabilities listed below up to the

number of participants in each category necessary to carry out this building block. However, there may be continuing opportunity to participate even after initial activity commences. Selected participants will be required to enter into a consortium CRADA with NIST (for reference, see **ADDRESSES** section above). NIST published a notice in the **Federal Register** on October 19, 2012 (77 FR 64314) inviting U.S. companies to enter into a National Cybersecurity Excellence Partnerships (NCEPs) in furtherance of the NCCoE. For this demonstration project, NCEP partners will not be given priority for participation.

Building Block Objective: The building block objective is to improve the overall security of IoT devices. A detailed description of the Mitigating IoT-Based DDoS Building Block is available at: *https://nccoe.nist.gov/projects/building-blocks/mitigating-iot-based-ddos.*

Requirements: Each responding organization's letter of interest should identify which security platform component(s) or capability(ies) it is offering. Letters of interest should not include company proprietary information, and all components and capabilities must be commercially available. Components are listed in section 3 of the Mitigating IoT-Based DDoS Building Block (for reference, please see the link in the PROCESS section above) and include, but are not limited to:

- Network gateways/routers supporting wired and wireless network access
- Personal computing devices (personal computers, tablets, and phones)
- Business computing devices
- Thermostats and temperature sensors in different rooms
- Home appliances (refrigerators, washers and dryers, stoves and microwaves)
- Heating ventilation and air conditioning (HVAC) systems
- Lighting
- Digital video recorders (DVR)
- Closed-circuit TV cameras and Webcams
- Baby monitors
- Smart TVs
- Set top boxes
- Security cameras
- Point of sale devices
- Printer/scanners/fax machines
- Home assistants (*e.g.,* Alexa)

Each responding organization's letter of interest should identify how their products address one or more of the following desired solution characteristics in section 3 of the Mitigating IoT-Based DDoS Building Block (for reference, please see the link in the PROCESS section above):

- IoT device controllers are capable of address assignment and packet filtering based on routes that can be integrated into home or enterprise networks;
- Manufacturer Usage Description (MUD) controllers are able to retrieve MUD files from websites using the HTTPS protocol;
- MUD controllers are able to provide route filtering commands for enforcement by routers;
- MUD servers at participating websites are capable of storing and retrieving MUD files and providing device communications requirements to MUD controllers;
- IoT devices are capable of inserting the MUD extension into address requests when they are powered up;
- IoT devices are capable of contacting update servers to download and apply security patches;
- Routers and switches are capable of receiving threat feeds from cloud-based or infrastructure services like DNS that includes type, severity, and mitigation for threats; and
- Any cryptographic modules employed conform to FIPS 140–2.

Responding organizations need to understand and, in their letters of interest, commit to provide:

1. Access for all participants' project teams to component interfaces and the organization's experts necessary to make functional connections among security platform components.

2. Support for development and demonstration of the Mitigating IoT-Based DDoS Building Block in NCCoE facilities which will be conducted in a manner consistent with the following standards and guidance: OMB Circular A–130; NIST Special Publications 800–40; 800–52; 800–57; 800–63; 800–147; 800–193; NISTIR 7823; NIST Framework for Improving Critical Infrastructure Cybersecurity; Ongoing Manufacturer Usage Description (MUD) Standards activities including Manufacturer Usage Description Specification, MUD Lifecyle: A Network Operator's Perspective, and MUD Lifecyle: A Manufacturer's Perspective; and RFCs 2131, 2818, 3315, 5280, 5652, and 6020.

Additional details about the Mitigating IoT-Based DDoS Building Block are available at: *https://nccoe.nist.gov/projects/building-blocks/mitigating-iot-based-ddos.*

NIST cannot guarantee that all of the products proposed by respondents will be used in the demonstration. Each prospective participant will be expected to work collaboratively with NIST staff and other project participants under the terms of the consortium CRADA in the development of the Mitigating IoT-Based DDoS Building Block. Prospective participants' contribution to the collaborative effort will include assistance in establishing the necessary interface functionality, connection and set-up capabilities and procedures, demonstration harnesses, environmental and safety conditions for use, integrated platform user instructions, and demonstration plans and scripts necessary to demonstrate the desired capabilities. Each participant will train NIST personnel, as necessary, to operate its product in capability demonstrations. Following successful demonstrations, NIST will publish a description of the security platform and its performance characteristics sufficient to permit other organizations to develop and deploy security platforms that meet the security objectives of the Mitigating IoT-Based DDoS Building Block. These descriptions will be public information.

Under the terms of the consortium CRADA, NIST will support development of interfaces among participants' products by providing IT infrastructure, laboratory facilities, office facilities, collaboration facilities, and staff support to component composition, security platform documentation, and demonstration activities.

The dates of the demonstration of the Mitigating IoT-Based DDoS Building Block capability will be announced on the NCCoE website at least two weeks in advance at *http://nccoe.nist.gov/.* The expected outcome of the demonstration is to improve security of IoT devices within the enterprise. Participating organizations will gain from the knowledge that their products are interoperable with other participants' offerings.

For additional information on the NCCoE governance, business processes, and NCCoE operational structure, visit the NCCoE website *http://nccoe.nist.gov/.*

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27870 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

NIST Special Publication 2000–02: Conformity Assessment Considerations for Federal Agencies

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on the draft Special Publication (SP) 2000–02 *Conformity Assessment Considerations for Federal Agencies* (*Considerations*) document. The draft *Considerations* document is posted on the NIST website at: *https://www.nist.gov/standardsgov/special-publications-conformity-assessment*.

DATES: NIST requests comments on the draft *Considerations* document. Comments must be received by February 26, 2018.

ADDRESSES: Comments may be submitted to NIST in the following ways:

• *Electronic comments:* Online submissions in electronic form may be sent to *sp2000-02@nist.gov* in any of the following formats: HTML; ASCII; Word; RTF; or PDF. Please include your name, organization's name (if any), and cite ''Comments on Draft Conformity Assessment Considerations for Federal Agencies'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. The proposed update to the *Considerations* document is available for review at *https://www.nist.gov/standardsgov/special-publications-conformity-assessment*. Comments submitted electronically, including attachments, will be posted to the NIST website unchanged.

• Written comments may be submitted by mail to Lisa Carnahan, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft *Considerations* document or this Request for Comments should be directed to Lisa Carnahan by email at *SP2000-02@nist.gov,* or by phone at 301–975–3362.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) recently revised Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998.[1] NIST is revising its conformity assessment materials to align with the updated Circular.

On February 28, 2017, NIST hosted a workshop to engage the conformity assessment community in the development of its conformity assessment materials. Updates to the conformity assessment materials reflect growth and evolution in the conformity assessment community as well as updates to the guidance in the revised OMB Circular A–119.

Taking into consideration the feedback received from workshop participants as well as input received from conformity assessment stakeholders in both the public and private sectors, NIST has developed a draft of the following materials:

• Conformity Assessment Considerations for Federal Agencies
• ABC's of Conformity Assessment

The purpose of the draft *Considerations* document is to provide the basics on conformity assessment concepts and activities as well as provide considerations to those who use, rely on, develop, manage or operate conformity assessment programs within federal departments and agencies. The information contained within the draft *Considerations* document seeks to help federal agencies develop, operate, and use conformity assessment programs in order to provide confidence that requirements in regulation, federal procurement or federal agency programs are met and reduce conformity assessment redundancy and burden on regulated entities.

Request for Public Comments: Persons interested in commenting on the draft *Considerations* document can submit their comments by following the instructions in the **DATES** and **ADDRESSES** sections.

All comments will be made publicly available; therefore, personal, proprietary or confidential information should not be included. When submitting comments, inclusion of name, affiliation, and contact information (phone number and/or email address in case of questions about the comment) are optional. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

Kevin Kimball,
NIST Chief of Staff.

[FR Doc. 2017–27892 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

[1] See ''*OMB Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,*'' which was published on January 27, 2016 and may be found at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/revised_circular_a-119_as_of_1_22.pdf.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

NIST Special Publication 2000–01: ABC's of Conformity Assessment

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on the draft Special Publication (SP) 2000–01 *ABC's of Conformity Assessment* document. The draft *ABC's of Conformity Assessment* document is posted on the NIST website at: *https://www.nist.gov/standardsgov/special-publications-conformity-assessment*.

DATES: NIST requests comments on the draft *ABC's of Conformity Assessment* document. Comments must be received by February 26, 2018.

ADDRESSES: Comments may be submitted to NIST in the following ways:

• *Electronic comments:* Online submissions in electronic form may be sent to *sp2000-01@nist.gov* in any of the following formats: HTML; ASCII; Word; RTF; or PDF. Please include your name, organization's name (if any), and cite ''Comments on Draft *ABC's of Conformity Assessment*'' in all correspondence. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. The proposed update to the *ABC's of Conformity Assessment* document is available for review at *https://www.nist.gov/standardsgov/special-publications-conformity-assessment*. Comments submitted electronically, including attachments, will be posted to the NIST website unchanged.

• Written comments may be submitted by mail to Amy Phelps, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2100, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Questions regarding the draft *ABC's of Conformity Assessment* document or this Request for Comments should be directed to Amy Phelps, by email at *SP2000-01@nist.gov,* or by phone at 301–975–4143.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) recently revised Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' in light of changes that have taken place in the world of regulation, standards, and conformity assessment since the Circular was last revised in 1998.[1] NIST is revising its conformity assessment materials to align with the updated Circular.

On February 28, 2017, NIST hosted a workshop to engage the conformity assessment community in the development of its conformity assessment materials. Updates to the conformity assessment materials reflect growth and evolution in the conformity assessment community as well as updates to the guidance in the revised OMB Circular A–119.

Taking into consideration the feedback received from workshop participants as well as input received from conformity assessment stakeholders in both the public and private sectors, NIST has developed a draft of the following materials:

- Conformity Assessment Considerations for Federal Agencies
- ABC's of Conformity Assessment

The purpose of the draft *ABC's of Conformity Assessment* document is to introduce conformity assessment concepts and information on how various conformity assessment activities are interlinked as well as the impact on the marketplace. The document highlights some of the important aspects of conformity assessment and serves as background for using available conformity assessment resources. The draft *ABCs of Conformity Assessment* document discusses the use of standards in conformity assessment activities; describes the types of conformity assessment activities; and identifies some of the interrelationships among conformity assessment activities.

Request for Public Comments: Persons interested in commenting on the draft *ABCs of Conformity Assessment* document can submit their comments by following the instructions in the **DATES** and **ADDRESSES** sections.

All comments will be made publicly available; therefore, personal, proprietary or confidential information should not be included. When submitting comments, inclusion of name, affiliation, and contact information (phone number and/or email address in case of questions about the comment) are optional. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials.

Kevin Kimball,

NIST Chief of Staff.

[FR Doc. 2017–27891 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–13–P

[1] See ''*OMB Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,*'' which was published on January 27, 2016 and may be found at: *https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/revised_circular_a-119_as_of_1_22.pdf*.

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: Alaska Region Permit Family of Forms.

OMB Control Number: 0648–0206.

Form Number(s): None.

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

Number of Respondents: 531.

Average Hours per Response: Federal fisheries permit, 21 minutes; federal processor permit, 25 minutes; exempted fishing permit, 100 hours.

Burden Hours: 590.

Needs and Uses: For a person to participate in Federal fisheries, the National Marine Fisheries Service (NMFS) requires a Federal Fisheries Permit (FFP), a Federal Processor Permit (FPP), or an Exempted Fishing Permit (EFP). NMFS Alaska Region created a set of commercial fishing permits that operators of vessels and managers of processors must have on board or on site when fishing, receiving, buying, or processing groundfish and non-groundfish species. The permit information provides harvest gear types; descriptions of vessels, shoreside processors, and stationary floating processors; and expected fishery activity levels. These permits provide NMFS with a way to monitor participation in Federal fisheries.

Section 303(b)(1) of the Magnuson-Stevens Act specifically recognizes the need for permit issuance. The requirement of a permit for marine resource users is one of the regulatory steps taken to carry out conservation and management objectives. The issuance of a permit is an essential ingredient in the management of fishery resources needed for identification of the participants, expected activity levels, and for regulatory compliance (*e.g.,* withholding of permit issuance pending collection of unpaid penalties).

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

Frequency: Every three years, annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

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: December 21, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–27929 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

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

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Non-commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery.

OMB Control Number: 0648–0577.

Form Number(s): None.

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

Number of Respondents: 100.

Average Hours per Response: 10 minutes per paper permit application; 5 minutes per online permit application; 2 hours per appeal of denied permit; 20 minutes per trip report logsheet.

Burden Hours: 102.

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

Regulations at 50 CFR 665, Subpart C, require that all participants (including vessel owners, operators, and crew) in the boat-based non-commercial bottomfish fishery in the Exclusive Economic Zone around the main Hawaiian Islands obtain a federal bottomfish permit. This collection of information is needed for permit issuance, to identify actual or potential participants in the fishery, determine qualifications for permits, and to help measure the impacts of management controls on the participants in the fishery. The permit program is also an effective tool in the enforcement of fishery regulations and serves as a link between the National Marine Fisheries Service (NMFS) and fishermen.

Regulations at 50 CFR 665 require that all vessel owners or operators in this fishery submit a completed logbook form at the completion of each fishing trip. These logbook reporting sheets document the species and amount of species caught during the trip. The reporting requirements are crucial to ensure that NMFS and the Western Pacific Fishery Management Council (Council) will be able to monitor the fishery and have fishery-dependent information to develop an Annual Catch Limit for the fishery, evaluate the effectiveness of management measures, determine whether changes in fishery management programs are necessary, and estimate the impacts and implications of alternative management measures.

Affected Public: Individuals or households.

Frequency: Annually and at the end of each fishing trip.

Respondent's Obligation: Mandatory.

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

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

Dated: December 21, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–27927 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF922

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 51 assessment webinar VII for Gulf of Mexico gray snapper.

SUMMARY: The SEDAR 51 assessment process of Gulf of Mexico gray snapper will consist of a Data Workshop, a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 51 assessment webinar VII will be held January 17, 2018, from 1 p.m. to 3 p.m. Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the assessment webinar VII are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 20, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–27821 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF918

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2018 ocean salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2018 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management alternatives must be received by 5 p.m. Pacific Time, March 30, 2018.

ADDRESSES: Documents will be available from, and written comments should be sent to Mr. Phil Anderson, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via email at *PFMC.comments@noaa.gov.* or through the internet at the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see **SUPPLEMENTARY INFORMATION.**

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION:

Tentative Schedule for Document Completion and Availability

February 16, 2018: ''Review of 2017 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 2, 2018: ''Preseason Report I—Stock Abundance Analysis and Environmental Assessment Part 1 for 2018 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

March 22, 2018: ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2018 Ocean Salmon Fishery Regulations'' and public hearing schedule is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 20, 2018: ''Preseason Report III—Council-Adopted Management Measures and Environmental Assessment Part 3 for 2018 Ocean Salmon Fishery Regulations'' scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.*

May 1, 2018: Federal regulations for 2018 ocean salmon regulations will be published in the **Federal Register** and implemented.

Meetings and Hearings

January 16–19, 2018: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2017 Ocean Salmon Fisheries, Stock Assessment and Fishery Evaluation Document for the Pacific Coast Salmon Fishery Management Plan'' and to consider any other estimation or methodology issues pertinent to the 2018 ocean salmon fisheries.

February 20–23, 2018: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2018 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2018 ocean salmon fisheries.

March 26–27, 2018: Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 26, 2018: Chateau Westport, Fremont Room, 710 West Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 26, 2018: Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267–4141.

March 27, 2018: Laurel Inn & Conference Center, 801 West Laurel Drive, Salinas, CA 93906, telephone: (831) 449–2474.

Although nonemergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

Special Accommodations

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 10 days prior to the meeting date.

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

Dated: December 20, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–27820 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Region Vessel and Gear Identification Requirements.

OMB Control Number: 0648–0360.

Form Number(s): None.

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

Number of Respondents: 339.

Average Hours per Response: Vessel-marking for all but purse seine vessels: 45 minutes; purse seine vessels, 75 minutes; gear-marking, 5 minutes per piece of gear.

Burden Hours: 2,348.

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

Regulations at 50 CFR 665.16 require that all U.S. vessels with Federal permits fishing for Western Pacific fishery management unit species display identification markings on the vessel and gear, as specified in 50 CFR 665 and 50 CFR 300. Vessels registered for use with a permit issued under Subparts B through E and Subparts G through I of 50 CFR 665, must display the vessel's official number on both sides of the deckhouse or hull, and on an appropriate weather deck. Vessels fishing for highly migratory species in the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area must comply with the regulations at 50 CFR 300.217. These regulations require that vessels must display their international radio call sign on both sides of the deckhouse or hull, and on an appropriate weather deck, unless specifically exempted. Regulations at 50 CFR 300.35 require that vessels fishing under the South Pacific Tuna Treaty must display their international radio call sign on the hull, the deck, and on the sides of auxiliary equipment such as skiffs and helicopters. The numbers must be a specific size at specified locations. The display of the identifying numbers aids in fishery law enforcement.

Western Pacific fisheries regulations at 50 CFR 665.128, 665.228, 665.428, 665.628, and 665.804 require that certain fishing gear must be marked. In the pelagic longline fisheries, the vessel operator must ensure that the official number of the vessel is affixed to every longline buoy and float. In the coral reef ecosystem fisheries, the vessel number must be affixed to all fish and crab traps. The marking of gear links fishing or other activity to the vessel, aids law enforcement, and is valuable in actions concerning the damage, loss of gear, and civil proceedings.

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

Frequency: Annually or on occasion.

Respondent's Obligation: Mandatory.

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

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

Dated: December 21, 2017.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2017–27928 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XF923

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a meeting, which is open to the public.

DATES: The meeting will be held Monday, January 22, 2018 to Wednesday, January 24, 2018, and will start at 8:30 a.m. and continue until business is concluded on each day.

ADDRESSES: The meeting will be held at the Glenn M. Anderson Federal Building, 501 W. Ocean Blvd., Long Beach, CA 90802, on the Third Floor in Room 3400. Visitors need to present photo ID and pass through electronic security equipment to enter the building. There is no visitor parking available in the building for the general public. Metered street parking is nearby. Commercial parking lots are within walking distance to the building.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of the HMSMT meeting is to finalize a preliminary analysis of the range of alternatives for authorizing a fishery using deep-set buoy gear adopted by the Pacific Council in September 2017. The HMSMT will provide the draft analysis at the Pacific Council's March 2018 meeting. At that meeting the Council is scheduled to further refine the alternatives as needed and adopt a preliminary preferred alternative, if possible. The HMSMT may also discuss updates to the HMS Stock Assessment and Fishery Evaluation document and HMS-related matters scheduled on future Council agendas.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (503) 820–2411 at least 10 business days prior to the meeting date.

Dated: December 20, 2017.

Tracey L. Thompson,

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

[FR Doc. 2017–27822 Filed 12–26–17; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2017–0040]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information

collection, titled, ''State Official Notification Rule.''

DATES: Written comments are encouraged and must be received on or before February 26, 2018 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

SUPPLEMENTARY INFORMATION:

Title of Collection: State Official Notification Rule—12 CFR 1320.

OMB Control Number: 3170–0019.

Type of Review: Extension without change of an existing information collection.

Affected Public: State and local Governments.

Estimated Number of Respondents: 6.

Estimated Total Annual Burden Hours: 3.

Abstract: Section 1042 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5552 (''Act''), gave authority to certain State and US territorial officials to enforce the Act and regulations prescribed thereunder. Section 1042 also requires that the Bureau issue a rule establishing how states are to provide notice to the Bureau before taking action to enforce the Act (or, in emergency situations, immediately after taking such an action). In accordance with the requirements of the Act, the Bureau issued a final rule (12 CFR 1082.1) establishing that notice should be provided at least 10 days before the filing of an action, with certain exceptions, and setting forth a limited set of information which is to be provided with the notice. This is a routine request for OMB to renew its approval of the collections of information currently approved under this OMB control number. The Bureau is not proposing any new or revised collections of information pursuant to this request.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 20, 2017.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2017–27872 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

US Air Force Scientific Advisory Board Notice of Meeting

AGENCY: United States Air Force Scientific Advisory Board, Department of the Air Force.

ACTION: Federal Register Meeting Notice.

SUMMARY: The Air Force Department is amending its prior notice of the meeting of the Air Force Scientific Advisory Barod that published in the **Federal Register** on November 27, 2017.

FOR FURTHER INFORMATION CONTACT: The Scientific Advisory Board meeting organizer, Lt Col Mike Rigoni at *michael.j.rigoni.mil@mail.mil* or 703–695–4297, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762.

SUPPLEMENTARY INFORMATION: The Air Force is amending the meeting notice of the Air Force Scientific Advisory Board that published on Monday, November 27, 2017, 82 FR 56009. Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board Winter Board meeting will take place on 23 January 2018 at the Beckman Center of National Academies of Science and Engineering, located at 100 Academy Drive, Irvine, California 92617.

The purpose of this United States Air Force Scientific Advisory Board quarterly meeting is to provide dedicated time for members to begin collaboration on research and formally commence the United States Air Force Scientific Advisory Board's two FY18 Secretary of the Air Force directed studies: (1) Technologies for Enabling Resilient Command and Control, and (2) Maintaining Technology Superiority for the USAF. At this meeting the United States Air Force Scientific Advisory Board will receive presentations covering; the status of FY18 new board members and consultants, the status of FY17 SAB study reports; the FY18 board meeting schedule; the outcome of recently completed United States Air Force Scientific Advisory Board Air Force Research Laboratory science and technology reviews; Multi-Domain Command & Control; technology development initiatives related to Air, Space, and cyberspace in the 2030 timeframe; the status of major acquisition programs; and the monetary balance between today's needs and investing in tomorrow's challenges—to prepare for full-spectrum operations.

The meeting will occur from 8:00 a.m.–4:30 p.m. on Tuesday, 23 January 2018. The session that will be open to the *general public* will be held from 8:00 a.m. to 9:00 a.m. on 23 January 2018.

In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, The Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires several sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will discuss information and matters covered

by Section 552b of Title 5, United States Code, subsection (c), subparagraph (1).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, using the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting start date. The Designated Federal Officer will forward all requests to the Chairman of the United States Air Force Scientific Advisory Board for review and ensure a formal reply is provided before 23 January 2018.

Henry Williams,

Acting Air Force Federal Register Officer.

[FR Doc. 2017–27598 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2017–OS–0042]

Submission for OMB Review; Comment Request

AGENCY: Defense Finance and Accounting Service (DFAS), DoD.

ACTION: 30-Day information collection 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 January 26, 2018

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Dependency Statements; Parent (DD Form 137–3), Incapacitated Child over 21 (DD Form 137–5), Full Time Student 21–22 Years of Age (DD Form 136–6), and Ward of a Court (DD Form 137–7); OMB Control Number 0730–0014.

Type of Request: Reinstatement.

Number of Respondents: 14,975.

Responses per Respondent: 1.

Annual Responses: 14,975.

Average Burden per Response: 57 minutes.

Annual Burden Hours: 14,190.75.

Needs and Uses: The information collection requirement is necessary to certify dependency or obtain information to determine entitlement to basic allowance for housing (BAH) with dependent rate, travel allowance, or uniformed services identification and privilege card. Information regarding a parent, an incapacitated child over age 21, a student age 21–22, or a ward of a court is provided by the military member. A medical doctor or psychiatrist, college administrator, or a dependent's employer may need to provide information for claims. Pursuant to 37 U.S.C. 401, 403, 406, and 10 U.S.C. 1072 and 1076, the member must provide more than one half of the claimed dependent's monthly expenses. DoDFMR 7000.14–R, Vol 7A, defines dependency and directs that dependency be proven. Dependency claim examiners use the information from these forms to determine the degree of benefits. The requirement to provide the information decreased the possibility of monetary allowances being approved on behalf of ineligible dependents.

Affected Public: Individuals or Households.

Frequency: Required to Obtain or Retain Benefits.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

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: December 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2017–27837 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 17–68]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

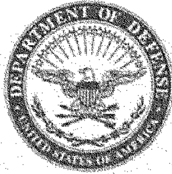
FOR FURTHER INFORMATION CONTACT: Pamela Young, (703) 697–9107, *pamela.a.young14.civ@mail.mil* or Kathy Valadez, (703) 697–9217, *kathy.a.valadez.civ@mail.mil;* DSCA/DSA–RAN.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 17–68 with attached Policy Justification.

Dated: December 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.



DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 19 2017

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 17-68, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 17–68

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Poland

(ii) *Total Estimated Value:*

Major Defense Equipment *	$0 million
Other	200 million
Total	200 million

(iii) *Description and Quantity or Quantities of Articles or Services Under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE:

Follow-on support and sustainment services for Poland's F–16 fleet to include aircraft maintenance; system and software overhauls and upgrades; engine support; spare and repair parts; support and test equipment; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical support; and other related elements of program support.

(iv) *Military Department:* Air Force (PL–D–QAW)

(v) *Prior Related Cases, if any:* PL–D–QAO, PL–D–QAP, and PL–D–QAI

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* December 19, 2017

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—F–16 Follow-on Support

The Government of Poland has requested to purchase follow-on support and sustainment services for its F–16 fleet to include aircraft maintenance; system and overhauls and upgrades; engine support; spare and repair parts; support and test equipment; publications and technical documentation; U.S. Government and contractor engineering, technical, and logistical support; and other related elements of program support. The estimated cost is $200 million.

This proposed sale will support the foreign policy and national security objectives of the United States by helping to improve the security of a NATO ally. Poland continues to be an important force for political stability and economic progress in Central Europe.

This potential sale will continue the sustainment of Poland's F–16 capability. Poland will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

Contracts will be awarded when necessary to provide the defense articles ordered if items ordered are not available from U.S. stock or are to be purchased further in the future. The potential prime contractors will be Harris Corporation of Melbourne, Florida; Boeing of Arlington, Virginia; UTC Aerospace Systems, ISR Systems of Charlotte, North Carolina; Lockheed Martin Missile and Fire Control of Orlando, Florida; Cubic Defense Applications of San Diego, California; L–3 Communications of New York, New York; Lockheed Martin Aero of Fort Worth, Texas; Exelis Electronic of Clifton, New Jersey; Northrop Grumman Corporation of Falls Church, Virginia; Raytheon of Waltham, Massachusetts; Honeywell of Morris Plains, New Jersey; Booz Allen Hamilton of McLean, Virginia; and BAE Systems of Arlington, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Poland.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2017–27841 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2017–HA–0067]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 26, 2018.

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

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

Instructions: All submissions received must include the agency name, docket number 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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Healthcare Management Systems Modernization (DHMSM), 1501 Wilson Blvd., Room 810, Arlington VA 22209, or call (703) 588–5646.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: MHS GENESIS; OMB Control Number; 0720–XXXX.

Needs and Uses: The information collection requirement is necessary to provide and document medical care; determine eligibility for benefits and entitlements; adjudicate claims; determine whether a third party is responsible for the cost of MHS provided healthcare and recover that

cost; and evaluate fitness for duty and medical concerns which may have resulted from an occupational or environmental hazard. Obtaining this information is essential for DoD to provide medical care and recover costs of providing that care.

Affected Public: Individuals or Households.

Annual Burden Hours: 3,348,727.

Number of Respondents: 2,870,338.

Responses per Respondent: 10.

Annual Responses: 28,703,380.

Average Burden per Response: 7 minutes.

Frequency: Annually and on occasion.

MHS GENESIS is the Department of Defense's (DoD) modernized electronic health record (EHR) and will provide access to authoritative clinical data sources, and over time will become the authoritative source of clinical data to support improved population health, patient safety, and quality of care to maximize medical readiness for the DoD. MHS GENESIS is expected to unify and increase accessibility of integrated, evidence-based healthcare delivery and decision-making. MHS GENESIS supports the availability of longitudinal medical records for over 9.6 million DoD beneficiaries and over 153,000 Military Health System (MHS) personnel globally. MHS GENESIS enables the application of standardized workflows, integrated healthcare delivery, and data standards for improved and secure electronic exchange of medical and patient data between the DoD and its external partners, including the Departments of Veterans Affairs (VA) and Health and Human Services (HHS) and private sector healthcare providers.

Dated: December 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2017–27838 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2017–OS–0043]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness (OUSD (P&R)), Office of the Assistant Secretary of Defense for Readiness (OASD(R)), DoD.

ACTION: 30-Day information collection 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 January 26, 2018.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Building Healthy Military Communities (BHMC) Pilot Rapid Needs Assessment (RNA); OMB Control No. 0704–XXXX.

Type of Request: New collection.

Number of Respondents: 280.

Responses per Respondent: 1.

Annual Responses: 280.

Average Burden per Response: 90 minutes.

Annual Burden Hours: 420.

Needs and Uses: The information collection requirement is necessary to establish a baseline assessment of readiness requirements and available resources to support these requirements at a state level, as well as to identify current gaps in resources for Service members across all components.

Affected Public: Individuals or households, Business or other for profit; Not-for-profit institutions, State, local, or tribal government.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

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: December 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–27839 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday and Thursday, January 10 and 11, and February 14 and 15, 2018. Public registration will begin at 8:45 a.m. on each day. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html.*

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting room will be displayed on the information screen for both days. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Robert McDonald, Office of the Assistant Secretary of Defense (Acquisition), 3600 Defense Pentagon, Washington, DC 20301–3600, email: *Robert.L.McDonald.mil@mail.mil,* phone: 571–256–9006 or LTC David Wollman, email: *David.J.Wollman.mil@mail.mil,* phone: 703–693–5962.

SUPPLEMENTARY INFORMATION:

Purpose of the Meetings: This meeting is being held under the provisions of the

Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) Ensuring that the DoD contractors are appropriately rewarded for their innovation and invention, (3) Providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) Encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) Ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the twenty-fifth and twenty-sixth meeting of the Government-Industry Advisory Panel and continued recurring teleconference meetings. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Final review of tension point information papers; (2) Rewrite FY17 NDAA 2320 and 2321 language; (3) Review Report Framework and Format for Publishing; (4) Comment Adjudication & Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the January 10–11 and February 14–15 meetings will be available as requested or at the following site: *https://www.facadatabase.gov/committee/committee.aspx?cid=2561&aid=41.* It will also be distributed upon request.

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (January 10 and February 14) prior to the start of the meeting. All members of the public must contact LTC McDonald or LTC Wollman at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 8:30 a.m. on January 10–11 and February 14–15. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC McDonald, the committee DFO, or LTC Wollman at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC McDonald and LTC Wollman, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than five (5) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: December 20, 2017.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2017–27842 Filed 12–26–17; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Integrated Environmental Impact Statement (EIS) for the New Jersey Back Bays (NJBB) Coastal Storm Risk Management (CSRM) Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The action being taken by the U.S. Army Corps of Engineers (USACE) is an evaluation of CSRM problems, and an evaluation of alternative structural, non-structural, and natural and nature-based feature (NNBF) measures to address the CSRM problems in the coastal communities of the New Jersey Back Bays and Coastal Lakes in Monmouth, Ocean, Burlington, Atlantic, and Cape May Counties, New Jersey. The purpose of any consequent work would be to implement any one or a number of recommended plans and/or strategies that address CSRM problems evaluated in the feasibility study and integrated environmental impact statement.

ADDRESSES: U.S. Army Corps of Engineers, Philadelphia District, CENAP–PL–E, 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390.

FOR FURTHER INFORMATION CONTACT: Questions, comments, and suggestions regarding the Draft Integrated EIS should be addressed to Mr. Steven D. Allen at the above address; Phone: (215) 656–6559; email: *steven.d.allen@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The NJBB CSRM Feasibility Study area is one of 9 focus areas with vulnerable coastal populations identified in the North Atlantic Coast Comprehensive Study (NACCS). The NACCS was conducted in response to Public Law 113–2 and the Water Resource and Reform Development Act (WRRDA) of 2014 following the devastation in the wake of Hurricane Sandy, which greatly affected the study area in October of 2012. The purpose of the NJBB CSRM Feasibility Study is to identify comprehensive CSRM strategies to increase coastal resilience, and to reduce flooding risk from future storms and impacts of sea level change. The objective of the Study is to investigate CSRM problems and solutions to reduce damages from coastal flooding that affect population, critical infrastructure, critical facilities, property, and ecosystems.

b. The authority for the proposed project is the resolution adopted by the U.S. House of Representatives Committee on Public Works and Transportation and the U.S. Senate Committee on Environment and Public Works dated December 1987.

2. Alternatives

In addition to the no action alternative, the alternatives considered for CSRM will fall into structural, non-structural, and NNBF categories. The structural measures being evaluated for CSRM include measures that would provide barrier protection and/or protection to the bays perimeters, which include: inlet storm surge barriers, interior flood gates, road/rail elevation, levees, floodwalls, bulkheads, seawalls, revetments, beach restoration, breakwaters, storm system drainage improvements or combinations thereof. Non-structural elements under consideration include building retrofit (elevation and flood proofing), managed coastal retreat, emergency evacuation plans, early warning systems, public education education/risk communication, working with other Federal, state and local government agencies to incorporate National Flood Insurance Program improvements into the study recommendations, and combinations thereof. NNBF considerations include wetland restoration, living shorelines, green stormwater management, reefs, and submerged aquatic vegetation. NNBF features may be combined with other proposed CSRM elements.

3. Scoping

a. Scoping is conducted in accordance with Section 1501.7 of the National Environmental Policy Act, and is defined as an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. For the NJBB CSRM Feasibility Study, the scoping process is on-going and has involved preliminary coordination with 2 stakeholder meetings in June 2016, and the distribution of scoping letters to Federal, state, and local agencies, tribes and other non-government organizations. The general public and other interested parties and organizations were invited to participate by means of a public notice and a public workshop meeting held on December 1, 2016. Additional scoping meetings may be announced at major study milestone decision points. Agency and public input are being solicited throughout the study, and will help inform the identification of a Tentatively Selected Plan (TSP). The TSP milestone is expected to be reached in December 2018.

b. Significant issues and concerns that have been identified in addition to the premise of the CSRM study (flood risks associated with storms and sea level rise) include, but are not limited to the potential for impacts on aquatic biota, fisheries, intertidal habitat, shallow water habitat, endangered species, water quality, hydrodynamics, flood plain management, air quality, cultural resources, sustainability, and socio-economics.

c. The USACE is the lead Federal agency, and the New Jersey Department of Environmental Protection is the non-Federal sponsor. The USACE will be inviting key resource agencies with jurisdiction by law as a cooperating and/or participating agency in accordance with Section 1501.6 of Title 40 Code of Federal Regulations and Section 1005 of the Water Resources Reform and Development Act of 2014. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Lieutenant Colonel Kristen Dahle, District Engineer, at U.S. Army Corps of Engineers, Philadelphia District, 100 Penn Square East, Wanamaker Building, Philadelphia, PA 19107–3390.

4. Availability

It is estimated that the Draft Integrated EIS and Feasibility Study will be made available to the public in January 2019.

Peter R. Blum,

Chief, Planning Division.

[FR Doc. 2017–27952 Filed 12–26–17; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2017–ICCD–0132]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; DC School Choice Incentive Program

AGENCY: Office of Innovation and Improvement (OII), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 26, 2018.

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–0132. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Justis Tuia, 202–453–6654.

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: DC School Choice Incentive Program.

OMB Control Number: 1855–0015.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 3,000.

Total Estimated Number of Annual Burden Hours: 1,000.

Abstract: The DC School Choice Incentive Program, authorized by the Consolidated Appropriations Act of 2004, awarded a grant to the DC Children and Youth Investment Trust Corporation that will administer scholarships to students who reside in the District of Columbia and come from households whose incomes do not exceed 185% of the poverty line. Priority is given to students who are currently attending schools in need of improvement, as defined by Title I. To assist in the student selection and assignment process, the information collected is used to determine the eligibility of those students who are interested in the available scholarships. Also, since the authorizing statute requires an evaluation we are proposing to collect certain family demographic information because they are important predictors of school success. Finally, we are asking to collect information about parental participation and satisfaction because these are key topics that the statute requires the evaluation to address.

Dated: December 21, 2017.

Stephanie Valentine,

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

[FR Doc. 2017–27861 Filed 12–26–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2017–ICCD–0130]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; State Educational Agency and Local Educational Agency—School Data Collection and Reporting Under ESEA, Title I, Part A

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 26, 2018.

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–0130. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 216–32, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Hannah Hodel, 202–453–6448.

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: State Educational Agency and Local Educational Agency-School Data Collection and Reporting under ESEA, Title I, Part A.

OMB Control Number: 1810–0622.

Type of Review: An extension of an existing information collection.

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

Total Estimated Number of Annual Responses: 52.

Total Estimated Number of Annual Burden Hours: 2,080.

Abstract: Although the U.S. Department of Education (ED) determines Title I, Part A allocations for Local Educational Agencies (LEAs), State Educational Agencies (SEAs) must adjust ED-determined Title I, Part A LEA allocations to account for newly created LEAs and LEA boundary changes, to redistribute Title I, Part A funds to small LEAs (under 20,000 total population) using alternative poverty data, and to reserve funds for school improvement, State administration, and the State academic achievement awards program. This control number covers only the burden associated with the actual procedures an SEA must follow when adjusting ED-determined LEA allocations.

Dated: December 21, 2017.

Stephanie Valentine,

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

[FR Doc. 2017–27860 Filed 12–26–17; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension/Revision

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for a three-year extension of collections of information pursuant to the Paperwork Reduction Act of 1995. The collections are used by DOE to exercise management oversight and control over its contractors.

DATES: Comments regarding this proposed information collection must be received on or before January 26, 2018. If you anticipate difficulty in submitting comments within that period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, and to Sandra K. Dentinger, AU–70/E–455 Germantown Building, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–1290 or by fax at 301–903–0048, by email at *Sandra.Dentinger@hq.doe.gov,* or information about the collection instruments may be obtained at: *https://energy.gov/ehss/information-collection.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to the person listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1800; (2) Information Collection Request Title: Security; (3) Type of Review: Renewal/revision; (4) Purpose: The collections are used by DOE to exercise management oversight and control over its contractors that provide goods and services for DOE organizations and activities in accordance with the terms of their contracts and the applicable statutory, regulatory, and mission support requirements of the Department. Information collected is for (1) Foreign Ownership, Control or Influence data from bidders on DOE contracts requiring personnel security clearances; and (2) individuals in the process of applying for a security clearance/access authorization or who already hold one. The collections are: DOE Form 5631.18, Security Acknowledgement; DOE F 5631.20, Request for Visitor Access Approval; DOE Form 5631.29, Security Termination Statement; DOE F 5631.34, Data Report on Spouse/Cohabitant; DOE Form 5631.5, The Conduct of Personnel Security Interviews; DOE Form 5639.3 Report of Security Incident/Infraction; DOE F 471.1, Security Incident Notification Report; DOE Form 472.3 Foreign Citizenship Acknowledgement; DOE Form 473.2, Security Badge Request; DOE Form 473.3, U.S. Department of Energy Clearance Access Request; Influence (e-FOCI) System as required by DOE Order 470.4B, Safeguards and Security Program, Section 2; and the Foreign Access Central Tracking System (FACTS); (5) Estimated Number of Respondents: 86,893; (6) Annual Estimated Number of Total Responses: 86,893; (7) Annual Estimated Number of Burden Hours: 11,296; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

DOE F 5631.34, Data Report on Spouse/Cohabitant: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 12968 (August 2, 1995); Executive Order 10865 (February 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 472.2 (July 21, 2011).

Security Incident Notification Report and Report of Preliminary Security Incident/Infraction (DOE F 471.1 and DOE F 5639.3): Executive Order 13526 (December 29, 2009); 32 CFR part 2001; DOE O 470.4B (July 21, 2011).

DOE F 5631.20, Request for Visitor Access Approval: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165.

DOE Form 5631.18, Security Acknowledgement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (April 27, 1953); DOE O 5631.2C (February 17, 1994).

DOE Form 5631.29, Security Termination Statement: Section 145(b) of the Atomic Energy Act of 1954, as amended, codified at 42 U.S.C. 2165; Executive Order 13526 (December 29, 2009); Executive Order 10865 (Feb. 20, 1960); Executive Order 10450 (Apr. 27, 1953); 32 CFR part 2001; DOE O 472.2 (July 21, 2011).

DOE Form 5631.5, The Conduct of Personnel Security Interviews: 10 CFR part 710; Executive Order 12968 (Aug. 2, 1995); Executive Order 10450 (April 27, 1953); DOE Order 472.2 (July 21, 2011).

DOE F 471.1, Security Incident Notification Report; DOE Form 472.3 Foreign Citizenship Acknowledgement; and DOE Form 473.2, Security Badge Request; the Atomic Energy Act of 1954, as amended, and by Executive Orders 13764, 10865, and 13526.

Electronic Foreign Ownership, Control or Influence (e-FOCI) System: Executive Order 12829 (January 6, 1993); DOE O 470.4B (July 21, 2011).

Foreign Access Central Tracking System (FACTS): Presidential Decision Directive 61 (February 1999); DOE O 142.3A (October 14, 2010).

Issued in Washington, DC, on December 19, 2017.

Stephanie K. Martin,

Director, Office of Resource Management, Office of Environment, Health, Safety and Security.

[FR Doc. 2017–27878 Filed 12–26–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of 229 Boundary for the Fort Saint Vrain Independent Spent Fuel Storage Installation

AGENCY: Department of Energy (DOE).

ACTION: Notice of 229 Boundary for the Fort Saint Vrain (FSV) Independent Spent Fuel Storage Installation (ISFSI).

SUMMARY: Notice is hereby given that the U. S. Department of Energy, pursuant to Section 229 of the Atomic Energy Act of 1954, as amended, published in the **Federal Register** on August 26, 1963 (28 FR 8400), prohibits the unauthorized entry, and the unauthorized introduction of weapons or dangerous materials into or upon the following described facilities of the Fort Saint Vrain Independent Spent Fuel Storage Installation of the United States Department of Energy.

The FSV ISFSI is located on part of the original FSV Nuclear Generating Station site which is about three and one-half miles northwest of Platteville, Colorado. Platteville is located in Weld County and is about 35 miles north of Denver. The FSV ISFSI street address is 17122 19.5 Weld County Road, Platteville, Colorado. The ISFSI is located approximately 1500 feet northeast of the Public Service of Colorado fossil-fueled, power plant building. The facility occupies 10 acres more or less. The 229 Boundary of this facility is indicated by a combination of chain link fence and chain link gates which surround the facility.

FOR FURTHER INFORMATION CONTACT: Scott E. Ferrara, the Department of Energy—Idaho Operations Office (DOE–ID), 1955 Fremont Ave., Idaho Falls, ID 83415. Telephone (208) 526–5531.

Issued in Idaho Falls, Idaho, on June 1, 2017.

Scott E. Ferrara,

DOE–ID Facility Director.

Editorial Note: This document was received for publication by the Office of the Federal Register on December 21, 2017.

[FR Doc. 2017–27880 Filed 12–26–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science, Office of High Energy Physics; Request for Information: Impacts From and to Quantum Information Science in High Energy Physics

AGENCY: Office of High Energy Physics, Office of Science, Department of Energy.

ACTION: Notice of request for information (RFI).

SUMMARY: The Office of High Energy Physics (HEP) in the Department of Energy (DOE) invites interested parties to provide input on topical areas in which progress in quantum information science can inform high energy physics, and on contributions that the high energy physics community can make to advancing quantum information science.

DATES: Written comments and information are requested on or before February 12, 2018.

ADDRESSES: Interested persons may submit comments by email only. Comments must be sent to *QISandHEP-RFI@science.doe.gov* with the subject line ''Quantum Information Science and HEP RFI''. Any attachments must be in one of the following formats: ASCII; Word; RTF; or PDF.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be submitted to Dr. Lali Chatterjee, (301) 903–0435, *QISandHEP-RFI@science.doe.gov or* Dr. Altaf H. Carim, (301) 903–9564, *QISandHEP-RFI@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Quantum information science (QIS) encompasses novel approaches to fundamental science and to applications such as sensing, communications, simulation, and computing that are enabled by understanding and manipulation of the uniquely quantum phenomena of superposition, entanglement, and squeezing. Within high energy physics, DOE's emphasis is on employing new perspectives and capabilities offered or enabled by QIS to address the science drivers identified by the community in the May 2014 ''Building for Discovery'' report of the Particle Physics Project Prioritization Panel (P5).[1] Focus areas include quantum computing and foundational QIS, quantum sensor technology, and novel experiments exploiting quantum entanglement. QIS methods and concepts are proving increasingly important in advancing fundamental understanding in, *e.g.,* the search for dark matter, emergence of space-time, and the black hole information paradox. Likewise, these advances contribute to development of QIS including quantum error correction and thermalization. Because the field is interdisciplinary and progressing rapidly, effective research programs may require collaborative groups with appropriate combinations of knowledge, capabilities, and experience in quantum information, particle physics, and/or other related fields. Several DOE HEP reports provide additional information pertaining to QIS impacts on and from HEP.[2 3 4]

The U.S. Department of Energy's Office of High Energy Physics in the Office of Science seeks input from stakeholders regarding potential research and development in QIS that addresses scientific and technological needs in high energy physics, and regarding capabilities in the high energy physics community that could contribute to the advancement of QIS. The information received in response to this RFI will inform and be considered by the Office of High Energy Physics in program planning and development. Please note that this RFI *is not* a Funding Opportunity Announcement, a Request for Proposal, or other form of solicitation or bid of DOE to fund potential research and development work in QIS.

Request for information: The objective of this request for information is to gather input about opportunities for research and development at the intersection of quantum information science and high energy physics, to inform Federal efforts in this area. The questions below are intended to assist in the formulation of comments, and should not be considered as a limitation on either the number or the issues that may be addressed in such comments.

The DOE Office of High Energy Physics is specifically interested in receiving input pertaining to any of the following questions:

(1) Fundamental Science

What are the key questions, opportunities, needs, and challenges for QIS to contribute to progress in the following topics? What kinds of experiments or calculations are needed to advance understanding? How can research in these areas contribute to the advancement of QIS?

a. Quantum gravity and emergence of space-time
b. Tensor networks, gauge symmetries, and field theories

[1] *https://science.energy.gov/~/media/hep/hepap/pdf/May-2014/FINAL_P5_Report_Interactive_060214.pdf.*

[2] HEP–ASCR Study Group Report, Grand Challenges at the Interface of Quantum Information Science, Particle Physics, and Computing, 2015, *https://science.energy.gov/~/media/hep/pdf/files/BannerPDFs/QIS_Study_Group_Report.pdf.*

[3] HEP–BES roundtable report, ''Common Problems in Condensed Matter and High Energy Physics'', 2015, *https://science.energy.gov/~/media/hep/pdf/Reports/HEP-BES_Roundtable_Report.pdf.*

[4] HEP–ASCR QIS roundtable report, ''Quantum Sensors at the Intersections of Fundamental Science, QIS and Computing'', 2016, *http://science.energy.gov/~/media/hep/pdf/Reports/DOE_Quantum_Sensors_Report.pdf.*

c. Holographic correspondence and black hole physics
d. Dark matter, dark energy, and physics beyond the Standard Model
e. Analog simulation and emulation of quantum systems of interest to particle physics

(2) Devices, Tools, Approaches, and Techniques

What developments are needed, are on the horizon, or can be envisioned in the following areas? How will they contribute to high energy physics? How can high energy physics expertise, resources, or capabilities in these or other areas contribute to broader advances in quantum information science?

a. Quantum sensors exploiting superposition, entanglement, and/or squeezing
b. Supporting technologies (superconducting radio frequency cavities, cryogenics, fast feedback and control systems, etc.)
c. Data analysis and background reduction
d. Machine learning and optimization
e. Algorithm development
f. Error correction and measurement

(3) Organizational and Assessment Considerations

a. What metrics could be applied to evaluate progress of the field and assess impacts of Federal investments?
b. What are key obstacles, impediments, or bottlenecks to advancing research at the intersection of QIS and HEP?
c. What mix of institutions (industrial, academic, lab) could best carry out the envisioned research and/or development, and who should drive the formulation of such efforts?
d. What collaboration models would be most effective for pursuing joint R&D?
e. What resources at DOE National Laboratories would be beneficial for and could accelerate or facilitate research in this topic?
f. Are there other factors, not addressed by the questions above, which should be considered in planning DOE HEP activities in this subject area?

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Note that comments will be made publicly available as submitted. Any information that may be confidential and exempt by law from public disclosure should be submitted as described below.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via email: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Depending on the response to this RFI, subsequent workshops or other activities may be held to further explore and elaborate the opportunities.

Issued in Washington, DC, on December 18, 2017.

James Siegrist,

Associate Director of Science for High Energy Physics.

[FR Doc. 2017–27877 Filed 12–26–17; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3102–025]

Jason and Carol Victoria Presley; Notice of Intent To File Subsequent License Application, Filing of Pre-Application Document, Request to use the Traditional Licensing Process, and Request To Waive Pre-Filing Requirements

a. *Type of Filings:* Notice of Intent to File Subsequent License Application and Request to Waive Pre-Filing and Notice of Intent Requirements and Notice of Filing of Preliminary Application Document and Request to Use the Traditional Licensing Process

b. *Project No.:* 3102–025.

c. *Dates Filed:* September 12 and October 31, 2017.

d. *Submitted By:* Jason and Carol Victoria Presley.

e. *Name of Project:* High Shoals Project.

f. *Location:* On the Apalachee River in Walton, Morgan, and Oconee Counties, Georgia. The project does not occupy federal lands.

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

h. *Applicant Contact:* Mr. Jason Presley and Ms. Carol Victoria Presley, 110 Frazier Hill Road, Bishop, GA 30621, (706) 769–8293, email: *jason@presley.us, victoria@presley.us.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093 or email at *michael.spencer@ferc.gov*.

j. On September 12, 2017, Jason and Carol Victoria Presley (licensee) filed a Notice of Intent to file a subsequent license application (Notice of Intent), and a request that the Commission waive certain deadlines, as required by the Commission's regulations, for filing the Notice of Intent, Pre-Application Document (PAD).[1] The licensee requests waiver of the Commission's regulations to allow for additional time to: (1) Consult with agencies and stakeholders to support a request to use the Traditional Licensing Process (TLP); (2) compile project documents for public inspection; and (3) submit a PAD and request to use the TLP.

k. On October 31, 2017, the licensee filed a PAD and a request to use the TLP.

l. The licensee requests waiver of the Commission's regulatory deadlines and notice requirements for the Notice of Intent, PAD, and Request to Use the TLP because of recent resolution of transfer of the project following the death of the prior licensee and the subsequent transfer of license to current licensee.[2]

m. With this notice we are soliciting comments on the licensee's PAD, request to use the TLP, and request to waive certain pre-filing requirements. All comments should be sent to the address in paragraph o below. Any individual or entity interested in submitting comments must do so within 60 days from the date that the Commission issues this notice.

n. The Notice of Intent, waiver request, PAD, request to use the TLP, and associated filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://*

[1] The licensee requests that sections 5.2, 5.3, 5.5, 5.6, 16.6, and 16.7 of the Commission's regulations be waived. 18 CFR 5.2, 5.3, 5.5, 5.6, 16.6, 16.7 (2017).

[2] *Gaynor L. Bracewell and John and Carol Victoria Presley,* 159 FERC ¶ 62,314 (2017) (Order Approving Transfer of License).

www.ferc.gov), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

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

o. The Commission strongly encourages electronic filing. Please file all documents 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.* 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–3102–025. All filings with the Commission must bear the appropriate heading: Comments on Pre-Application Document, Request to use TLP, or Request to Waive Pre-Filing Requirements.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27915 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF18–2–000]

Notice of Filing; Western Area Power Administration

Take notice that on December 1, 2017, Western Area Power Administration submitted tariff filing per: Formula Rates for the Pick-Sloan Missouri Basin Project-Eastern Division—Rate Order No. WAPA–180 to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 2, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27902 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–472–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; States Edge Wind I Holding LLC

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 9, 2018.

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

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

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

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27907 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14826–001]

Merchant Hydro Developers, LLC; Notice of Surrender of Preliminary Permit

Take notice that Merchant Hydro Developers, LLC, permittee for the proposed Hudson Hill Pumped Storage Hydro Project, has requested that its preliminary permit be terminated. The permit was issued on September 5, 2017, and would have expired on August 31, 2020.[1] The project would have been located near Jackson Township in Lycoming County, Pennsylvania.

The preliminary permit for Project No. 14826 will remain in effect until the close of business, January 19, 2018. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27918 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

[1] 160 FERC 62,203 (2017).

[2] 18 CFR 385.2007(a)(2) (2017).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ18–5–000]

Notice of Filing; City of Banning, California

Take notice that on December 14, 2017, City of Banning, California submitted its tariff filing: City of Banning 2018 TRBAA/ETC Update to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 4, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27905 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL18–52–000]

Brookfield Energy Marketing LP v. Green Mountain Power Corporation; Notice of Complaint

Take notice that on December 18, 2017, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824(e), and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Brookfield Energy Marketing LP (Complainant) filed a formal complaint against Green Mountain Power Corporation (Green Mountain or Respondent) requesting that the Commission issue an order finding that the Complainant's transmission service request was valid and order Green Mountain Power Corporation to process the request, all as more fully explained in the complaint.

Complainant certifies that copies of the complaint were served on the contacts for Respondent as listed on the Commission's list of Corporate Officials.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 8, 2018.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27913 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

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

CA Flats Solar 150, LLC	EG17–149–000
Florey Knob Energy LLC	EG17–150–000
RE Gaskell West LLC	EG17–151–000
RE Gaskell West 1 LLC	EG17–152–000
RE Gaskell West 4 LLC	EG17–153–000
RE Gaskell West 5 LLC	EG17–154–000
RE Gaskell West 3 LLC	EG17–155–000
Solar Star Oregon II, LLC	EG17–156–000

SP Cactus Flats Wind Energy, LLC.	EG17–157–000
Caoxian Taida New Energy Company Limited.	FC17–6–000
Altamuskin Windfarm Limited.	FC17–7–000
Amplus Andhra Power Private Limited.	FC17–8–000

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

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2017–27904 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ18–3–000]

Notice of Filing; City of Pasadena, California

Take notice that on December 13, 2017, City of Pasadena, California submitted its tariff filing: City of Pasadena 2018 TRBAA Update to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 3, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27908 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ18–6–000]

City of Riverside, California; Notice of Filing

Take notice that on December 18, 2017, City of Riverside, California submitted its tariff filing: City of Riverside 2018 TRBAA/ETC Update to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 8, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27910 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2788–017]

Goodyear Lake Hydro, LLC; Notice Soliciting Scoping Comments

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

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2788–017.

c. *Date filed:* February 27, 2017.

d. *Applicant:* Goodyear Lake Hydro, LLC (Goodyear Lake Hydro).

e. *Name of Project:* Colliersville Hydroelectric Project.

f. *Location:* On the North Branch of the Susquehanna River, in the Town of Milford, Otsego County, New York. The project does not occupy lands of the United States.

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

h. *Applicant Contact:* Mr. Kevin Webb, Hydro Licensing Manager; Enel Green Power North America, Inc., 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039; *kevin.webb@enel.com.*

i. *FERC Contact:* Emily Carter, (202) 502–6512 or *emily.carter@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2788–017.

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

k. This application is not ready for environmental analysis at this time.

l. Project Description.

The existing Colliersville Hydroelectric Project consists of: (1) A dam that includes: A 200-foot-long, 35-foot-high, reinforced-concrete, Ambursen-type dam or spillway structure [1] with a crest elevation of 1,150.22 feet National Geodetic Vertical Datum of 1929 (NGVD 29); a 50-foot-wide concrete headgate structure located on the west side of the river and adjacent to the spillway, forming the closure with the west bank; and an L-shaped, 66-foot-long, concrete wall with one side along the east side of the spillway and the other side parallel to the axis of the dam, extending approximately 6 to 8 feet above the crest of the dam; (2) a 364-acre reservoir (Goodyear Lake) with a gross storage capacity of 7,800 acre-feet at a normal pool elevation of 1,150.22 feet NGVD29; (3) a 550-foot-long reinforced concrete power canal, approximately 50 feet wide and 6 feet deep at the head gates, extending from a head gate structure adjacent to the dam (*i.e.,* the intake) to the powerhouse; (4) a 103-foot-long by 33-foot-wide reinforced concrete powerhouse with trash racks with a clear spacing of 1.5 inches, and containing two turbines rated at 850 horsepower (HP) and 1,150 HP, and two generators having a rated capacity of 650 kilowatts (kW) and 850 kW, respectively; (5) a 300-foot-long and approximately 50- to 60-foot-wide tailrace; (6) three, approximately 80-foot-long, 4.16-kilovolt underground generator leads or transmission lines from the powerhouse to an adjacent substation owned by the New York State Electric and Gas Corporation; and (7) appurtenant facilities.

[1] A type of buttress dam of which the upstream part is a relatively thin flat slab usually made of reinforced concrete. A buttress dam consists of watertight parts supported at intervals on the downstream side by a series of buttresses.

Goodyear Lake Hydro operates the project in a run-of-river mode. The project experiences substantial seasonal and annual variations in generation, and generates an annual average of 5,985 megawatt-hours. Goodyear Lake Hydro proposes to continue to operate the project in run-of-river mode.

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

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

o. Scoping Process

The Commission staff intends to prepare an Environmental Assessment (EA) for the Colliersville Hydroelectric Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document 1 (SD1) issued December 20, 2017.

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27917 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–24–000]

Steel Reef Pipelines US LLC; Notice of Application for Section 3 Authorization and Presidential Permit

Take notice that on December 8, 2017, Steel Reef Pipelines US LLC (Steel Reef), Suite 500, 407 8th Avenue SW, Calgary, Alberta, T2P 1E5 Canada, filed in the above referenced docket an application, pursuant to section 3 of the Natural Gas Act (NGA) and Subpart B of Section 153 of the Commission's regulations, seeking authorization to site, construct, operate and maintain certain natural gas pipeline border crossing facilities to export natural gas from the United States to Canada (Border Crossing Facilities). The Border Crossing Facilities consist of a segment of 10.75-inch outside diameter pipe that extends from an interconnection with upstream gathering facilities for 250 feet to the International Boundary. The Border Crossing Facilities are a part of the proposed approximately 2.2-mile pipeline that further extends to an existing natural gas processing plant in Canada. Additionally, Steel Reef requests a Presidential Permit for the Border Crossing Facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or TTY, (202) 208–1659.

Any questions regarding this application should be directed to Chris Anderson, Steel Reef Infrastructure Corp. Suite 500—407, 8th Avenue SW, Calgary, Alberta, T2P 1E5 Canada, or call (403) 263–8333 or email: *chris.anderson@steelreef.ca.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record

for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the e-Filing link.

Comment Date: 5:00 p.m. Eastern Time on January 10, 2018.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27919 Filed 12–26–17; 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: EC18–37–000.
Applicants: Shoreham Solar Commons LLC.
Description: Application for Approval of the Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act of Shoreham Solar Commons LLC.
Filed Date: 12/19/17.
Accession Number: 20171219–5217.
Comments Due: 5 p.m. ET 1/9/18.

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

Docket Numbers: ER10–1350–006.
Applicants: Entergy Services, Inc.
Description: Entergy Services, Inc., as agent for the Entergy Operating Companies submits filing per 35.19a(b): Refund Report to be effective N/A.
Filed Date: 12/18/17.
Accession Number: 20171218–5269.
Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER13–136–004; ER13–135–004; ER13–137–004; ER13–138–004; ER13–141–004; ER13–142–004.
Applicants: Georgia-Pacific Brewton LLC.
Description: Triennial Market-Power Analyses of the Georgia-Pacific Entities in the Southeast Region.
Filed Date: 12/19/17.
Accession Number: 20171219–5242.
Comments Due: 5 p.m. ET 2/20/18.

Docket Numbers: ER15–1905–007.
Applicants: Amazon Energy LLC.
Description: Notice of Change in Status of Amazon Energy LLC.
Filed Date: 12/19/17.
Accession Number: 20171219–5241.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER17–1562–001.
Applicants: Energy Unlimited, Inc.
Description: Compliance filing: Energy Unlimited Inc MBR Tariff Update to be effective 2/19/2018.
Filed Date: 12/19/17.
Accession Number: 20171219–5204.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER17–2201–003; ER13–1536–015; ER10–2192–031; ER10–2178–031; ER10–2181–035; ER10–2182–034.
Applicants: Exelon FitzPatrick, LLC, Exelon Generation Company, LLC, Constellation Energy Commodities Group Maine, LLC, Constellation NewEnergy, Inc., Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.
Description: Notice of Non-Material Change in Status of Exelon FitzPatrick, LLC, et. al.
Filed Date: 12/19/17.
Accession Number: 20171219–5240.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–210–002.
Applicants: Emera Maine.
Description: Tariff Amendment: Request to Lift Stay and Answer Protest ER18–210–000 to be effective 1/1/2018.
Filed Date: 12/19/17.
Accession Number: 20171219–5195.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–215–001.
Applicants: Interstate Power and Light Company.
Description: Supplement to December 18, 2017 Interstate Power and Light Company tariff filing (Certificate of Service).
Filed Date: 12/19/17.
Accession Number: 20171219–5230.
Comments Due: 5 p.m. ET 12/26/17.

Docket Numbers: ER18–455–001.
Applicants: ISO New England Inc.
Description: Tariff Amendment: Errata to Filing Re: CSO Transfer Improvements—ER18–455–000 to be effective 3/1/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5047.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–475–000.
Applicants: The Potomac Edison Company, Monongahela Power Company, Virginia Electric and Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: VEPCO, Potomac and Monongahela submit Interconnection Agreement SA No. 4874 to be effective 2/20/2018.

Filed Date: 12/20/17.
Accession Number: 20171220–5029.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–476–000.
Applicants: Nevada Power Company.
Description: Notices of Cancellation of Rate Schedule No. 69, et al. of Nevada Power Company.
Filed Date: 12/19/17.
Accession Number: 20171219–5227.
Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–477–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Russell County Solar LGIA Filing to be effective 12/11/2017.
Filed Date: 12/20/17.
Accession Number: 20171220–5075.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–478–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1276R15 KCPL NITSA NOA to be effective 12/1/2017.
Filed Date: 12/20/17.
Accession Number: 20171220–5077.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–479–000.
Applicants: California Independent System Operator Corporation.
Description: Tariff Cancellation: 2017–12–20 Notice of Cancellation—EIM Implementation Agreement with PacifiCorp to be effective 2/19/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5107.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–480–000.
Applicants: Mid-Atlantic Interstate Transmission, LLC, American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT and ATSI submit ECSA Nos. 4719, 4720 and 4800 to be effective 2/19/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5108.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–481–000.
Applicants: California Independent System Operator Corporation.
Description: Tariff Cancellation: 2017–12–20 Notice of Cancellation—EIM Implementation Agreement with NV Energy to be effective 2/19/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5113.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–482–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: OATT Att O–PSCo Depreciation, Tbl 25 Filing to be effective 5/1/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5116.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–483–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 20171220_Depreciation Filing to be effective 5/1/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5148.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–484–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PJM submits Revisions to OA section 18.17.7 re: Generator Data Confidentiality to be effective 2/19/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5154.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–485–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP–NCEMC PSCA RS No. 182 (5th Amended) to be effective 1/1/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5156.
Comments Due: 5 p.m. ET 1/10/18.

Docket Numbers: ER18–486–000.
Applicants: Allegheny Generating Company.
Description: Baseline eTariff Filing: Baseline new to be effective 2/16/2018.
Filed Date: 12/20/17.
Accession Number: 20171220–5196.
Comments Due: 5 p.m. ET 1/10/18.

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: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27900 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–003]

Swan Lake North Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

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

a. *Type of Application:* Original License (Major Project).

b. *Project No.:* 13318–003.

c. *Date filed:* October 28, 2015.

d. *Applicant:* Swan Lake North Hydro LLC.

e. *Name of Project:* Swan Lake North Pumped Storage Hydroelectric Project.

f. *Location:* The project would be located about 11 miles northeast of Klamath Falls, Klamath County, Oregon. The project would occupy about 730 acres of federal lands administered by the Bureau of Land Management and the Bureau of Reclamation, state lands, and private lands.

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

h. *Applicant Contact:* Erik Steimle, Rye Development LLC, 745 Atlantic Avenue, 8th floor, Boston, MA 02111. Telephone: (503) 998–0230; Email: *erik@ryedevelopment.com.*

i. *FERC Contact:* Dianne Rodman at (202) 502–6077; or email at *Dianne.Rodman@ferc.gov.*

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file comments, recommendations, terms and conditions, and prescriptions 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–13318–003.

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

k. This application has been accepted and is ready for environmental analysis.

l. *The proposed project would consist of the following new facilities:* (1) A 7,972–foot-long, 58-foot-high earthen embankment forming an asphalt concrete and geomembrane-lined upper reservoir, with a surface area of 64.21 acres and a storage capacity of 2,568 acre-feet at a maximum surface elevation of 6,128 feet above mean sea level (msl); (2) a 8,003-foot-long, 65-foot-high earthen embankment forming a geomembrane-lined lower reservoir, with a surface area of 60.14 acres and a storage capacity of 2,581 acre-feet at a maximum surface elevation of 4,457 feet msl; (3) a 500-foot-long, rip-rap lined trapezoidal spillway built into the crest of each embankment at an elevation of approximately 6,135 feet msl and 4,464 feet msl for the upper and lower reservoirs, respectively; (4) a 0.5-percent-slope perforated polyvinyl chloride tube of varying diameter and accompanying optical fiber drainage system designed to detect, collect, and monitor water leakage from the reservoirs; (5) a 25-inch-diameter bottom outlet with manual valve for gravitational dewatering of the lower reservoir; (6) an upper intake consisting of a bell mouth, 38.6-foot-wide by 29.8-foot-long inclined screen, head gate, and 13.8-foot-diameter foundational steel pipe; (7) a 13.8-foot-diameter, 9,655-foot-long steel high-pressure penstock from the upper reservoir to the powerhouse that would be predominantly aboveground with a 14-foot-long buried segment; (8) three 9.8-foot-diameter, 1,430-foot-long steel low-pressure penstocks from the lower reservoir to the powerhouse that would be predominantly aboveground with a 78-foot-long buried segment; (9) a partially buried powerhouse with three 131.1–MW reversible pump-turbine units for a total installed capacity of 393.3 MW; (10) a fenced substation next to the powerhouse; (11) a 32.8-mile-long, 230-kilovolt (kV) aboveground transmission line interconnecting to an existing non-project substation; (12) approximately 10.7 miles of improved project access road; (13) approximately 3.4 miles of new permanent project access road; (14) approximately 8.3 miles of temporary project access road; and (15) appurtenant facilities. The project would be a closed-loop system using groundwater for initial fill, and would not use any existing surface body of water. Initial fill water and long-term refill due to evaporative losses would be supplied by the local groundwater agricultural pumping system and delivered to the lower reservoir via an existing underground agricultural irrigation network. The average annual generation is expected to be 1,187 gigawatt-hours.

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

All filings must (1) bear in all capital letters the title COMMENTS, REPLY COMMENTS, RECOMMENDATIONS, TERMS AND CONDITIONS, or PRESCRIPTIONS; (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 submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

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

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	December 2018.
Draft Environmental Impact Statement (EIS) Issued.	August 2018.
Comments on Draft EIS Due.	October 2018.
Final EIS Issued	December 2018.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27916 Filed 12–26–17; 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: EC18–36–000.

Applicants: MDU Resources Group, Inc.

Description: Application of MDU Resources Group, Inc. for Authorization under FPA Section 203 and Request for Confidential Treatment.

Filed Date: 12/19/17.

Accession Number: 20171219–5151.

Comments Due: 5 p.m. ET 1/9/18.

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

Docket Numbers: EG18–20–000.

Applicants: States Edge Wind I LLC.

Description: Notice of Self-Certification of Exempt Wholesale

Generator Status of States Edge Wind I LLC.

Filed Date: 12/19/17.

Accession Number: 20171219–5126.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: EG18–21–000.

Applicants: States Edge Wind I Holdings LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of States Edge Wind I Holdings LLC.

Filed Date: 12/19/17.

Accession Number: 20171219–5149.

Comments Due: 5 p.m. ET 1/9/18.

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

Docket Numbers: ER18–471–000.

Applicants: States Edge Wind I LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/18/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5116.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–471–001.

Applicants: States Edge Wind I LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 2/18/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5150.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–472–000.

Applicants: States Edge Wind I Holding LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 2/18/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5117.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–472–001.

Applicants: States Edge Wind I Holding LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 2/18/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5154.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–473–000.

Applicants: Union Electric Company.

Description: § 205(d) Rate Filing: Revised Rate Schedule 22 Reactive to be effective 1/1/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5121.

Comments Due: 5 p.m. ET 1/9/18.

Docket Numbers: ER18–474–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2017–12–19 Informational Update to Technical Information—CCFC Sutter Pseudo PGA to be effective 2/22/2018.

Filed Date: 12/19/17.

Accession Number: 20171219–5161.

Comments Due: 5 p.m. ET 1/9/18.

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: December 19, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27835 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF18–3–000]

Notice of Filing; Western Area Power Administration

Take notice that on December 1, 2017, Western Area Power Administration submitted tariff filing per: Formula Rates for the Loveland Area Projects—Rate Order No. WAPA–179 to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 2, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27903 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–471–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; States Edge Wind I LLC

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 9, 2018.

The Commission encourages electronic submission of protests and

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

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

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

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27906 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ18–4–000]

Notice of Filing; City of Azusa, California

Take notice that on December 14, 2017, City of Azusa, California submitted its tariff filing: City of Azusa 2018 TRBAA/ETC Update to be effective 1/1/2018.

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

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

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

Comment Date: 5:00 p.m. Eastern Time on January 4, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27909 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Numbers: RP18–254–000.
Applicants: NGO Transmission, Inc.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 1/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5049.
Comments Due: 5 p.m. ET 1/2/18.

Docket Numbers: RP18–255–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: 2017–12–18 CP, Sequent, Tenaska to be effective 1/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5170.
Comments Due: 5 p.m. ET 1/2/18.

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: December 19, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27836 Filed 12–26–17; 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: EC18–35–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Application for Approval of Acquisition of Assets Pursuant to Section 203 of the Federal Power Act of Michigan Electric Transmission Company, LLC.
Filed Date: 12/18/17.
Accession Number: 20171218–5231.
Comments Due: 5 p.m. ET 1/8/18.

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

Docket Numbers: ER10–2570–033.
Applicants: Shady Hills Power Company, L.L.C.
Description: Updated Market Power Analysis for the Southeast Region of Shady Hills Power Company, L.L.C.
Filed Date: 12/18/17.
Accession Number: 20171218–5235.
Comments Due: 5 p.m. ET 2/16/18.

Docket Numbers: ER10–3099–018.
Applicants: RC Cape May Holdings, LLC.
Description: Supplement to June 30, 2017 Triennial Market-Based Rate Update Filing for the Northeast Region of RC Cape May Holdings, LLC.
Filed Date: 12/15/17.

Accession Number: 20171215–5245.
Comments Due: 5 p.m. ET 1/5/18.

Docket Numbers: ER10–3145–010; ER10–3116–010; ER13–1544–007; ER10–3120–010; ER11–2036–010; ER16–930–004; ER10–3128–010; ER10–1800–011; ER10–3136–010; ER11–2701–012; ER10–1728–010; ER15–1582–009; ER15–1579–008; ER15–1914–010; ER16–1255–004; ER16–2201–003; ER16–1955–004; ER17–1864–002; ER17–1871–002; ER17–1909–002; ER17–544–003; ER17–306–003; ER16–1738–004; ER16–474–005; ER16–1901–004; ER16–468–004; ER15–2679–006; ER16–2578–004; ER16–2541–003; ER15–2680–006; ER15–762–010; ER16–2224–003; ER16–890–005; ER15–760–009; ER16–1973–004; ER16–1956–004.
Applicants: AES Alamitos, LLC, AES Energy Storage, LLC, AES ES Tait, LLC, AES Huntington Beach, L.L.C., AES Laurel Mountain, LLC, AES Ohio Generation, LLC, AES Redondo Beach, L.L.C., Indianapolis Power & Light Company, Mountain View Power Partners, LLC, Mountain View Power Partners IV, LLC, The Dayton Power and Light Company, 65HK 8me LLC, 67RK 8me LLC, 87RL 8me LLC, Antelope Big Sky Ranch LLC, Antelope DSR 1, LLC, Antelope DSR 2, LLC, Bayshore Solar A, LLC, Bayshore Solar B, LLC, Bayshore Solar C, LLC, Beacon Solar 1, LLC, Beacon Solar 3, LLC, Beacon Solar 4, LLC, Central Antelope Dry Ranch C LLC, Elevation Solar C LLC, FTS Master Tenant 1, LLC, Latigo Wind Park, LLC, North Lancaster Ranch LLC, Pioneer Wind Park I LLC, Sandstone Solar LLC, Sierra Solar Greenworks LLC, Solverde 1, LLC, Summer Solar LLC, Western Antelope Blue Sky Ranch A LLC, Western Antelope Blue Sky Ranch B LLC, Western Antelope Dry Ranch LLC.
Description: Triennial Market Power Update of the AES MBR Affiliates for the Central Region.
Filed Date: 12/18/17.
Accession Number: 20171218–5238.
Comments Due: 5 p.m. ET 2/16/18.

Docket Numbers: ER17–2536–001.
Applicants: Pacific Gas and Electric Company.
Description: Tariff Amendment: Answer to Port of Oakland IA Deficiency to be effective 2/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5206.
Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–215–001.
Applicants: Interstate Power and Light Company.
Description: Tariff Amendment: Amendment to Proposed IPL Wholesale Formula Rate Changes to be effective 1/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5225.
Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–216–001.
Applicants: Wisconsin Power and Light Company.
Description: Tariff Amendment: Amendment to Proposed WPL Wholesale Formula Rate Changes to be effective 1/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5224.
Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–469–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2017–12–18 Filing of PSP Agreement with Placer County Water Agency to be effective 1/1/2018.
Filed Date: 12/18/17.
Accession Number: 20171218–5184.
Comments Due: 5 p.m. ET 1/8/18.

Docket Numbers: ER18–470–000.
Applicants: UGI Utilities Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: UGI submits Interconnection and Operating Agreement, Service Agreement No. 1460 to be effective 12/13/2017.
Filed Date: 12/18/17.
Accession Number: 20171218–5194.
Comments Due: 5 p.m. ET 1/8/18.

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: December 19, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27834 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1744–039]

PacifiCorp; Notice of Draft License Application (DLA) and Draft Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

Take notice that the following Draft License Application (DLA) and draft Preliminary Draft Environmental Assessment (PDEA) have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Major Constructed Project.
b. *Project No.:* 1744–039.
c. *Date Filed:* December 15, 2017.
d. *Applicant:* PacifiCorp.
e. *Name of Project:* Weber Hydroelectric Project.
f. *Location:* On the Weber River, in Weber, Davis, and Morgan Counties, Utah. The project occupies 14.94 acres of United States lands administered by the U.S. Forest Service.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Eve Davies, PacifiCorp—Renewable Resources, 1407 West North Temple, Suite 210, Salt Lake City, UT 84116; (801) 220–2245; email *eve.davies@pacificorp.com.*
i. *FERC Contact:* Evan Williams at (202) 502–8462; or email at *evan.williams@ferc.gov.*
j. *Status of Project:* With this notice the Commission is soliciting (1) preliminary terms, conditions, and recommendations on the draft PDEA, and (2) comments on the DLA.
k. *Deadline for filing:* 90 days from the issuance of this notice.

All comments on the draft PDEA and DLA should be sent to the addresses noted above in Item (h), and filed with FERC.

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 P–1744–039.

All comments must bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

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

PacifiCorp has mailed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at PacifiCorp Hydro Resources, 1407 W. North Temple, Suite 210, Salt Lake City, UT 84116.

m. With this notice, we are initiating consultation with the UTAH STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27914 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–23–000]

Notice of Application; Algonquin Gas Transmission, LLC

Take notice that on December 6, 2017, Algonquin Gas Transmission, LLC (Algonquin), having its principal place of business at 5400 Westheimer Court, Houston, Texas 77056–5310 filed in the above referenced docket an application pursuant to section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to abandon two reciprocating compressor units and related appurtenances located in Providence County, Rhode Island referred to as Burrillville Compressor Station Project (Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Specifically, Algonquin is requesting approval to abandon in place compressor unit Nos. 1 and 2, and to remove related appurtenances, at its Burrillville Compressor Station. Algonquin states that the Project will allow Algonquin to eliminate the need for future operating and maintenance expenditures on facilities that are outdated and not needed to satisfy its current firm service obligations. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Connolly, Director, Rates & Certificates, P.O. Box 1642, Houston, Texas 77251–1642, or telephone (713) 627–4102, or fax (713) 627–5947 or by emailing *lisa.connolly@enbridge.com*.

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: January 10, 2018

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27901 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–26–000]

Notice of Application; Texas Eastern Transmission, LP

Take notice that on December 7, 2017, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in Docket No. CP18–26–000 an application pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authority to: (i) Construct, own, operate, and maintain two new 8,600 horsepower (hp) Solar Taurus 70 natural-gas fired compressor units to replace two existing natural-gas fired compressor units, and related appurtenant facilities on existing Texas Eastern's Lambertville Compressor Station in Hunterdon County, New Jersey (Lambertville East Expansion Project); (ii) charge initial incremental recourse rates and an incremental fuel percentage for firm service on the project facilities; and (iii) abandon the existing compressor units being replaced and related facilities; and (iv) any waivers, authority, and further relief as may be necessary to implement the proposal contained in its application. The Lambertville East Expansion Project will replace 10,200 hp from the existing two units being replaced and will provide additional 7,000 hp. The project is designed to allow Texas Eastern to deliver 60,000 dekatherms per day to two local New Jersey gas utilities. Texas Eastern estimates the cost of the project to be $110,955,942, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Berk Donaldson, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642; by telephone (713) 627–4488; by facsimile (713) 627–5947; or by email at *berk.donaldson@enbridge.com.*

Pursuant to section 157.9 of the Commission's rules (18 CFR 157.9), within 90 days of this Notice, the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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

Comment Date: 5:00 p.m. Eastern Time on January 10, 2018.

Dated: December 20, 2017.

Kimberly D. Bose,

Secretary.

[FR Doc. 2017–27912 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ18–7–000]

City of Colton, California; Notice of Filing

Take notice that on December 18, 2017, City of Colton, California submitted its tariff filing: City of Colton 2018 TRBAA/ETC Update to be effective 1/1/2018.

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

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

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

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

Comment Date: 5:00 p.m. Eastern Time on January 8, 2018.

Dated: December 20, 2017.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2017–27911 Filed 12–26–17; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9972–43-Region 4]

Notice of Final National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GEG460000); Availability of Finding of No Significant Impact

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Reissuance of NPDES General Permit.

SUMMARY: Today, the EPA Region 4 (the ''Region'') is reissuing the National Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GEG460000) for new and existing source discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. This reissued general permit replaces the previous permit issued on March 15, 2010, and which became effective on April 1, 2010, and expired on March 31, 2015. The general permit authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas, and covers existing and new source facilities with operations located on Federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida. The western boundary of the coverage area is demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama. The permit term will be no longer than five years from the effective date of the permit. Individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200-meter water depth.

The draft NPDES general permit was publicly noticed from August 18, 2016 to September 17, 2016. This final permit reflects changes based on comments received during the public comments period, which are detailed in the Amendment to the Fact Sheet.

DATES: This action is applicable as of January 20, 2018.

ADDRESSES: The final NPDES general permit, Amendment to the Permit fact sheet, Finding of No Significant Impact document, Final Essential Fish Habitat Determination, Final Ocean Discharge Criteria Evaluation, and other relevant documents may be obtained by writing the U.S. EPA-Region 4, Water Protection Division (WPD), NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960, Attention: Ms. Bridget Staples. Alternatively, copies of the above-mentioned documents may be downloaded at: *https://www.epa.gov/aboutepa/about-epa-region-4-southeast#r4-public-notices.*

FOR FURTHER INFORMATION CONTACT: Ms. Bridget Staples, EPA Region 4, WPD, NPDES Section, by mail at the Atlanta address given above, by telephone at (404) 562–9783 or by email at *Staples.Bridget@epa.gov.*

SUPPLEMENTARY INFORMATION:

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), operators of offshore oil and gas facilities in lease blocks located in Outer Continental Shelf (OCS) Federal water in the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida and in the western boundary of the coverage area demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama, are authorized to discharge to receiving waters in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, IV and V, and appendices.

Operators of facilities within the NPDES general permit coverage area must submit a Notice of Intent (NOI) to the Regional Administrator, prior to discharge, that they intend to be covered by the general permit (See Part I.A.4). The effective date of coverage will be the postmarked date of the NOI, or if the postmarked date is illegible, the effective date of coverage will be two days prior to the receipt date of the NOI.

Administratively continued coverages under the previous NPDES general permit will cease for operators 30 days after the effective date of the new permit. Therefore, such operators must submit a new NOI to be covered under this general permit within 30 days after the effective date of this permit. If a permit application for an individual permit is filed, the coverage under the previous general permit terminates when a final action is taken on the application for an individual permit.

This permit and the authorization to discharge shall expire midnight, Eastern Standard Time, five years from the effective date.

Dated: December 14, 2017.

Mary Walker,

Director, Water Protection Division, U.S. EPA, Region 4.

[FR Doc. 2017–27947 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9972–41–ORD]

Human Studies Review Board; Notification of Public Meetings

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Office of the Science

Advisor announces two separate public meetings of the Human Studies Review Board (HSRB) to advise the Agency on the ethical and scientific review of research involving human subjects.

DATES: A virtual public meeting will be held on Tuesday, January 23, 2018 and Wednesday, January 24, 2018, from 1:00 p.m. to approximately 5:30 p.m. Eastern Time on both dates. A separate, subsequent teleconference meeting is planned for Thursday, March 15, 2018, from 2:00 p.m. to approximately 3:30 p.m. Eastern Time for the HSRB to finalize its Final Report of the January 23 and 24, 2018 meeting and review other possible topics.

ADDRESSES: Both of these meetings will be conducted entirely by telephone and on the internet using Adobe Connect. For detailed access information visit the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.*

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to receive further information should contact the HSRB Designated Federal Official (DFO), Thomas O'Farrell on telephone number (202) 564–8451; fax number: (202) 564–2070; email address: *ofarrell.thomas@epa.gov;* or mailing address: Environmental Protection Agency, Office of the Science Advisor, Mail Code 8105R, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Meeting access: These meetings will be open to the public. The full Agenda and meeting materials will be available at the HSRB website: *http://www2.epa.gov/osa/human-studies-review-board.* For questions on document availability, or if you do not have access to the internet, consult with the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**.

Special accommodations. For information on access or services for individuals with disabilities, or to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

How may I participate in this meeting?

The HSRB encourages the public's input. You may participate in these meetings by following the instructions in this section.

1. *Oral comments.* To pre-register to make oral comments, please contact the DFO, Thomas O'Farrell, listed under **FOR FURTHER INFORMATION CONTACT**. Requests to present oral comments during either meeting will be accepted up to Noon Eastern Time on Tuesday, January 16, 2018, for the January 23 and 24, 2018 meeting and up to Noon Eastern Time on Tuesday, March 8, 2018 for the March 15, 2018 meeting. To the extent that time permits, interested persons who have not pre-registered may be permitted by the HSRB Chair to present oral comments during either meeting at the designated time on the agenda. Oral comments before the HSRB are generally limited to five minutes per individual or organization. If additional time is available, further public comments may be possible.

2. *Written comments.* Submit your written comments prior to the meetings. For the Board to have the best opportunity to review and consider your comments as it deliberates, you should submit your comments by Noon Eastern Time on Tuesday, January 16, 2018, for the January 23 and 24, 2018 meeting and up to Noon Eastern Time on Tuesday, March 8, 2018 for the March 15, 2018 meeting. If you submit comments after these dates, those comments will be provided to the HSRB members, but you should recognize that the HSRB members may not have adequate time to consider your comments prior to their discussion. You should submit your comments to the DFO, Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**. There is no limit on the length of written comments for consideration by the HSRB.

Background

The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act 5 U.S.C. App. 2 9. The HSRB provides advice, information, and recommendations on issues related to scientific and ethical aspects of third-party human subjects research that are submitted to the Office of Pesticide Programs (OPP) to be used for regulatory purposes.

Topic for discussion. On January 23 and 24, 2018, EPA's Human Studies Review Board will consider two topics: (1) A completed study and monograph report titled ''Agricultural Handler Exposure during Open Pour Loading of Granules'' by the Agricultural Handlers Exposure Task Force, and (2) a study protocol titled ''Laboratory Evaluation of Bite Protection From Repellent-Impregnated Fabrics'' by Pinebelt Industries.

The Agenda and meeting materials for this topic will be available in advance of the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

On March 15, 2018, the HSRB will review and finalize their draft Final Report from the January 23 and 24, 2018 meeting, in addition to other topics that may come before the Board. The HSRB may also discuss planning for future HSRB meetings. The agenda and the draft report will be available prior to the meeting at *http://www2.epa.gov/osa/human-studies-review-board.*

Meeting minutes and final reports. Minutes of these meetings, summarizing the matters discussed and recommendations made by the HSRB, will be released within 90 calendar days of the meeting. These minutes will be available at *http://www2.epa.gov/osa/human-studies-review-board.* In addition, information regarding the HSRB's Final Report, will be found at *http://www2.epa.gov/osa/human-studies-review-board* or from Thomas O'Farrell listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 14, 2017.

Jennifer Orme-Zavaleta,

EPA Science Advisor.

[FR Doc. 2017–27951 Filed 12–26–17; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies'') may not conduct or sponsor, and the 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 Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the Board's publication for public comment of a proposal to extend, with revision, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are currently approved collections of information. The Board is publishing this proposal on behalf of the agencies.

The proposed revisions to these reports would align with corresponding

changes made to the Consolidated Reports of Condition and Income (FFIEC 031, FFIEC 041, and FFIEC 051). The Consolidated Reports of Condition and Income are commonly referred to as the Call Report. The proposed revisions to the FFIEC 002 and the FFIEC 002S would delete or consolidate certain items, establish certain reporting thresholds, account for changes in the accounting for equity investments, and make instructional clarifications consistent with those previously made to or currently proposed for the Call Report instructions. The proposed revisions would result in an overall reduction in burden and would take effect as of the June 30, 2018, report date. In determining whether to approve the proposed collection of information, the agencies will consider all comments received. As required by the PRA, the Board would then publish a second **Federal Register** notice for a 30-day comment period and submit the final FFIEC 002 and FFIEC 002S to OMB for review and approval.

DATES: Comments must be submitted on or before February 26, 2018.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

You may submit comments, which should refer to ''FFIEC 002 and FFIEC 002S,'' by any of the following methods:

- *Agency website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the reporting form numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street NW, (between 18th and 19th Streets NW), Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the FFIEC 002 and FFIEC 002S discussed in this notice, please contact the agency staff member whose name appears below. In addition, copies of the FFIEC 002 and FFIEC 002S forms can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board is proposing to extend for three years, with revision, the FFIEC 002 and FFIEC 002S.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB Control Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—209; FFIEC 002S—38.

Estimated Average Burden per Response: FFIEC 002—23.87 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFEIC 002—19,955 hours; FFIEC 002S—912 hours.

Type of Review: Revision of currently approved collections.

General Description of Reports

These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

Current Actions

I. Introduction

The proposed revisions partially stem from a formal initiative launched by the FFIEC in December 2014 to identify potential opportunities to reduce burden associated with Call Report requirements for community banks. The FFIEC's formal initiative included surveys of agency Call Report data users, which have served as the

foundation for the proposed burden-reducing revisions.[1] As part of these surveys, users were asked to fully explain the need for each Call Report data item they deemed essential, how the data item is used, the frequency with which it is needed, and the population of institutions from which it is needed. Based on the results of the surveys, the agencies identified Call Report data items that are no longer needed, are needed on a less frequent basis, or are needed only above certain reporting thresholds, and have proposed or finalized the elimination, less frequent collection, or creation of new or upwardly revised reporting thresholds for these data items in the Call Report. In an effort to maintain consistency between the FFIEC 002, the FFIEC 002S, and the Call Report, the burden-reducing changes identified for the Call Report have been incorporated into this proposal where applicable. In addition, the proposed revisions ensure the reporting of data on equity investments in several FFIEC 002 schedules is consistent with changes in the accounting standards applicable to such investments. All of the revisions in this proposal have been implemented or proposed to be implemented in the Call Report.

II. General Discussion and Detail of Specific Proposed Revisions

The proposed revisions are meant to align with revisions either implemented or proposed to be implemented in the Call Report. Below is a list of the specific proposed revisions to the FFIEC 002 and FFIEC 002S. The proposed revisions are segmented by schedule except for the revisions relating to the accounting for equity securities, which can be found following the section regarding proposed revisions to FFIEC 002 Schedule S, Servicing, Securitization, and Asset Sale Activities. Other than proposed revisions to the Report of Assets and Liabilities in the next paragraph, which pertain to both the FFIEC 002 and the FFIEC 002S, all other proposed revisions pertain only to the FFIEC 002.

Schedule RAL (FFIEC 002) and Report of Assets and Liabilities (FFIEC 002S)

In an effort to improve clarity, conformity with current accounting terminology, and internal consistency across schedules, the agencies propose to revise the caption in the FFIEC 002 and FFIEC 002S forms and instructions from ''loans and leases, net of unearned income'' to ''loans and leases held for investment and held for sale.'' These two captions are intended to represent the same reported amounts. Accordingly, the agencies will replace the former caption with the latter caption in affected data items and related instructions across all applicable schedules.

Each year in the March FFIEC 002, each institution indicates in Schedule RAL, Assets and Liabilities, Memorandum item 17, the most comprehensive level of auditing work performed for the branch or agency by, or on behalf of, the parent organization during the preceding calendar year. In completing Memorandum item 17, each institution selects from seven statements describing a range of levels of auditing work the one statement that best describes the level of auditing work performed for it. Certain statements from which an institution must choose do not reflect current auditing practices performed in accordance with applicable standards and procedures promulgated by the U.S. auditing standard setters, namely the Public Company Accounting Oversight Board (PCAOB) and the Auditing Standards Board (ASB) of the American Institute of Certified Public Accountants. The PCAOB establishes auditing and related professional practice standards used in the performance and reporting of audits of the financial statements and the internal control over financial reporting (ICFR) of public companies. The ASB establishes auditing and quality control standards applicable to the performance and issuance of audit reports for entities that are not public companies, *e.g.* private companies.

The PCAOB's Auditing Standard No. 5 (AS 5), An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements, became effective for fiscal years ending on or after November 15, 2007, and provides guidance regarding the integration of audits of ICFR with audits of financial statements for public companies. Those public companies not required to undergo an integrated audit must have an audit of their financial statements.

The ASB has separately provided similar guidance in Statement on Auditing Standards Number 130 (SAS 130), An Audit of Internal Control Over Financial Reporting That Is Integrated With an Audit of Financial Statements, which became effective for integrated audits for periods ending on or after December 15, 2016. Consistent with the PCAOB, the ASB states in SAS 130 that ''[a]n audit of ICFR is required to be integrated with an audit of financial statements.'' Unless a private company is required to or elects to have an integrated audit of its financial statements and ICFR, the private company may be required to or can choose to have an external auditor perform an audit of its financial statements.

The existing wording of statements 1 and 2 of Schedule RAL, Memorandum item 17, reads as follows:

1 = ''Independent annual audit of the branch or agency conducted in accordance with U.S. generally accepted auditing standards by a certified public accounting firm''
2 = ''Independent annual audit of the branch or agency conducted in accordance with home-country auditing standards by an independent accounting firm.''

Because these statements no longer fully and properly describe the types of external auditing services performed for institutions under current professional standards and to enhance the information institutions provide the agencies annually about the level of auditing external work performed for them, the agencies are proposing to replace existing statements 1 and 2 with new statements 1a and 1b and revised statement 2. These statements would read as follows:

1a = ''An integrated audit of the branch or agency and its internal control over financial reporting conducted in accordance with the auditing standards of the American Institute of Certified Public Accountants (AICPA) or the Public Company Accounting Oversight Board (PCAOB) by an independent public accountant.''

1b = ''An audit of the branch or agency conducted in accordance with the auditing standards of the AICPA or the PCAOB by an independent public accountant.''

2 = ''An audit of the branch or agency conducted in accordance with home-country auditing standards by an independent public accountant.''

Further, the agencies also propose to revise the caption to Memorandum item 17 to explicitly state that the work is performed by independent external auditors and to remove the reference to work performed on behalf of the parent organization.

The agencies also propose to consolidate the detail on the fair value and the unpaid principal balance of loans held for trading collected in Schedule RAL. For loans secured by 1–4 family residential properties, breakouts for revolving, open-end loans

[1] See 80 FR 56539 (September 18, 2015), 81 FR 45357 (July 13, 2016), 81 FR 54190 (August 15, 2016), 82 FR 2444 (January 9, 2017), 82 FR 29147 (June 27, 2017), and 82 FR 51908 (November 8, 2017) for information on other actions taken under this initiative.

secured by 1–4 family residential properties and extended under lines of credit, as well as closed-end loans secured by 1–4 family residential properties, would be consolidated into a single item. In addition, construction, land development, and other land loans; loans secured by farmland; loans secured by multifamily (5 or more) residential properties; and loans secured by nonfarm nonresidential properties would be consolidated into a single item. Specifically, existing Memorandum items 5.a.(3)(a) and 5.a.(3)(b) would be consolidated into new Memorandum item 5.a.(1), while existing Memorandum items 5.a.(1), 5.a.(2), 5.a.(4), and 5.a.(5) would be consolidated into new Memorandum item 5.a.(2). Existing Memorandum items 6.a.(3)(a) and 6.a.(3)(b) would be consolidated into new Memorandum item 6.a.(1), while existing Memorandum items 6.a.(1), 6.a.(2), 6.a.(4), and 6.a.(5) would be consolidated into new Memorandum item 6.a.(2). The agencies no longer need this current level of detail on loans held for trading in the FFIEC 002.

Schedule A

On Schedule A, Cash and Balances Due from Depository Institutions, the agencies propose to consolidate the reporting of an institution's balances due from depository institutions in the U.S., which are currently reported in items 3.a for balances due from U.S. branches and agencies of foreign banks (including their international banking facilities (IBFs)) and 3.b for balances due from other depository institutions in the U.S. (including their IBFs), into a single item 3. In addition, the agencies propose to consolidate the reporting of an institution's balances due from foreign branches of U.S. banks (item 4.a), balances due from banks in the reporting institution's home country and its home country central bank (item 4.b), and balances due from all other banks in foreign countries and foreign central banks (item 4.c), into a single item 4, Balances due from banks in foreign countries and foreign central banks. The agencies no longer need this current level of detail for these balances in the FFIEC 002.

Schedule C—Part I

At present, institutions that have elected to measure loans held for investment or held for sale at fair value under a fair value option are required to report the fair value and unpaid principal balance of such loans in Memorandum items 5 and 6, respectively, of Schedule C, Part I, Loans and Leases. Because Schedule C, Part I, must be completed by all institutions, Memorandum items 5 and 6 also must be completed by all institutions although only a nominal number of institutions have disclosed reportable amounts for any of the categories of fair value option loans reported in the subitems of these two Memorandum items. Accordingly, the agencies are proposing to move Memorandum items 5 and 6 on the fair value and unpaid principal balance of fair value option loans from Schedule C, Part I, to Schedule Q, Financial Assets and Liabilities Measured at Fair Value on a Recurring Basis, and to designate them as Memorandum items 3 and 4, respectively.

The agencies also propose to consolidate the detail on loans held for investment or held for sale measured at fair value and the unpaid principal balance of such loans that would be moved to Schedule Q. Breakouts for revolving, open-end loans secured by 1–4 family residential properties and extended under lines of credit, as well as closed-end loans secured by 1–4 family residential properties, would be consolidated into a single item for loans secured by 1–4 family residential properties. In addition, construction, land development, and other land loans; loans secured by farmland; loans secured by multifamily (5 or more) residential properties; and loans secured by nonfarm nonresidential properties would be consolidated into a single item for loans secured by real estate other than 1–4 family residential properties. Specifically, existing Memorandum items 5.a.(3)(a) and 5.a.(3)(b) would be consolidated into new Memorandum item 5.a.(1), while existing Memorandum items 5.a.(1), 5.a.(2), 5.a.(4), and 5.a.(5) would be consolidated into new Memorandum item 5.a.(2). Existing Memorandum items 6.a.(3)(a) and 6.a.(3)(b) would be consolidated into new Memorandum item 6.a.(1), while existing Memorandum items 6.a.(1), 6.a.(2), 6.a.(4), and 6.a.(5) would be consolidated into new Memorandum item 6.a.(2). The agencies no longer need this current level of detail in the FFIEC 002.

Schedule C—Part II

The agencies propose to remove items 1.a and 1.b on Schedule C, Part II, Loans to Small Businesses and Small Farms. Item 1.a requires FDIC-insured branches to indicate on an annual basis whether all or substantially all of the institution's dollar volume of reported ''Commercial and industrial loans to U.S. addressees'' consist of loans with original amounts of $100,000 or less. If a branch reports ''Yes'' in item 1.a, then it must provide the number of ''Commercial and industrial loans to U.S. addressees'' outstanding in item 1.b. This change aligns this schedule with revisions made to the corresponding schedule in the FFIEC 031 Call Report.

Schedule Q

The agencies propose to modify the reporting criteria for Schedule Q, Financial Assets and Liabilities Measured at Fair Value on a Recurring Basis, by applying only an activity threshold and not an asset-size threshold, which currently is $500 million. As proposed, Schedule Q is to be completed by branches and agencies that (1) have elected to report financial instruments or servicing assets and liabilities at fair value under a fair value option with changes in fair value recognized in earnings, or (2) reported total trading assets of $10 million or more in any of the four preceding calendar quarters. Institutions that do not meet either of these criteria would no longer need to complete this schedule, regardless of asset size. The agencies believe the activity thresholds are more appropriate than the existing simple asset-size threshold for determining which institutions must complete this schedule.

The agencies also propose to raise the dollar portion of the threshold from $25,000 to $100,000 for itemizing and describing the components of ''All other assets'' and ''All other liabilities,'' which are reported in Memorandum items 1 and 2, respectively. The percentage portion of the existing thresholds would not be changed. Based on a preliminary evaluation of the existing reporting thresholds, the agencies have concluded that the dollar portion of the thresholds that currently apply to these items can be increased to provide a reduction in reporting burden without a loss of data that would be necessary for supervisory or other public policy purposes.

Schedule S

The agencies propose the following revisions to Schedule S, Servicing, Securitization, and Asset Sale Activities, as they no longer need the current level of detail on securitization and asset sale activities in the FFIEC 002:

(1) Consolidate the maximum amount of credit exposures arising from recourse or other seller-provided credit enhancements in the forms of retained interest-only strips, subordinated securities and other residual interests, and standby letters of credit and other

enhancements reported in items 2.a, 2.b, and 2.c, respectively, into a single new item 2.

(2) Create a reporting threshold of $100 billion or more in total assets for reporting in item 3, which is for reporting unused commitments to provide liquidity to structures reported in item 1 involving assets sold and securitized by the reporting institution with servicing retained or with recourse or other seller-provided credit enhancements.

(3) Consolidate ownership (or seller's) interests carried as securities and loans, which are reported in items 6.a and 6.b, respectively, into a single new item 6. The agencies also propose to create a reporting threshold of $10 billion or more in total assets for reporting this new combined item 6.

(4) Remove items 7.a and 7.b, which contain loan amounts included in ownership (or seller's) interests carried as securities that are 30–89 days past due and 90 days or more past due, respectively.

(5) Consolidate columns B and C of item 9, which contain the maximum amount of credit exposure arising from credit enhancements provided by the reporting institution to other institutions' securitization structures, into existing column G. The activities covered in columns B and C pertain to home equity lines and credit card receivables, respectively. The amounts previously reported in columns B and C would be reported in column G, ''All other loans, all leases, and all other assets.''

(6) Create a reporting threshold of $10 billion or more in total assets for reporting unused commitments to provide liquidity to other institutions' securitization structures in item 10. The agencies also propose to consolidate columns B and C of item 10 into existing column G. The activities covered in columns B and C pertain to home equity lines and credit card receivables, respectively. The amounts previously reported in columns B and C by institutions with $10 billion or more in total assets would be included in column G, ''All other loans, all leases, and all other assets.''

(7) Consolidate columns B through F of item 11, which contain assets sold with recourse or other seller-provided credit enhancements and not securitized, into existing column G. The activities covered in columns B through F pertain to home equity lines, credit card receivables, auto loans, other consumer loans, and commercial and industrial loans, respectively. The amounts previously reported in columns B through F would be included in column G, ''All other loans, all leases, and all other assets.''

(8) Consolidate columns B through F of item 12, which contain the maximum amount of credit exposure arising from recourse or other seller-provided credit enhancements on assets sold with recourse or other seller-provided credit enhancements and not securitized, into existing column G. The activities covered in columns B through F pertain to home equity lines, credit card receivables, auto loans, other consumer loans, and commercial and industrial loans, respectively. The amounts previously reported in columns B through F would be included in column G, ''All other loans, all leases, and all other assets.''

(9) Create a reporting threshold of $10 billion or more in total assets for reporting detail on asset-backed commercial paper conduits in Memorandum item 1. Institutions report the maximum amount of credit exposure arising from credit enhancements provided to asset-backed commercial paper conduits sponsored by the reporting institution or related institutions, and by unrelated institutions, in Memorandum items 1.a.(1) and 1.a.(2), respectively. Institutions report unused commitments to provide liquidity to asset-backed commercial paper conduits sponsored by the reporting institution or related institutions, and by unrelated institutions, in Memorandum items 1.b.(1) and M.1.b.(2), respectively.

Proposed Revisions to Address Changes in Accounting for Equity Investments

In January 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2016–01, ''Recognition and Measurement of Financial Assets and Financial Liabilities.'' In its summary of this ASU, the FASB described how one of the main provisions of the ASU differs from current U.S. generally accepted accounting principles (GAAP) as follows:

> The amendments in this Update supersede the guidance to classify equity securities with readily determinable fair values into different categories (that is, trading or available-for-sale) and require equity securities (including other ownership interests, such as partnerships, unincorporated joint ventures, and limited liability companies) to be measured at fair value with changes in the fair value recognized through net income. An entity's equity investments that are accounted for under the equity method of accounting or result in consolidation of an investee are not included within the scope of this Update.

The FASB further stated in the summary that ''an entity may choose to measure equity investments that do not have readily determinable fair values at cost minus impairment, if any, plus or minus changes resulting from observable price changes in orderly transactions for the identical or a similar investment of the same issuer.''

The instructions to the FFIEC 002 require that respondents must utilize U.S. GAAP when filing the report. The agencies propose to revise the FFIEC 002 report form and instructions to account for the changes to U.S. GAAP set forth in ASU 2016–01.[2] These proposed revised reporting requirements would become effective for different sets of respondents as those respondents become subject to the ASU. Institutions that are public business entities, as defined in U.S. GAAP, are subject to ASU 2016–01 for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Therefore, for an institution with a calendar year fiscal year that is a public business entity, the proposed revised reporting requirements would become effective for its FFIEC 002 for June 30, 2018. As discussed below, interim guidance would be provided for purposes of reporting by such an institution in accordance with the ASU in its FFIEC 002 for March 31, 2018. All other institutions become subject to the ASU for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. Therefore, for an institution with a calendar year fiscal year that is not a public business entity, the proposed revised reporting requirements would become effective for its FFIEC 002 for December 31, 2019. The period over which institutions will be implementing this ASU ranges from the first quarter of 2018 through the fourth quarter of 2020. December 31, 2020, will be the first quarter-end FFIEC 002 report date as of which all institutions would be required to prepare their FFIEC 002 in accordance with ASU 2016–01 and the proposed revised reporting requirements.

The changes to the accounting for equity investments under ASU 2016–01 will affect several existing data items in the FFIEC 002. One outcome of these accounting changes is the elimination of the concept of available-for-sale (AFS) equity securities, which are measured at fair value on the balance sheet with changes in fair value recognized through other comprehensive income. At present, the historical cost and fair value of AFS equity securities, *i.e.,* investments in mutual funds and other

[2] No revisions to the FFIEC 002S regarding equity securities are being proposed.

equity securities with readily determinable fair values that are not held for trading, are reported in Schedule RAL, item 1.c.(4), ''All other'' bonds, notes, debentures, and corporate stock, and Memorandum item 3, ''Fair value of available-for-sale securities.'' The total fair value of AFS securities reported in Schedule RAL, Memorandum item 3, also is reported in item 1, column A, of Schedule Q. Institutions then report in columns C, D, and E of item 1 of Schedule Q a breakdown of their AFS securities by the level in the fair value hierarchy within which the fair value amounts of these securities fall (Level 1, 2, or 3). Any balance sheet netting adjustments to these fair value amounts are reported in column B of item 1 of Schedule Q.

Another outcome of the changes in the accounting for equity investments under ASU 2016–01 is that equity securities and other equity investments without readily determinable fair values that are within the scope of ASU 2016–01 and are not held for trading must be measured at fair value through net income, rather than at cost (less impairment, if any), unless the measurement election described above is applied to individual equity investments. In general, institutions currently report their holdings of such equity securities without readily determinable fair values as a component of other assets in Schedule RAL, item 1.h.

At present, AFS equity securities and equity investments without readily determinable fair values are included in the quarterly averages reported in Schedule K, Quarterly Averages. Institutions report the quarterly average for ''Total claims on nonrelated parties'' in item 5 of this schedule. This average reflects all equity securities not held for trading on a cost basis. In addition, for branches whose deposits are insured by the FDIC, AFS equity securities and equity investments without readily determinable fair values are included in the quarterly averages reported in Schedule O, Other Data for Deposit Insurance Assessments. Institutions report the quarterly average for ''Average consolidated total assets for the calendar quarter'' in item 4 of this schedule. This average reflects AFS equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.

The agencies have considered the changes to the accounting for equity investments under ASU 2016–01 and the effect of these changes on the manner in which data on equity securities and other equity investments are currently reported in the FFIEC 002, which has been described above. Accordingly, the proposed revisions to the FFIEC 002 report form and instructions to address the equity securities accounting changes are as follows:

(1) In Schedule RAL, Assets and Liabilities, a new Memorandum item 4, ''Fair value of equity securities with readily determinable fair values not held for trading,'' would be added effective June 30, 2018. From June 30, 2018, through September 30, 2020, the instructions for Memorandum item 4 and the reporting form for Schedule RAL would include guidance stating that Memorandum item 4 is to be completed only by institutions that have adopted ASU 2016–01. Institutions that have not adopted ASU 2016–01 would leave Memorandum item 4 blank. Existing Memorandum items 3, ''Fair value of available-for-sale securities,'' and 4, ''Amortized cost of available-for-sale securities,'' would be renumbered as Memorandum items 3.a and 3.b, respectively, effective June 30, 2018. During the period from June 30, 2018, through September 30, 2020, the instructions for Schedule RAL, Memorandum items 3.a and 3.b, would explain that institutions that have adopted ASU 2016–01 should include only debt securities in Memorandum items 3.a and 3.b. Effective December 31, 2020, the caption for Memorandum items 3.a and 3.b would be revised to ''Fair value of available-for-sale debt securities'' and ''Amortized cost of available-for-sale debt securities,'' respectively, and all institutions would report their holdings of equity securities with readily determinable fair values not held for trading in Memorandum item 4.

(2) In Schedule RAL, equity securities and other equity investments without readily determinable fair values not held for trading, which are currently reported in item 1.h, would continue to be reported in this item. However, the instructions would be revised as of June 30, 2018, to state that, after the effective date of ASU 2016–01 for an institution, the equity securities and other equity investments the institution reports in item 1.h would be measured in accordance with the ASU.

(3) In Schedule K, Quarterly Averages, the instructions for item 5, ''Total claims on nonrelated parties,'' would include guidance from June 30, 2018, through September 30, 2020, stating that, for purposes of reporting the quarterly average for total claims:

- Institutions that have adopted ASU 2016–01 should reflect the quarterly average of all debt securities not held for trading on an amortized cost basis, and
- Institutions that have not adopted ASU 2016–01 should reflect the quarterly average for all securities not held for trading on an amortized cost basis.

Then, effective December 31, 2020, the instructions for item 5 would indicate that, for debt securities not held for trading, the quarterly average for total claims should reflect such securities on an amortized cost basis.

(4) In Schedule O, Other Data for Deposit Insurance Assessments, the instructions for item 4, ''Average consolidated total assets for the calendar quarter,'' would include guidance from June 30, 2018, through September 30, 2020, stating that, for purposes of reporting the quarterly average for total assets:

- Institutions that have adopted ASU 2016–01 should reflect the quarterly average for debt securities not held for trading at amortized cost, and
- Institutions that have not adopted ASU 2016–01 should reflect the quarterly average for all debt securities not held for trading at amortized cost, available-for-sale equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.

Then, effective December 31, 2020, the instructions for item 4 would indicate that, for debt securities not held for trading, the quarterly average for total assets should reflect such securities at amortized cost.

(5) In Schedule Q, the caption for item 1, ''Available-for-sale securities,'' would be changed to ''Available-for-sale debt securities and equity securities with readily determinable fair values not held for trading'' effective June 30, 2018. From June 30, 2018, through September 30, 2020, the instructions for item 1 and the reporting form for Schedule Q would include guidance stating that, for institutions that have adopted ASU 2016–01, the amount reported in item 1, column A, must equal the sum of Schedule RAL, Memorandum items 3.a and 4, and for institutions that have not adopted ASU 2016–01, the amount reported in item 1, column A, must equal Schedule RAL, Memorandum item 3.a. Effective December 31, 2020, this guidance would indicate that the amount reported in item 1, column A, must equal the sum of Schedule RAL, Memorandum items 3.a and 4.

Institutions that apply ASU 2016–01 in the first quarter of 2018 will need to report their holdings of equity securities and other equity investments in accordance with this accounting

standard within the existing structure of the FFIEC 002 for March 31, 2018. Interim guidance accompanying the Board's transmittal letter to institutions for the March 31, 2018, report date will advise institutions that have adopted ASU 2016–01 to (a) continue to report the fair value and historical cost of their holdings of equity securities with readily determinable fair values not held for trading (which were reportable as available-for-sale equity securities prior to the adoption of ASU 2016–01) in existing Memorandum items 3 and 4 of Schedule RAL; (b) measure their holdings of equity securities and other equity investments without readily determinable fair values not held for trading in accordance with the ASU and continue to report them in Schedule RAL, item 1.h; (c) report Schedule K, item 5, consistent with the measurement of Schedule RAL, item 1.i, except that all debt securities not held for trading should be measured on an amortized cost basis; (d) report Schedule O, item 4, consistent with the measurement of Schedule RAL, item 3, except that all debt securities not held for trading should be measured at amortized cost; and (e) continue to report the amount from Memorandum item 3 of Schedule RAL in Schedule Q, item 1, column A.

III. Timing

The proposed changes to the report forms and instructions described in this notice would be implemented as of the June 30, 2018, report date. However, as discussed above, the proposed revised reporting requirements for equity investments would have varying effective dates for individual respondents and would begin with the June 30, 2018, report date. The agencies invite comment on any difficulties that institutions would expect to encounter in implementing the systems and process changes necessary to accommodate the proposed revisions to the FFIEC 002 and FFIEC 002S as of this proposed effective date.

The specific wording of the captions for the new or revised data items discussed in this proposal and the numbering of these data items may be modified to provide clarity.

IV. Request for Comment

Public comment is requested on all aspects of this notice. Comment is specifically invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record.

Board of Governors of the Federal Reserve System, December 21, 2017.

Margaret Shanks,

Deputy Secretary of the Board.

[FR Doc. 2017–27942 Filed 12–26–17; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 171 0184]

Alimentation Couche-Tard Inc. and CrossAmerica Partners LP; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent orders—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 15, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Alimentation Couche-Tard, Inc. (ACT) et al.; FTC File No. 1710184'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/actholidaydivest* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Alimentation Couche-Tard, Inc. (ACT) et al.; FTC File No. 1710184'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Nicholas Bush, (202–326–2848), Bureau of Competition, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 15, 2017), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 15, 2018. Write ''Alimentation Couche-Tard, Inc. (ACT) et al.; FTC File No. 1710184'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *https://www.ftc.gov/policy/public-comments.*

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/actholidaydivest* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that website.

If you prefer to file your comment on paper, write ''Alimentation Couche-Tard, Inc. (ACT) et al.; FTC File No. 1710184'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC

20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 15, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Agreement Containing Consent Orders To Aid Public Comment

Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Alimentation Couche-Tard Inc. (''ACT'') and CrossAmerica Partners LP (''CAPL'') (collectively, the ''Respondents''). The Consent Agreement is designed to remedy the anticompetitive effects that likely would result from ACT's proposed acquisition of Holiday Companies (''Holiday'').

Under the terms of the proposed Consent Agreement, ACT and CAPL must divest to a Commission-approved buyer (or buyers) certain CAPL and Holiday retail fuel outlets and related assets in ten local markets in Minnesota and Wisconsin. ACT and CAPL must complete the divestiture no later than 120 days after the closing of ACT's acquisition of Holiday. The Commission and Respondents have agreed to an Order to Maintain Assets that requires Respondents to operate and maintain each divestiture outlet in the normal course of business through the date the Commission-approved buyer acquires the outlet.

The Commission has placed the proposed Consent Agreement on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

II. The Respondents

Respondent ACT, a publicly traded company headquartered in Laval, Quebec, Canada, operates convenience stores and retail fuel outlets throughout the United States and the world. ACT is the parent of wholly owned subsidiary Circle K Stores Inc. (''Circle K''). ACT's current U.S. network consists of approximately 7,200 stores located in 42 states. Over 5,000 locations are company-operated, making ACT the largest convenience store operator in terms of company-owned stores and the second-largest chain overall in the country. ACT convenience store locations operate primarily under the Circle K, Kangaroo Express, and Corner Store banners, while its retail fuel outlets operate under a variety of company and third-party brands.

Respondent CAPL, a publicly traded master limited partnership headquartered in Allentown, Pennsylvania, markets fuel at wholesale, and owns and operates convenience stores and retail fuel outlets. ACT, via Circle K, acquired CST Brands, Inc. in June 2017, which gave Circle K operational control and management of CAPL. CAPL supplies fuel to nearly 1,200 sites across 29 states.

III. The Proposed Acquisition

On July 10, 2017, ACT, through its wholly owned subsidiary Oliver Acquisition Corp., entered into an agreement to acquire certain Holiday equity interests, including Holiday's retail fuel outlets (the ''Transaction''). The Transaction would cement ACT's position as one of the largest operators of retail fuel outlets in the United States.

The Commission's Complaint alleges that the Transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and that the Transaction agreement constitutes a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by substantially lessening competition for the retail sale of gasoline and the retail sale of diesel in ten local markets in Minnesota and Wisconsin.

IV. The Retail Sales of Gasoline and Diesel

The Commission's Complaint alleges that relevant product markets in which to analyze the Transaction are the retail sale of gasoline and the retail sale of diesel. Consumers require gasoline for their gasoline-powered vehicles and can purchase gasoline only at retail fuel outlets. Likewise, consumers require diesel for their diesel-powered vehicles and can purchase diesel only at retail fuel outlets. The retail sale of gasoline and the retail sale of diesel constitute separate relevant markets because the two are not interchangeable—vehicles that run on gasoline cannot run on diesel and vehicles that run on diesel cannot run on gasoline.

The Commission's Complaint alleges the relevant geographic markets in which to assess the competitive effects

of the Transaction include ten local markets within the following cities: Aitkin, Hibbing, Minnetonka, Mora, Saint Paul, and Saint Peter in Minnesota, and Hayward, Siren, and Spooner in Wisconsin.

The geographic markets for retail gasoline and retail diesel are highly localized, ranging up to a few miles, depending on local circumstances. Each relevant market is distinct and fact-dependent, reflecting the commuting patterns, traffic flows, and outlet characteristics unique to each market. Consumers typically choose between nearby retail fuel outlets with similar characteristics along their planned routes. The geographic markets for the retail sale of diesel may be similar to the corresponding geographic markets for retail gasoline as many diesel consumers exhibit the same preferences and behaviors as gasoline consumers.

The Transaction would substantially increase the market concentration in each of the ten local markets, resulting in highly concentrated markets. In five local markets, the Transaction would reduce the number of competitively constraining independent market participants from three to two. In the remaining five local markets, the Transaction would reduce the number of competitively constraining independent market participants from four to three.

The Transaction would substantially lessen competition for the retail sale of gasoline and the retail sale of diesel in these local markets. Retail fuel outlets compete on price, store format, product offerings, and location, and pay close attention to competitors in close proximity, on similar traffic flows, and with similar store characteristics. The combined entity would be able to raise prices unilaterally in markets where ACT and Holiday are close competitors. Absent the Transaction, ACT and Holiday would continue to compete head to head in these local markets.

Moreover, the Transaction would increase the likelihood of coordination in local markets where only two or three competitively constraining independent market participants would remain. Two aspects of the retail fuel industry make it vulnerable to coordination. First, retail fuel outlets post their fuel prices on price signs that are visible from the street, allowing competitors to observe each other's fuel prices without difficulty. Second, retail fuel outlets regularly track their competitors' fuel prices and change their own prices in response. These repeated interactions give retail fuel outlets familiarity with how their competitors price and how their competitors respond to their own prices.

Entry into each relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects arising from the Acquisition. Significant entry barriers include the availability of attractive real estate, the time and cost associated with constructing a new retail fuel outlet, and the time associated with obtaining necessary permits and approvals.

V. The Proposed Consent Agreement

The proposed Consent Agreement would remedy the Acquisition's likely anticompetitive effects by requiring ACT and CAPL to divest certain CAPL and Holiday retail fuel outlets and related assets in ten local markets.

The proposed Consent Agreement requires that the divestiture occur no later than 120 days after ACT consummates the Acquisition. This Agreement protects the Commission's ability to obtain complete and effective relief given the small number of outlets to be divested. Further, based on Commission staff's investigation, the Commission believes that ACT can identify an acceptable buyer (or buyers) within 120 days.

The proposed Consent Agreement further requires ACT and CAPL to maintain the economic viability, marketability, and competitiveness of each divestiture asset until the Commission approves a buyer (or buyers) and the divestiture is complete. For up to twelve months following the divestiture, ACT and CAPL must make available transitional services, as needed, to assist the buyer of each divestiture asset.

In addition to requiring outlet divestitures, the proposed Consent Agreement also requires ACT and CAPL to provide the Commission notice before acquiring designated outlets in the ten local areas for ten years. The prior notice provision is necessary because acquisitions of the designated outlets likely raise competitive concerns and may fall below the HSR Act premerger notification thresholds.

The proposed Consent Agreement contains additional provisions designed to ensure the effectiveness of the proposed relief. For example, Respondents have agreed to an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain each divestiture outlet in the normal course of business, through the date the Respondents' complete divestiture of the outlet. During this period, and until such time as the buyer (or buyers) no longer requires transitional assistance, the Order to Maintain Assets authorizes the Commission to appoint an independent third party as a Monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2017–27924 Filed 12–26–17; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (''FTC'').

ACTION: Notice and request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for information collection requirements contained in its Trade Regulation Rule entitled Labeling and Advertising of Home Insulation (R-value Rule or Rule). That clearance expires on January 31, 2018.

DATES: Comments must be received by January 26, 2018.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''R-value Rule: FTC File No. R811001'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/rvaluerulepra2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Hampton Newsome, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC–9528, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–2889.

SUPPLEMENTARY INFORMATION:

Title: R-value Rule, 16 CFR part 460.

OMB Control Number: 3084–0109.

Type of Review: Extension of a currently approved collection.

Abstract: The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

On October 11, 2017, the Commission sought comment on the information collection requirements in the R-value Rule. 82 FR 47207. No germane comments were received. As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment. Comments should address only the information collection requirements of the current Rule. They should not address proposed Rule amendments recently announced by the Commission in a separate proceeding.[1]

Estimated Annual Hours Burden: 131,740 hours.

Likely Respondents and Estimated Burden:

Installation manufacturers, installers, new home builders/sellers, dealers and retailers.

(a) Installation manufacturers.

- Testing by installation manufacturers − 15 new products/year × 2 hours each = 30 hours; and
- Disclosures by installation manufacturers − [(144 manufacturers × 20 hours) + (6 largest manufacturers × 80 hours each] = 3,360 hours.
- Recordkeeping by installation manufacturers − 150 manufacturers × 1 hour each = 150 hours.

(b) Installers.

- Disclosures by retrofit installers (manufacturer's insulation fact sheet) − 2 million retrofit installations/year × 2 minutes each = 66,667 hours.
- Disclosures by installers (advertising) − 1,615 installers × 1 hour each = 1,615 hours.
- Recordkeeping by installers − 1,615 installers × 5 minutes each = 135 hours.

(c) New home builders/sellers, dealers.

- Disclosures by new home sellers − 1,174,000 new home sales/year × 30 seconds each = 9,783 hours.

(d) Retailers.

- Disclosures by retailers − [25,000 retailers × 1 hour each (fact sheets) + 25,000 retailers × 1 hour each (advertising disclosure) = 50,000 hours.

Frequency of Response: Periodic.

Total Annual Labor Cost: $2,616,943 per year (solely related to labor costs) [approximately $858 for testing, based on 30 hours for manufacturers (30 hours × $28.61 per hour for skilled technical personnel); $4,284 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 285 hours (285 hours × $15.03 per hour for clerical personnel); $50,501 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $15.03 per hour for clerical personnel); and $2,561,300 for disclosure compliance by installers, new home sellers, and retailers (128,065 hours × $20 per hour for sales persons).]

Request for Comment

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before January 26, 2018. Write ''R-value Rule: FTC File No. R811001'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/rvaluerulepra2* by following the instructions on the web-based form. When this Notice appears at *http://www.regulations.gov,* you also may file a comment through that website.

If you file your comment on paper, write ''R-value Rule: FTC File No. R811001'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail are subject to delays due to heightened security precautions. Thus, comments can also be sent via email to *wliberante@omb.eop.gov.*

Because your comment will be placed on the publicly accessible FTC website at *https://www.ftc.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential'' —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is

[1] See, ''FTC Proposes Updates to R-Value Rule for Home Insulation Products,'' Dec. 4, 2017, *https://www.ftc.gov/news-events/press-releases/2017/12/ftc-proposes-updates-r-value-rule-home-insulation-products.*

requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before January 26, 2018. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

David C. Shonka,

Acting General Counsel.

[FR Doc. 2017–27868 Filed 12–26–17; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the Regenstrief Center for Healthcare Engineering at Purdue University Patient Safety Organization (RCHE Purdue PSO)

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the Regenstrief Center for Healthcare Engineering at Purdue University Patient Safety Organization (RCHE Purdue PSO) of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on December 15, 2017.

ADDRESSES: Both directories can be accessed electronically at the following HHS website: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Room 06N94B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, establish a framework by which hospitals, doctors, and other health care providers may voluntarily report information to Patient Safety Organizations (PSOs), on a privileged and confidential basis, for the aggregation and analysis of patient safety events.

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from RCHE Purdue PSO, a component entity of Purdue University, PSO number P0168, to voluntarily relinquish its status as a PSO. Accordingly, RCHE Purdue PSO was delisted effective at 12:00 Midnight ET (2400) on December 15, 2017.

More information on PSOs can be obtained through AHRQ's PSO website at *http://www.pso.ahrq.gov.*

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2017–27803 Filed 12–26–17; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–6784]

Implementation of Pathogen Reduction Technology in the Manufacture of Blood Components in Blood Establishments: Questions and Answers; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Implementation of Pathogen Reduction Technology in the Manufacture of Blood Components in Blood Establishments: Questions and Answers; Draft Guidance for Industry.'' The draft guidance document provides blood establishments that collect or process blood and blood components with recommendations for implementing pathogen reduction technology in the manufacture of pathogen-reduced blood components. The guidance also provides answers to frequently asked questions concerning the implementation of the INTERCEPT® Blood System for Platelets and Plasma. The recommendations apply to licensed blood establishments that intend to manufacture pathogen-reduced blood components using an FDA approved pathogen reduction device.

DATES: Submit either electronic or written comments on the draft guidance by March 27, 2018 to ensure that the Agency considers your comment on this

draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–6784 for ''Implementation of Pathogen Reduction Technology in the Manufacture of Blood Components in Blood Establishments: Questions and Answer; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jonathan McKnight, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Implementation of Pathogen Reduction Technology in the Manufacture of Blood Components in Blood Establishments: Questions and Answers; Draft Guidance for Industry.'' The draft guidance provides blood establishments that collect or process blood and blood components with recommendations for implementing pathogen reduction technology in the manufacture of pathogen-reduced blood components. The draft guidance also provides recommendations to licensed manufacturers on reporting the manufacturing changes associated with implementation of pathogen reduction technology under 21 CFR 601.12. Currently, the INTERCEPT® Blood System for Platelets and Plasma has been approved for the manufacture of certain pathogen-reduced platelet and plasma products. The draft guidance provides answers to frequently asked questions from blood establishments concerning the implementation of the INTERCEPT® Blood System for Platelets and Plasma. If the product platform for this device changes or FDA approves another device with a similar intended use in the future, the Agency will consider providing additional recommendations to blood establishments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on implementation of pathogen reduction technology in the manufacture of blood components in blood establishments. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338; the collections of information in 21 CFR part 606 have been approved under OMB control number 0910–0116; and the collections of information in 21 CFR

630.10 have been approved under OMB control number 0910–0795.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: December 22, 2017.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2017–28043 Filed 12–26–17; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the program), as required by the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the program in general, contact Lisa L. Reyes, Acting Clerk, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the table) set forth at 42 CFR 100.3. This table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on November 1, 2017, through November 30, 2017. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading ''**FOR FURTHER INFORMATION CONTACT**''), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: December 18, 2017.

George Sigounas,

Administrator.

List of Petitions Filed

1. Alina Derkach on behalf of E.E.D., Richmond, Virginia, Court of Federal Claims No: 17–1648V
2. Patsy Gipson on behalf of Alfred J. Gipson, Deceased, Garland, Texas, Court of Federal Claims No: 17–1651V
3. Katie Reaves, Florence, California, Court of Federal Claims No: 17–1655V
4. Maria Vasquez, Washington, District of Columbia, Court of Federal Claims No: 17–1658V
5. Berill Blair, Fairbanks, Alaska, Court of Federal Claims No: 17–1659V
6. Kari Lafferty, Roseville, California, Court of Federal Claims No: 17–1660V
7. Wendi Walter and Phillip Walter on behalf of M.W., Decatur, Georgia, Court of Federal Claims No: 17–1663V
8. Robert Neal, Eagan, Minnesota, Court of Federal Claims No: 17–1690V
9. Angela Kay Stacy, Hazard, Kentucky, Court of Federal Claims No: 17–1691V
10. Elizabeth Argiri and Samuel Argiri on behalf of L.A., Roseville, Michigan, Court of Federal Claims No: 17–1715V
11. Mary Jo Accetta, Seattle, Washington, Court of Federal Claims No: 17–1731V

12. Joellen Marie Graef, Ashwaubenon, Wisconsin, Court of Federal Claims No: 17–1735V
13. April Ferguson on behalf of J.F., Cheyenne, Wyoming, Court of Federal Claims No: 17–1737V
14. Kathleen Fox, Blasdell, New York, Court of Federal Claims No: 17–1738V
15. Kameron Blair Hilton, Mooresville, North Carolina, Court of Federal Claims No: 17–1739V
16. Jennifer Feisal Curtis, Yukon, Oklahoma, Court of Federal Claims No: 17–1740V
17. Tracy Martins on behalf of S.M., Washington, District of Columbia, Court of Federal Claims No: 17–1741V
18. Lee Haley, Marshall, Texas, Court of Federal Claims No: 17–1742V
19. Angela Roach, Reno, Nevada, Court of Federal Claims No: 17–1744V
20. Yelena Goyzman, Cleveland, Ohio, Court of Federal Claims No: 17–1745V
21. Larry Nelson, Willmar, Minnesota, Court of Federal Claims No: 17–1747V
22. Diana L. Mitchell, Mechanicsville, Virginia, Court of Federal Claims No: 17–1751V
23. Abigail Holuta, Pittsburgh, Pennsylvania, Court of Federal Claims No: 17–1753V
24. Ignacio Vazquez, Chicago, Illinois, Court of Federal Claims No: 17–1755V
25. Kendra Matthews, Orlando, Florida, Court of Federal Claims No: 17–1761V
26. Judianne Lynch, Seattle, Washington, Court of Federal Claims No: 17–1762V
27. Ruby Best-McRae, Claxton, Georgia, Court of Federal Claims No: 17–1764V
28. Tamara N. Jackson, Kuna, Idaho, Court of Federal Claims No: 17–1766V
29. Kathryn Rector, Boston, Massachusetts, Court of Federal Claims No: 17–1767V
30. Beth Cormier, Lowell, Massachusetts, Court of Federal Claims No: 17–1768V
31. Kasey Pientowaski on behalf of J.S., Morton, Mississippi, Court of Federal Claims No: 17–1769V
32. Mark Rose and Denise Sheffield-Rose on behalf of A.R., Wesley Chapel, Florida, Court of Federal Claims No: 17–1770V
33. Sharon Orange, Lynchburg, Virginia, Court of Federal Claims No: 17–1771V
34. Kimberly Truett, Jupiter, Florida, Court of Federal Claims No: 17–1772V
35. Rebecca Sandler, Washington, District of Columbia, Court of Federal Claims No: 17–1773V
36. Eston Hood, Lithonia, Georgia, Court of Federal Claims No: 17–1774V
37. Jackie Ratliff, Centreville, Illinois, Court of Federal Claims No: 17–1777V
38. Bridget Kling, Chalmette, Louisiana, Court of Federal Claims No: 17–1778V
39. Lori Welch, Farmington Hills, Michigan, Court of Federal Claims No: 17–1779V
40. Susan Beeson, Whittier, California, Court of Federal Claims No: 17–1781V
41. Magalis Tijerina, Dallas, Texas, Court of Federal Claims No: 17–1783V
42. Justin Ryder, Orange, California, Court of Federal Claims No: 17–1787V
43. Deborah Franklin, St. Louis, Missouri, Court of Federal Claims No: 17–1789V
44. Michael Riley and Jocelyn V. Riley on behalf of A.C.R., Harlan, Iowa, Court of Federal Claims No: 17–1790V
45. Samantha Destura, Beverly Hills, California, Court of Federal Claims No: 17–1792V
46. Steven Widner, Washington, District of Columbia, Court of Federal Claims No: 17–1795V
47. Nathen DiMaggio, Farmington Hills, Michigan, Court of Federal Claims No: 17–1799V
48. Miguel Gomez, Vallejo, California, Court of Federal Claims No: 17–1800V
49. Elizabeth Teter on behalf of S.T., Mentor, Ohio, Court of Federal Claims No: 17–1801V
50. Breunna Bingham, Glendale, California, Court of Federal Claims No: 17–1803V
51. Mark Olsavicky, Jr. and Autumn Olsavicky on behalf of J.O., Deceased, Munhall, Pennsylvania, Court of Federal Claims No: 17–1806V
52. Ronald Dean Cummings, Chester, Virginia, Court of Federal Claims No: 17–1807V
53. Bruce Fedewa, Lansing, Michigan, Court of Federal Claims No: 17–1808V
54. Jeffrey L. Johnson, Fairfax, Virginia, Court of Federal Claims No: 17–1810V
55. Cheryl M. Baker, Prescott Valley, Arizona, Court of Federal Claims No: 17–1811V
56. Rachelle Mudrack, Shipshewana, Indiana, Court of Federal Claims No: 17–1813V
57. Patricia Stolberg on behalf of Peter Stolberg, Deceased, Sarasota, Florida, Court of Federal Claims No: 17–1815V
58. Indigo Grant on behalf of M.G., Deceased, Wappingers Falls, New York, Court of Federal Claims No: 17–1816V
59. Ana Oquendo Vazquez and Artemio Ramirez Garcia on behalf of A. R., Norcross, Georgia, Court of Federal Claims No: 17–1817V
60. Mary Hlad, Lebanon, Tennessee, Court of Federal Claims No: 17–1818V
61. Mark Pfeifer on behalf of Ronald Vincent Pfeifer, Deceased, Las Vegas, Nevada, Court of Federal Claims No: 17–1824V
62. Maria Cristina Rubio on behalf of Alex Rubio, Jr., Oklahoma City, Oklahoma, Court of Federal Claims No: 17–1827V
63. Peggy Dougherty, Ft. Myers, Florida, Court of Federal Claims No: 17–1829V
64. Afshin Khan, New Orleans, Louisiana, Court of Federal Claims No: 17–1831V
65. Susan Bryce, Torrington, Connecticut, Court of Federal Claims No: 17–1832V
66. Judith Anntoinette Burger, Parkville, Maryland, Court of Federal Claims No: 17–1835V
67. Vanessa K. Drake and Lance Drake on behalf of T.B.D., Glendale, California, Court of Federal Claims No: 17–1836V
68. Praveen Mathada, San Diego, California, Court of Federal Claims No: 17–1837V
69. Teresa Kellett on behalf of B.K., Waxahachie, Texas, Court of Federal Claims No: 17–1840V
70. Harold A. Mojicatoro, Philadelphia, Pennsylvania, Court of Federal Claims No: 17–1841V
71. Patricia Sharp, Apple Valley, Minnesota, Court of Federal Claims No: 17–1844V
72. Louise Brinskelle, Staten Island, New York, Court of Federal Claims No: 17–1845V
73. Deborah Hardiman, Wellesley Hills, Massachusetts, Court of Federal Claims No: 17–1846V
74. Orangie Robinson, Washington, District of Columbia, Court of Federal Claims No: 17–1848V
75. Robert Joseph Gardner, Salt Lake City, Utah, Court of Federal Claims No: 17–1851V
76. Barbara Dolan, Beverly Hills, California, Court of Federal Claims No: 17–1855V
77. Bryan Armbruster, Memphis, Tennessee, Court of Federal Claims No: 17–1856V

78. Janice Espinosa, Dresher, Pennsylvania, Court of Federal Claims No: 17–1857V

[FR Doc. 2017–27961 Filed 12–26–17; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–0330]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 26, 2018.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title: Appellant Climate Survey, Revision.

Abstract: The Office of Medicare Hearings and Appeals (OMHA) requests revision to a previously approved information collection request from the Office of Management and Budget (OMB). The annual OMHA Appellant Climate Survey is a survey of Medicare beneficiaries, providers, suppliers, or their representatives who participated in a hearing before an Administrative Law Judge (ALJ) from OMHA. Appellants dissatisfied with the outcome of their Level 2 Medicare appeal may request a hearing before an OMHA ALJ. The Appellant Climate Survey will be used to measure appellant satisfaction with their OMHA appeals experience, as opposed to their satisfaction with a specific ruling. OMHA was established by the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (Pub. L. 108–173) and became operational on July 1, 2005. The MMA legislation and implementing regulations issued on March 8, 2007 instituted a number of changes in the appeals process. The MMA legislation also directed HHS to consider the feasibility of conducting hearings using telephone or video-teleconference (VTC) technologies. In carrying out this mandate, OMHA makes use of both teleconferencing and VTC to provide appellants with a vast nationwide network of access points for hearings close to their homes. The first 3-year administration cycle of the OMHA survey began in fiscal year (FY) 2008, a second 3-year cycle began in FY2011, and third 3-year cycle began in FY2014. The survey will continue to be conducted annually over a 3-year period with the next data collection cycle beginning in FY2018. Data collection instruments and recruitment materials will be offered in English and Spanish. Total burden for survey respondents is 100.00 hours each year.

Affected Public: Survey respondents will consist of Medicare beneficiaries and non-beneficiaries (*i.e.,* providers, suppliers), who participated in a hearing before an OMHA ALJ. OMHA will draw a representative, non-redundant sample of appellants whose cases have been closed in the last 6 months.

TABLE 1—ESTIMATES OF RESPONDENT BURDEN

Respondent type	Form name	Number of respondents	Number of responses per respondent	Burden per response (hours)	Total burden (hours)
Beneficiaries	Appellant Climate Survey	200	1	15/60	50.00
Non-Beneficiaries	Appellant Climate Survey	200	1	15/60	50.00
Total		400	1	15/60	100.00

Terry S. Clark,

Office of the Secretary, Asst. Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2017–27857 Filed 12–26–17; 8:45 am]
BILLING CODE 4150–46–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Elder Mistreatment.

Date: January 24, 2018.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *firthkm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 20, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–27937 Filed 12–26–17; 8:45 am]

BILLING CODE 4140–01–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, 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 and/or contract proposals 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 and/or contract proposals applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE II Review.

Date: January 29–30, 2018.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Bethesda, MD 20892–9750, 240–276–5413, *klaus.piontek@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Cachexia Therapy and Local Delivery of Chemopreventive Agents.

Date: February 8, 2018.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Bethesda, MD 20892–9750, 240–276–5460, *jfang@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–6: Modified RNA and Oncosomes.

Date: February 14, 2018.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W114, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W114, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project I.

Date: February 20–21, 2018.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Klaus B. Piontek, Ph.D., Scientific Review Officer, Research Program Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W612, Bethesda, MD 20892–9750, 240–276–5413. *klaus.piontek@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Imaging Radiation and Immunotherapies.

Date: February 20–21, 2018.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Bethesda, MD 20892–9750, 240–276–5460, *jfang@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biological Comparisons in Patient-Derived Models of Cancer.

Date: February 23, 2018.

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 7W236, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Robert S. Coyne, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W236, Bethesda, MD 20892–9750, 240–276–5120, *coynes@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; TEP–2: Software Tools & Sensors for the Cancer Therapeutics.

Date: February 28–March 1, 2018.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Bethesda, MD 20852.

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nadeem.khan@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; SEP–1 for Provocative Questions.

Date: March 1, 2018.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 9609, Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–7755, *byeong-chel.lee@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Clinical and Translational Exploratory/Developmental Studies.

Date: March 1–2, 2018.

Time: 5:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W242, Bethesda, MD 20892–9750, 240–276–6372, *zouzhiq@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI R03 & Clinical and Translational R21: SEP–1A.

Date: March 29, 2018.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Shady Grove, 9609 Medical Center Drive, Room 7W260, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities National, Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nadeem.khan@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: December 20, 2017.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–27939 Filed 12–26–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Development of Clinically Useful Diagnostics for Antimicrobial-Resistant Bacteria (R01).

Date: January 18, 2018.

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*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01).

Date: January 19, 2018.

Time: 10:00 a.m. to 1:00 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: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F52B National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, 240) 669–5044, *nv19q@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: December 21, 2017.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2017–27938 Filed 12–26–17; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–1009]

Commercial Fishing Safety Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard seeks applications for membership on the Commercial Fishing Safety Advisory Committee. The Commercial Fishing Safety Advisory Committee provides advice and makes recommendations to the Coast Guard and the Department of Homeland Security on various matters relating to the safe operation of commercial fishing industry vessels. Both positions were previously advertised under Docket No. USCG–2017–0829 but no applications for either of the two positions were received.

DATES: Completed applications should be submitted to the U.S. Coast Guard on or before February 26, 2018.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Commercial Fishing Safety Advisory Committee that also identifies which membership category the applicant is applying under, along with a resume detailing the applicant's experience via one of the following methods:

- *By Email: Jonathan.G.Wendland@uscg.mil*, *Subject line:* The Commercial Fishing Safety Advisory Committee.
- *By Mail:* Commandant (CG–CVC–3)/CFSAC, Attn: Mr. Jonathan Wendland, U.S. Coast Guard, 2703 Martin Luther King Ave. SE, Stop 7501, Washington, DC 20593–7501.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Wendland, Alternate Designated Federal Officer of the Commercial Fishing Safety Advisory Committee, 202–372–1245 or *Jonathan.G.Wendland@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Safety Advisory Committee is a federal advisory committee which operates under the provisions of the Federal Advisory Committee Act, (Title 5, U.S.C. Appendix). The U.S. Coast Guard chartered the Commercial Fishing Safety Advisory Committee to provide advice on issues related to the safety of commercial fishing industry vessels regulated under Chapter 45 of title 46, United States Code, which includes uninspected fish catching vessels, fish processing vessels, and fish tender vessels. (See Title 46 U.S.C. 4508.)

The Commercial Fishing Safety Advisory Committee meets at least once a year. It may also meet for other extraordinary purposes. Its subcommittees or working groups may communicate throughout the year to prepare for meetings or develop proposals for the committee as a whole or to address specific tasks.

Each member serves for a term of three years. An individual may be appointed to a term as a member more than once, but not more than two terms consecutively. All members serve at their own expense and receive no salary or other compensation from the Federal Government, although travel reimbursement and per diem may be provided for called meetings.

The U.S. Coast Guard will consider applications for two (02) positions that will be vacant on January 2018 in the following categories:

(a) An individual who represents the general public, a marine surveyor who provides services to vessels to which Chapter 45 of Title 46 U.S.C. applies (*one* position);

(b) An individual who represents manufacturers of equipment for vessels to which Chapter 45 of Title 46, U.S.C. applies (one position);

If you are selected as a member from the general public, you will be appointed and serve as a Special Government Employee as defined in Section 202(a) of Title 18, U.S.C. Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450). The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*), or by contacting the

individual listed in **FOR FURTHER INFORMATION CONTACT**. Applications for a member drawn from the general public which are not accompanied by a completed OGE Form 450 will not be considered.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyist to Federal Advisory Committees, Boards, and Commissions'' (79 CFR 47482, August 13, 2014). Registered lobbyists are lobbyists as defined in Title 2, U.S.C. 1602 who are required by Title 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives. The position we list for a member from the general public would be someone appointed in their individual capacity and would be designated as a Special Government Employee as defined in Section 202(a), Title 18, U.S.C.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Jonathan Wendland, Commercial Fishing Safety Advisory Committee Alternate Designated Federal Officer, via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section. All email submittals will receive an email receipt confirmation.

Dated: December 20, 2017.

Jennifer F. Williams,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2017–27886 Filed 12–26–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2017–1001]

Merchant Marine Personnel Advisory Committee; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard seeks applications for membership on the Merchant Marine Personnel Advisory Committee. This committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security through the Commandant of the U.S. Coast Guard on matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards and other matters as assigned by the Commandant; may be given special assignments by the Secretary and may conduct studies, inquiries, workshops, and fact finding in consultation with individuals and groups in the private sector and with State or local governments; shall advise, consult with, and make recommendations reflecting its independent judgment to the Secretary; and may make available to Congress recommendations that the Committee makes to the Secretary.

DATES: Completed applications should reach the Coast Guard on or before February 26, 2018.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Merchant Marine Personnel Advisory Committee that also identifies which membership category the applicant is applying under, along with a resume detailing the applicant's experience via one of the following methods:

- *By Email: davis.j.breyer@uscg.mil*; Subject Line: The Merchant Marine Personnel Advisory Committee.
- *By Fax:* 202–372–8382 ATTN: Mr. Davis J. Breyer, Alternate Designated Federal Officer; or
- *By Mail:* Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC, 20593–7509.

FOR FURTHER INFORMATION CONTACT: Mr. Davis J. Breyer, Alternate Designated Federal Officer of the Merchant Marine Personnel Advisory Committee, 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC, 20593–7509, telephone 202–372–1445, fax 202–372–8382 or *davis.j.breyer@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Merchant Marine Personnel Advisory Committee is a federal advisory committee which operates under the provisions of the Federal Advisory Committee Act, (Title 5 U.S.C. Appendix).

The Committee meets not less than twice each year. Its subcommittees and working groups may also meet intercessionally to consider specific tasks as required.

Each Merchant Marine Personnel Advisory Committee member serves a term of office of up to three years. Members may serve a maximum of two consecutive terms. All members serve without compensation from the Federal Government; however, upon request, they may receive travel reimbursement and per diem.

We will consider applications for the following 8 positions that will either be vacant on August 13, 2018, or are currently vacant. These positions are three year terms.

To be eligible, you must have the experience listed for the applicable membership position:

(1) Three positions for members who serve as representatives standing for the viewpoint of merchant marine deck officers. One member shall be licensed for inland or river route, with a limited or unlimited tonnage; one shall be licensed for oceans any gross tons; and one member shall be a licensed deck officer with an unlimited tonnage master's license with significant tanker experience;

(2) one position for a member who serves as a representative standing for the viewpoint of licensed merchant marine engineering officers who is licensed as a chief engineer, any horsepower;

(3) one position for a member who serves as a representative standing for the viewpoint of maritime training institutions other than state or federal academies and shall represent the viewpoint of the small vessel industry;

(4) one position for a member who will be appointed from the general public who will serve as a Special Government Employee as defined in Title 18, United States Code, section 202(a). Preference will be given to applicants who can provide relevant input regarding matters relating to personnel in the United States merchant marine, including training, qualifications, certification, documentation, and fitness standards.

(5) one position for a member who must be jointly recommended by the state academies as defined by 46 CFR 310 Subpart A, who will represent the viewpoint of the state academies in accordance with 46 U.S.C. 8108; and

(6) one position for a member who must be recommended by the federal academy as defined by 46 CFR 310 Subpart C, who will represent the viewpoint of the federal academy in accordance with 46 U.S.C. 8108.

If you are selected as a member from the general public you will be appointed and serve as a Special Government

Employee as defined in section 202(a) of Title 18, U.S.C. Applicants for appointment as a Special Government Employee are required to complete a Confidential Financial Disclosure Report (OGE Form 450). The U.S. Coast Guard may not release the reports or the information in them to the public except under an order issued by a federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated U.S. Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the website of the Office of Government Ethics (*www.oge.gov*) or by contacting the individual listed above in **FOR FURTHER INFORMATION CONTACT**. Applications for a member drawn from the general public that are not accompanied by a completed OGE Form 450 will not be considered. All other members serve as representatives and stand for the viewpoints of the roles as identified above.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See ''Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions'' (79 FR 47482, August 13, 2014). The position we list for a member from the general public would be someone appointed in their individual capacity and would be designated as a Special Government Employee as defined in Section 202(a), Title 18, U.S.C. Registered lobbyists are lobbyists as defined in Title 2 U.S.C. 1602 who are required by Title 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Davis J. Breyer, Alternate Federal Officer of the Merchant Marine Personnel Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. All email submittals will receive email receipt confirmation.

Dated: December 20, 2017.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2017–27858 Filed 12–26–17; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2017–0037]

Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate (NPPD), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; revision of information collection request: 1670–0029.

SUMMARY: The DHS NPPD Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to solicit comments during a 60-day public comment period prior to the submission of this ICR to OMB. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (in hours), and the estimated burden cost necessary to implement the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program. In this notice, DHS is updating the burden estimate and expanding the collection to include Tier 3 and Tier 4 high-risk chemical facilities.

DATES: Comments are encouraged and will be accepted until February 26, 2018.

ADDRESSES: You may submit comments, identified by docket number DHS–2017–0037, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Email: cfats@dhs.gov.* Please include docket number DHS–2017–0037 in the subject line of the message.
- *Mail:* Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/ISCD, ATTN: 1670–0029, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528–0610.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and docket number DHS–2017–0059. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[1] Sensitive Security Information (SSI),[2] or Protected Critical Infrastructure Information (PCII)[3] should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and packaged in accordance with applicable requirements and submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2017–0037.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Graydon at (866)323–2957 or at *cfats@dhs.gov.*

SUPPLEMENTARY INFORMATION: On December 18, 2014, the President signed into law the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (''CFATS Act of 2014'') providing long-term authorization for the CFATS program. The CFATS Act of 2014 codified the DHS authority to implement the CFATS program into the Homeland Security Act of 2002. See 6 U.S.C. 621 *et seq.*

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006) (''Section 550''), provided (and the CFATS Act of 2014 continues to provide) the Department with the authority to identify and regulate the security of high-risk chemical facilities using a risk-based approach. On April 9, 2007, the Department issued the CFATS Interim Final Rule (IFR), implementing this statutory mandate. See 72 FR 17688.

Section 550 required (and the CFATS Act of 2014 continues to require) that the Department establish risk-based

[1] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *www.dhs.gov/publication/safeguarding-cvi-manual.*

[2] For more information about SSI see 49 CFR part 1520 and the SSI Program web page at *www.tsa.gov/for-industry/sensitive-security-information.*

[3] For more information about PCII see 6 CFR part 29 and the PCII Program web page at *www.dhs.gov/pcii-program.*

performance standards (RBPS) for high-risk chemical facilities. Through the CFATS regulations, the Department promulgated 18 RBPS. Each chemical facility that has been finally determined by the Department to be high-risk must submit, for Department approval, a Site Security Plan (SSP) or an Alternative Security Program (ASP), whichever the high-risk chemical facility so chooses, that satisfies each applicable RBPS. RBPS 12 requires high-risk chemical facilities to perform appropriate background checks on and ensure appropriate credentials for facility personnel, and, as appropriate, unescorted visitors with access to restricted areas or critical assets. RBPS 12(iv) specifically requires high-risk chemical facility to implement measures designed to identify people with terrorist ties. For the purposes of the CFATS Personnel Surety Program, 'people' in RBPS 12(iv) is in reference to affected individuals (*i.e.,* facility personnel or unescorted visitors with or seeking access to restricted areas or critical assets at high-risk chemical facilities).

Identifying affected individuals who have terrorist ties is an inherently governmental function and requires the use of information held in government-maintained databases that are unavailable to high-risk chemical facilities. *See* 72 FR 17688, 17709 (April 9, 2007). Thus, under RBPS 12(iv), the Department and high-risk chemical facilities must work together to satisfy the ''terrorist ties'' aspect of the Personnel Surety performance standard.

In accordance with the Homeland Security Act of 2002 as amended by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Public Law 113–254, the following options are available to enable high-risk chemical facilities to facilitate the vetting of affected individuals for terrorist ties:

Option 1. High-risk chemical facilities may submit certain information about affected individuals, which the Department will use to vet those individuals for terrorist ties. Specifically, the identifying information about affected individuals will be compared against identifying information of known or suspected terrorists contained in the Federal Government's consolidated and integrated terrorist watch list, the Terrorist Screening Database (TSDB), which is maintained by the Department of Justice (DOJ) Federal Bureau of Investigation (FBI) in the Terrorist Screening Center (TSC).[4]

Option 2. High-risk chemical facilities may submit information about affected individuals who already possess certain credentials or documentation that rely on security threat assessments conducted by the Department. This will enable the Department to verify the continuing validity of these credentials or documentation.

Option 3. High-risk chemical facilities may comply with RBPS 12(iv) without submitting to the Department information about affected individuals who possess Transportation Worker Identification Credentials (TWICs), if a high-risk chemical facility electronically verifies and validates the affected individual's TWICs through the use of TWIC readers (or other technology that is periodically updated using the Canceled Card List).

Option 4. High-risk chemical facilities may visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the TSDB. The Department continues to believe that visual verification has significant security limitations and, accordingly, encourages high-risk chemical facilities choosing this option to identify in their SSPs the means by which they plan to address these limitations.

In addition to the options described above for satisfying RBPS 12(iv), a high-risk chemical facility is welcome to propose alternative or supplemental options in its SSP that are not described in this document. The Department will assess the adequacy of such alternative or supplemental options on a facility-by-facility basis in the course of evaluating each facility's SSP.

Under Option 3 and Option 4, a high-risk chemical facility would not need to submit information about an affected individual to the Department. These Options are only mentioned in this notice for informational purposes, and there will be no analysis of Option 3 and Option 4 in this information collection request.

This information collection request does not propose changes to who qualifies as an affected individual. There are certain groups of persons that the Department does not consider to be affected individuals, such as (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of their official duties; (2) State and local law enforcement officials that gain unescorted access to restricted areas or critical assets as part of their official duties; and (3) emergency responders at the State or local level that gain unescorted access to restricted areas or critical assets during emergency situations.

The current information collection for CFATS Personnel Surety Program (IC 1670–0029) will expire on August 31, 2018.[5]

Summary of Proposed Revisions to the Information Collection

The Department is seeking a revision to the CFATS Personnel Surety Program Information Collection to: (1) Obtain approval to collect information about affected individuals from all high-risk chemical facilities rather than only Tier 1 and Tier 2 high-risk chemical facilities; (2) update the estimated number of annual respondents from 195,000 to 72,607 based on historical information collected since the Department implemented the CFATS Personnel Surety Program; and (3) update the estimated time per respondent from 0.58 hours to 0.1667 hours based upon historical data collected by the Department since the implantation of the CFATS Personnel Surety Program.

Collection at all High-Risk Chemical Facilities

In response to multiple comments on the current ICR, the Department agreed to a ''phased implementation'' of the CFATS Personnel Surety Program to Tier 1 and Tier 2 high-risk chemical facilities. Based on lessons learned and the near completion of the implementation at Tier 1 and Tier 2 high-risk chemical facilities, the Department now seeks to close the last security gap by implementing CFATS Personnel Surety Program at all high-risk chemical facilities. As implemented at Tier 1 and Tier 2 high-risk chemical facilities, the Department will roll out the CFATS Personnel Surety Program in a ''phased implementation'' to Tier 3 and Tier 4 high-risk chemical facilities.

Updates to Burden Estimate Based on Historical Information

The Department implemented the CFATS Personnel Surety Program in December 2015. Since implementation, the Department has evaluated many of the assumptions it used when estimating the burden estimate of this Information Collection. As a result, several of the assumptions can be

[4] For more information about the TSDB, see DOJ/FBI–019 Terrorist Screening Records System, last published in full as 77 FR 26580 (May 25, 2017).

[5] The current information collection for CFATS Personnel Surety Program may be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201312-1670-001.*

revised using actual data rather than assumptions. The burden methodology and revised estimates are described in, ''The Department's Methodology in Estimating the Burden for CFATS Personnel Surety Program Information Collection.''

Information Collected About Affected Individuals

This information collection request does not propose changes to the information collected on affected individuals.

Option 1: Collecting Information To Conduct Direct vetting

If high-risk chemical facilities select Option 1 to satisfy RBPS 12(iv) for an affected individual, the following information about the affected individual would be submitted to the Department:

- For U.S. Persons (U.S. citizens and nationals, as well as U.S. lawful permanent residents):
  - Full Name;
  - Date of Birth; and
  - Citizenship or Gender.
- For Non-U.S. Persons:
  - Full Name;
  - Date of Birth;
  - Citizenship; and
  - Passport information and/or alien registration number.

To reduce the likelihood of false positives in matching against records in the Federal Government's consolidated and integrated terrorist watch list, high-risk chemical facilities would also be able to submit the following optional information about an affected individual to the Department:

- Aliases;
- Gender (for Non-U.S. Persons);
- Place of Birth; and/or
- Redress Number.[6]

High-risk chemical facilities have the option to create and use the following field(s) to collect and store additional information to assist with the management of an affected individual's records. Any information collected in this field will not be used to support vetting activities.

- *User Defined Field(s)*

Table 1 summarizes the biographic data that would be submitted to the Department under Option 1.

TABLE 1—REQUIRED AND OPTIONAL DATA FOR AN AFFECTED INDIVIDUAL UNDER OPTION 1

Data elements submitted to the department	For a U.S. person	For a non-U.S. person
Full Name	Required.	
Date of Birth	Required.	
Gender	Must provide Citizenship or Gender	Optional.
Citizenship		Required.
Passport Information and/or Alien Registration Number.	N/A	Required.
Aliases	Optional.	
Place of Birth	Optional.	
Redress number	Optional.	
User Defined Field(s)	Optional (Not used for vetting purposes).	

Option 2: Collecting Information To Use Vetting Conducted Under Other DHS Programs

In lieu of submitting information to the Department under Option 1 for vetting of terrorist ties, high-risk chemical facilities also have the option, where appropriate, to submit information to the Department to electronically verify that an affected individual is currently enrolled in another DHS program that vets for terrorist ties.

To verify an affected individual's enrollment in one of these programs under Option 2, the Department would collect the following information about the affected individual:

- Full Name;
- Date of Birth; and
- Program-specific information or credential information, such as expiration date, unique number or issuing entity (*e.g.,* State for Commercial Driver's License [CDL] associated with a Hazardous Materials Endorsement [HME]).

To reduce the likelihood of false positives, high-risk chemical facilities may also submit the following optional information about an affected individual to the Department:

- Aliases;
- Gender;
- Place of Birth; and/or
- Citizenship.

High-risk chemical facilities have the option to create and use the following field(s) to collect and store additional information to assist with the management of an affected individual's records. Any information collected in this field will not be used to support vetting activities.

- *User Defined Field(s)*

Table 2 summarizes the biographic data that would be submitted to the Department under Option 2.

TABLE 2—REQUIRED AND OPTIONAL DATA FOR AN AFFECTED INDIVIDUAL UNDER OPTION 2

Data Elements Submitted to the Department	
Full Name	Required.
Date of Birth	Required.
Program-specific information or credential information, such as expiration date, unique number, or issuing entity.	Required.
Aliases	Optional.
Gender	Optional.
Place of Birth	Optional.
Citizenship	Optional.
User Defined Field(s)	Optional (Not used for vetting purposes).

Other Information Collected

The Department may also contact a high-risk chemical facility or its designees to request additional

[6] For more information about Redress Numbers, please go to *http://www.dhs.gov/one-stop-travelers-redress-process#1.*

information (*e.g.,* visa information) pertaining to an affected individual in order to clarify suspected data errors or resolve potential matches (*e.g.,* an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an affected individual's information has been confirmed as a match to a record of an individual with terrorist ties.

The Department may also collect information provided by individuals or high-risk chemical facilities in support of any adjudication requests under Subpart C of the CFATS regulation,[7] or in support of any other redress requests.[8]

Request For Exception To The Requirement Under 5 CFR 1320.8(b)(3)

The Department is requesting from OMB an exception for the CFATS Personnel Surety Program to the Paperwork Reduction Act (PRA) notice requirement contained in 5 CFR 1320.8(b)(3), which requires Federal agencies to ensure that their information collections provide certain reasonable notices under the PRA to affected individuals. If this exception is granted, the Department will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals, which would increase burdens.

Whether or not this exception is granted, high-risk chemical facilities must affirm the required privacy notice regarding the collection of personal information has been provided to affected individuals before personal information is submitted to the Department.

The Department's Methodology in Estimating the Burden for CFATS Personnel Surety Program Information Collection Number of Respondents

For the purpose of this collection, the number of respondents is broken down into two groups: ''initial respondents'' and ''annual respondents.''

The ''initial respondents'' are those affected individuals with existing access at a high-risk chemical facility and will be submitted by the facility after receiving authorization or approval of an SSP requiring the facility to implement measures to comply with RBPS 12(iv). All new burdens associated with initial respondents under this collection will be for Tier 3 and Tier 4 facilities as discussed later in this notice under ''(A) Initial Respondents,'' Tier 1 and Tier 2 facilities have already submitted initial respondents to the CFATS Personnel Surety Program under the current collection. The burden for ''initial respondents'' is estimated in this notice under ''Total Burden Cost (Capital/Startup)'' because the burden imposed by initial respondent submission on high-risk chemical facilities is a one-time cost.

''Annual respondents'' are the number of respondents the Department estimates will be submitted each year by high-risk chemical facilities that have completed the initial respondent's submission and are now in the maintenance phase (*e.g.,* adding new affected individuals due to employee hires).

(A) Initial Respondents

The estimated number of high-risk chemical facilities and the average number of respondents is based on historical data collected by the Department since the implementation of the CFATS Personnel Surety Program. The Department estimates that under this collection there are (a) 200 Tier 1 and Tier 2 high-risk chemical facilities that will have to submit information about affected individuals under the current ICR, and (b) 3,700 Tier 3 and Tier 4 high-risk chemical facilities that will submit for the first time under this new collection. Historically, each Authorizer submitted, on average, 180 initial respondents, with each Authorizer responsible for 1.7 high-risk chemical facilities. Dividing 180 affected individuals per Authorizer by 1.7 high-risk chemical facilities results in an average of 106 initial respondents submitted per high-risk chemical facility.

Additionally, the Department recognizes that high-risk chemical facilities that are high risk for a release security issue may take a facility-wide approach rather than an asset-based approach in defining their restricted areas, which may result in a higher number of affected individuals. Therefore, the Department reviewed the number of release sites to ensure the estimated number of respondents for the Tier 3 and Tier 4 high-risk chemical facilities were comparable to the historical data received by the Department since the implementation of the CFATS Personnel Surety Program. The Department found that the release security issues for Tier 1 and Tier 2 high-risk chemical facilities made up 38% of the total Tier 1 and Tier 2 high-risk chemical facility population. For the Tier 3 and Tier 4 high-risk chemical facilities, the release security issue made up 25% of the total Tier 3 and Tier 4 high-risk chemical facility population. Based on these findings, the Department was satisfied that the Tier 1 and Tier 2 high-risk chemical facility historical data provided a valid representation of what the Department can expect from the Tier 3 and Tier 4 high-risk chemical facilities.

Under the current collection, approximately 21,200 initial respondents for Tier 1 and Tier 2 high-risk chemical facilities (200 high-risk Tier 1 and Tier 2 high-risk chemical facilities with an average of 106 initial respondents per high-risk chemical facility) will or have been submitted to the CFATS Personnel Surety Program. The Department assumes that there are no additional burdens associated with initial respondents for Tier 1 and Tier 2 high-risk chemical facilities under this collection because they have already submitted the initial respondents under the current collection.

As described above, the Department intends to implement the CFATS Personnel Surety Program at all high-risk chemical facilities, which will require Tier 3 and Tier 4 high-risk chemical facilities to submit information about affected individuals under the CFATS Personnel Surety Program or to select Option 3 or 4 for CFATS Personnel Surety Program participation that do not involve submission of information to the Department. However, for burden estimates, the Department assumes all Tier 3 and Tier 4 high-risk chemical facilities will select option 1 and/or option 2, which both require information submission. As these high-risk chemical facilities have not previously submitted, all 3,700 Tier 3 and Tier 4 high-risk chemical facilities would be required to submit initial respondents to the CFATS Personnel Surety Program.

The Department intends to implement the CFATS Personnel Surety Program at Tier 3 and Tier 4 high-risk chemical facilities in a phased implementation so that the estimated 3,700 Tier 3 and Tier 4 high-risk chemical facilities are evenly distributed over three years (*i.e.,* 1,233 high-risk chemical facilities each year for three years). This results in an estimated 130,698 initial respondents each year (1,233 high-risk chemical facilities multiplied by 106 submissions per high-risk chemical facility) from Tier 3 and Tier 4 high-risk chemical facilities.

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[7] *See* 6 CFR 27.300 *et seq.*

[8] More information about access, correction, and redress requests under the Freedom of Information Act and the Privacy Act can be found in Section 7.0 of the Privacy Impact Assessment for the CFATS Personnel Surety Program, dated May 4, 2011, available at *https://www.dhs.gov/sites/default/files/publications/privacy-pia-nppd-cfats-2011.pdf.*

(B) Annual Respondents

The Department estimates the annual respondents based on the annual hires rates of 47.8% for total private industry, as estimated from the Bureau of Labor Statistics (BLS).[9] Annual hires are used to account for the replacement of employee separations as well as new hires. In the first year of this collection, the Department applies the hires rate to the initial submission of affected individuals submitted from Tier 1 and Tier 2 high-risk chemical facilities under the current collection for the CFATS Personnel Surety Program. In the second and third year of this collection, the Department applies the hires rate to the subsequent total population of affected individuals submitted under the CFATS Personnel Surety Program (*i.e.,* the Tier 1 and Tier 2 high-risk chemical facilities' initial submissions plus the initial submissions received from Tier 3 and Tier 4 high-risk chemical facilities).

The breakdown of the annual hires for each year of the information collection request is as follows:

- In year one, the number of hires is 10,134 respondents (*i.e.,* 21,200 Tier 1 and Tier 2 initial respondents multiplied by the hires rate of 47.8%).[10]
- In year two, the number of hires is 72,607 respondents (*i.e.,* 72,607 Tier 1 and Tier 2 initial respondents plus the number of initial respondents submitted by Tier 3 and Tier 4 high-risk chemical facilities in year one [130,698 affected individuals] multiplied by the hires rate of 47.8%).
- In year three, the number of hires is 135,081 respondents (*i.e.,* 21,200 Tier 1 and Tier 2 initial respondents plus the number of initial respondents submitted by Tier 3 and Tier 4 high-risk chemical facilities in years one and two [261,396 affected individuals] multiplied by the hires rate of 47.8%).

Table 3 presents the annual submissions for the three years.

TABLE 3—ANNUAL SUBMISSIONS FOR THREE YEARS

	Initial respondents (Tier 3 and Tier 4)	Existing population of affected individuals	Hires (existing population of affected individuals multiplied by 47.8%)
Year 1	130,698	21,200 (Initial Respondents Tier 1 and Tier 2 from current collection).	10,134
Year 2	130,698	151,898 (Tier 1 and Tier 2 initial respondents plus year 1 Tier 3 and Tier 4 initial respondents).	72,607
Year 3	130,698	282,596 (Tier 1 and Tier 2 initial respondents plus year 1 and year 2 Tier 3 and Tier 4 initial respondents.	135,081
Average	130,698		72,607

The number of respondents for the three years was then averaged to come up with the revised annual respondent rate of 72,607 respondents per year (*i.e.,* the sum of 10,134 annual respondents in year one, plus 72,607 annual respondents in year two, plus 135,081 annual respondents in year three, divided by the three years this information collection request covers).

Estimated Time per Respondent

Based on industry feedback and historical data collected on their use of the CFATS Personnel Surety Program application, the Department has estimated the time per respondent to be 5 minutes per submission of a record about an affected individual rather than 30 minutes previously estimated in the current collection. The proposed estimated time per respondent includes the time to edit or remove a record if a high-risk chemical facility opts to subsequently notify the Department that an affected individual no longer has access. Since this estimate is based on current submissions from Tier 1 and Tier 2 high-risk chemical facilities, the Department has chosen an estimate of 10 minutes (0.1667 hours) per record to provide a more conservative estimate.

Annual Burden Hours

To estimate the annual burden hours for this collection, the Department multiplies the number of annual respondents by the estimated time burden of 0.1667 hours (10 minutes), for an estimated annual burden of 12,101 hours (*i.e.,* 0.1667 hours multiplied by 72,607 annual respondents). The one-time burden associated with the submission of initial respondents is considered below under startup costs.

Total Burden Cost (Capital/Startup)

The Department provides access to the CFATS Personnel Surety Program application free of charge and assumes that each high-risk chemical facility already has access to the internet for basic business needs. In addition to the Tier 1 and Tier 2 high-risk chemical facilities at which the CFATS Personnel Surety Program has already been implemented, the Department expects to implement the CFATS Personnel Surety Program at Tier 3 and Tier 4 high-risk chemical facilities upon approval of this collection request. Tier 3 and Tier 4 high-risk chemical facilities will have a one-time requirement to submit information about initial respondents with existing access to the restricted areas or critical assets at the high-risk chemical facility. This one-time cost is estimated here as a startup cost. The Department estimates that under this collection there will be 3,700 Tier 3 and Tier 4 high-risk chemical facilities that will submit initial respondents. To estimate initial startup cost, the Department multiples the number of high-risk chemical facilities by the estimated number of affected individuals per high-risk chemical facility to obtain the total number of initial respondents submitted. The estimated number of initial respondents is 392,094 (*i.e.,* 3,700 Tier 3 and Tier 4 high-risk chemical facilities multiplied by 106 affected individuals per high-risk chemical facility).[11] The startup burden of 65,349 hours is subsequently

[9] *https://www.bls.gov/news.release/archives/jolts_03162017.pdf* Table 14

[10] Numbers may not total due to rounding of estimates in the text.

[11] Values may not total due to rounding.

estimated by multiplying the number of initial respondents by the estimated time per respondent (*i.e.,* 392,094 affected individuals multiplied by 0.1667 hours).

The one-time startup cost is estimated by multiplying the startup burden by the wage rate of the employee type expected to submit the information about affected individuals to the CFATS Personnel Surety Program. The site security officer's average hourly wage rate of $78.93 was based on an average hourly wage rate of $53.92 [12] with a benefits multiplier of 1.4639.[13] Therefore the Department estimates the one-time startup cost of this information request to be $5,158,226 (*i.e.,* 65,349 hours multiplied by $78.93 per hour).[14]

Consideration of Other Capital Costs

This information collection request maintains the existing assumptions found in the current information collection request with regard to activities listed in 5 CFR 1320.3(b)(1). Specifically, that 5 CFR 1320.3(b)(1) and 5 CFR 1320.8 require the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. Therefore, many costs (*e.g.,* physical modification of the facility layout) a high-risk chemical facility may choose to incur to develop or implement its SSP or ASP should not be accounted for when estimating the capital costs associated with this information collection.

Furthermore, the Department maintains the same assumptions found in the current information collection request with regards to estimating certain high-risk chemical facility capital costs, such as: (1) Capital costs for computer, telecommunications equipment, software, and storage to manage the data collection, submissions, and tracking; (2) capital and ongoing costs for designing, deploying, and operating information technology (IT) systems necessary to maintain the data collection, submissions, and tracking; (3) cost of training high-risk chemical facility personnel to maintain the data collection, submissions, and tracking; and (4) site security officer time to manage the data collection, submissions, and tracking. The Department continues to exclude these costs in accordance with 5 CFR 1320.3(b)(2), which directs Federal agencies to not count the costs associated with the time, effort, and financial resources incurred in the normal course of their activities (*e.g.,* in compiling and maintaining business records) if the reporting, recordkeeping, or disclosure activities are usual and customary.

The Department continues to exclude these usual and customary costs because the time, effort, and financial resources are costs that high-risk chemical facilities incur to conduct background checks for identity, criminal history, and legal authorization to work under 6 CFR 27.230(a)(12)(i)–(iii), and also under various other Federal, State, or local laws or regulations.

Recordkeeping Burden

The recordkeeping costs, if any, to create, keep, or retain records pertaining to background checks as part of a high-risk chemical facility's SSP or ASP, are properly estimated in the recordkeeping estimates associated with the SSP Instrument under Information Collection 1670–0007.

Total Annual Burden Cost

The 2007 CFATS Regulatory Evaluation assumed that Site Security Officers are responsible for submitting information to the Department. For the purpose of this notice, the Department maintains this assumption.

Therefore, to estimate the total annual burden, the Department multiplied the annual burden of 12,101 hours by the average hourly wage rate of Site Security Officers of $78.93 and then added the one-time startup cost associated with the initial respondents. Therefore, the total annual burden cost for the CFATS Personnel Surety Program is $955,191 (12,101 total annual burden hours multiplied by $78.93 per hour). For the three year period for which this collection will be approved, the total cost burden would be $8,023,798 ($955,191 annual cost multiplied by 3 + $5,158,226 startup cost). The annual burden for this collection over the three year period is estimated at $2,674,599 ($8,023,798 total cost/3 years).[15]

Solicitation of Comments

OMB is particularly interested in comments that:

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

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

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

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

Title of Collection: Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

OMB Control Number: 1670–0029.

Instrument: CFATS Personnel Surety Program.

Frequency: ''Other''.

Affected Public: Business or other for-profit.

Number of Annual Respondents: 72,607 respondents (estimate).

Estimated Time per Respondent: 0.1667 hours (10 minutes).

Total Annual Burden Hours: 12,101 hours.

Total Annual Burden Cost (Capital/Startup): $1,719,409.

Total Annual Burden Cost: $955,191.

Total Recordkeeping Burden: $0.

David Epperson,

Chief Information Officer.

[FR Doc. 2017–27519 Filed 12–26–17; 8:45 am]

BILLING CODE 910–9P–P

[12] The wage used for an SSO equals that of Managers, All (11–9199), with a load factor of 1.4639 to account for benefits in addition to wages *https://www.bls.gov/oes/2016/may/oes119199.htm.*

[13] Load factor based on BLS Employer Cost for Employee Compensation, as of June 9, 2017. Load factor = Employer cost for employee compensation ($35.28)/wages and salaries ($24.10) = 1.4639 *https://www.bls.gov/news.release/ecec.nr0.htm.*

[14] Numbers may not total due to rounding.

[15] All calculations may not total due to rounding.

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0121]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be

submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 26, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0121 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 20, 2017 at 82 FR 43994, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2014–0008 in the search box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households, Businesses and Organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 56,000 Respondents × (.50) 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 28,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. There is no cost to the respondents as the responses are voluntary and do not require anything other than the survey to be submitted.

Dated: December 20, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–27824 Filed 12–26–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–1615–0048]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Premium Processing Service

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 26, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0048 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW, Washington, DC 20529–2140, Telephone number (202) 272–8377

(This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 15, 2017, at 82 FR 43396, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2006–0025 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–907; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses the information provided on Form I–907 to provide petitioners the opportunity to request faster processing of certain employment-based petitions and applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 319,301 responses at 35 minutes (.58 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 185,195 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $78,228,500.

Dated: December 20, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–27823 Filed 12–26–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0126]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Collection of Qualitative Feedback through Focus Groups

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 26, 2018. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *dhsdeskofficer@omb.eop.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0126 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on September 29, 2017 at 82 FR 45604, allowing for a 60-day public comment period. USCIS did not receive any comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2012 -0004 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Qualitative Feedback through Focus Groups.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit. The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback USCIS means information that provides useful insights on perceptions and opinions, but not responses to statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information on customer and stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, and/or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders and contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not be generalized to the overall population. This data collection will not be used to generate quantitative information that is designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection is 3,000 and the estimated hour burden per response is 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 4,500 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0.

Dated: December 20, 2017.

Samantha Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2017–27809 Filed 12–26–17; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6074–N–01]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees; State of Texas Allocation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates $57,800,000 of Community Development Block Grant disaster recovery (CDBG–DR) funds to the State of Texas in response to Hurricane Harvey. This allocation is made pursuant to the requirements of Public Law 115–31. This notice also makes a technical correction to the previously established alternative requirement on the low- and moderate- income national objective criteria for grantees undertaking CDBG–DR buyouts and housing incentives.

DATES: Applicable: January 2, 2018.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 10166, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Facsimile inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the''800'' number, these telephone numbers are not toll-free.) Email inquiries may be sent to *disaster_recovery@hud.gov.*

SUPPLEMENTARY INFORMATION:

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I. 2017 Allocations

A. Background

Congress appropriated $400 million in CDBG–DR funds for necessary expenses for activities authorized under title I of the Housing and Community Development Act of 1974 (HCDA) related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas resulting from a qualifying major disaster declared by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (Stafford Act) (42 U.S.C. 5121 *et seq.*) in 2015, 2016, 2017 or later.

Of this amount, HUD previously allocated $342,200,000 to areas impacted by disasters in 2015 and 2016. The $57,800,000 allocated under this notice is the remaining amount from $400 million appropriated under Public Law 115–31.

Public Law 115–31 specifies that the funds allocated for disasters in 2017 or later must be allocated and used under the same authority and conditions as those applicable to CDBG–DR funds appropriated by Public Law 114–223. Therefore, the funds allocated to the State of Texas under this notice are subject to the authority and conditions of Public Law 114–223 and the requirements, waivers, and alternative requirements applicable to CDBG–DR funds appropriated under Public Law 114–223 provided in HUD's **Federal Register** notices published on November 21, 2016, January 18, 2017, and August 7, 2017. These **Federal Register** notices describe the allocation and applicable waivers and alternative requirements, relevant statutory and regulatory requirements, grant award process, criteria for Action Plan approval, and eligible disaster recovery activities for the qualifying disaster.

Section III.A. of HUD's August 7, 2017 **Federal Register** notice provided that HUD would not evaluate a 2017 disaster for qualification to receive CDBG–DR funds until: (i) The major disaster has been declared eligible for the Federal Emergency Management Agency's (FEMA) Public Assistance (PA) Program and Individual and Households (IHP) Program; (ii) FEMA has approved Individual Assistance applications totaling at least $13 million in IHP financial assistance for the declared disaster in a single county; and (iii) four months have passed since the disaster declaration that made IHP available, or the IHP registration period is closed, whichever comes first. Section III. A. iii. was intended to allow time for HUD to gather data needed to validate that a disaster met the eligibility thresholds established in the methodology. However, HUD has already received sufficient data to show these thresholds were far exceeded by Hurricane Harvey, and thus, the Department is rescinding section III. A. iii. of the August 7, 2017 notice to expedite this allocation.

Section III.A. also provided that HUD would use the detailed methodology specified in Appendix A of the January 18, 2017 notice and make allocations equal to the lesser of 100 percent of the serious unmet needs or the remaining funds available from Public Law 115–31. Using updated data HUD received from the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA), the unmet needs in Texas far exceed this allocation of the remaining $57,800,000 available from Public Law 115–31. A detailed explanation of HUD's allocation methodology applicable to the $57,800,000 is provided at Appendix A of the January 18, 2017 notice.

TABLE 1—QUALIFYING 2017 DISASTER AND "MOST IMPACTED AND DISTRESSED" AREA

FEMA Disaster No.	Grantee	Minimum amount that must be expended for recovery in the HUD-identified "most impacted and distressed" areas
2017 Disasters		
4332	State of Texas	Harris County ($46,240,000).

The grantee's use of funds is limited to unmet recovery needs from Hurricane Harvey (FEMA Disaster No. 4332). Table 2 shows the HUD-identified "most impacted and distressed" areas impacted by the identified disaster. At least 80 percent of the $57,800,000 must address unmet needs within Harris County, Texas, which is the "most impacted and distressed" area, as identified by HUD. Texas may spend the remaining 20 percent in Harris County or in other areas the grantee determines to be "most impacted and distressed" that a received a presidential disaster declaration pursuant to the disaster number listed in Table 1.

B. Use of Funds

Public Law 115–31 requires funds to be used only for specific disaster recovery related purposes. This allocation provides funds to the State of Texas for authorized disaster recovery efforts associated with Hurricane Harvey. Section III of the August 7, 2017 notice describes the requirements governing the submission of action plans required for 2017 disasters. However, the State of Texas previously completed a CDBG–DR action plan for 2016 disasters and that action plan is subject to the same requirements applicable to this allocation. Due to the severity of Hurricane Harvey and to help ensure funds reach those affected in a timely manner, HUD will allow Texas to adopt and incorporate into its Action Plan, for the funds allocated under this notice, any relevant information from the action plan that it previously completed for its 2016 disaster allocation. Additionally, the scale of analysis for this allocation may be commensurate with the amount of the allocation and the limited data available this soon after the disaster. Accordingly, section III. B. of the August 7, 2017 notice is deleted and replaced with the following:

B. Use of Funds

Grantees receiving an allocation of funds under Public Law 115–31 for 2017 and later disasters pursuant to a subsequent notice are subject to the requirements of the November 21, 2016 notice, as amended, which require that prior to the obligation of CDBG–DR funds, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds, including criteria for eligibility, and how the use of these funds will address long-term recovery and restoration of infrastructure and housing and economic revitalization in the most impacted and distressed areas. The grantee's Action Plan for 2017 disasters may adopt and incorporate applicable sections and any other relevant information from its Action Plan for 2016 disasters, previously submitted pursuant to the November 21, 2016 notice or January 18, 2017 notice. The grantee must include updated information specific to the 2017 disasters, such as its analysis of unmet needs and use of funds to address these needs. The Action Plan for 2017 disasters must describe uses and activities for all funds that: (1) Are authorized under title I of the Housing and Community Development Act of 1974 (HCDA) or allowed by a waiver or alternative requirement; and (2) respond to disaster-related impact to infrastructure, housing, and economic revitalization in the most impacted and distressed areas. To inform the Action Plan, the grantee must conduct an updated assessment of community impacts and unmet needs to guide the development and prioritization of planned recovery activities, pursuant to paragraph A.2.a. in section VI of the November 21, 2016, notice, as amended. However, the scale of analysis for this allocation may be commensurate with the amount of the allocation and the limited data available.

Public Law 115–31 requires the Secretary to certify, in advance of signing a grant agreement, that the grantee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, ensure timely expenditure of funds, maintain comprehensive websites regarding all disaster recovery activities assisted with these funds, and detect and prevent waste, fraud, and abuse of funds. The November 21, 2016 notice further required grantees to submit risk analysis documentation and to certify to its capacity to administer CDBG–DR funds. To provide a basis for these certifications, grantees were required to submit documentation to the Department demonstrating compliance with the stated requirements of the

statute and corresponding notice. The Department will not require grantees to resubmit its previous documentation to support the Secretary's required certification before signing the grant agreement for funds under Public Law 115–31 for 2017 disasters. Instead, grantees receiving an allocation of funds under Public Law 115–31 for 2017 disasters may submit a new certification to HUD indicating that its submissions in response to the certification requirements of the November 21, 2016 notice for its CDBG–DR grant for 2016 disasters remain unchanged, and the policies and procedures on which HUD based its certification for 2016 disasters are adopted and will apply to the grantee's CDBG–DR grant allocation for 2017 disasters. Alternatively, grantees may provide a supplement updating its previous submissions in response to the certification requirements of the November 21, 2016 notice to indicate any changes that will apply to the use of funds for 2017 disasters, and will submit a certification that its submissions remain unchanged, except as indicated.

Pursuant to the November 21, 2016 notice, as amended, a grantee receiving an allocation of funds for 2017 disasters in a subsequent notice is also required to expend 100 percent of its allocation of CDBG–DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

A grantee receiving an allocation of funds for 2017 disasters will be subject to the grant process provided for in section V. of the November 21, 2016 notice, as amended. The grantee and HUD will execute a separate grant agreement for funds for 2017 disasters.

C. Grant Process

To receive funds allocated by this notice, Texas may adopt and incorporate applicable sections and any other relevant information from its approved Action Plan for 2016 disasters, and include any additional information, as appropriate, to address recovery from Hurricane Harvey. In developing the resulting Action Plan for Hurricane Harvey (Public Law 115–31), Texas must meet the grant process requirements from the November 21, 2016 notice, which include the following:

- Consult with affected citizens, stakeholders, local governments, and public housing authorities to assess needs;
- Publish the resulting Action Plan for Hurricane Harvey (Pub. L. 115–31) in accordance with the requirements set forth in section VI.A.4.a of the November 21, 2016 notice, including the requirement to prominently post the Action Plan on its official website for no less than 14 calendar days. The grantee must also ensure equal access for persons with disabilities and persons with limited English proficiency. The manner of publication must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the Action Plan contents and provide feedback;
- Respond to public comment and submit its resulting Action Plan for 2017 disasters to HUD no later than 90 days after the effective date of this notice;
- Enter the activities from its published Action Plan for Hurricane Harvey (Pub. L. 115–31) into the Disaster Recovery Grant Reporting (DRGR) system and submit the updated DRGR Action Plan to HUD within the system;
- Sign and return the grant agreement to HUD;
- Ensure that the HUD approved Action Plan for Hurricane Harvey (Pub. L. 115–31) is posted prominently on its official website; and
- Amend its published Action Plan for Hurricane Harvey (Pub. L. 115–31) to include its projection of expenditures and outcomes within 90 days of the Action Plan approval.

HUD will review Texas's resulting Action Plan for Hurricane Harvey (Pub. L. 115–31) within 45 days from date of receipt and determine whether to approve the plan per criteria identified in this notice and all applicable prior notices. HUD will then send an approval letter, grant conditions, and an unsigned grant agreement to the grantee. If the state's Action Plan is not approved, a letter will be sent identifying its deficiencies and the state must then re-submit the plan within 45 days of the notification letter.

Once HUD signs the grant agreement and revises the grantee's line of credit amount, the state may draw down funds from the line of credit after the Responsible Entity completes applicable environmental review(s) pursuant to 24 CFR part 58 or as authorized by Public Law 115–31 and, as applicable, receives from HUD or the state an approved Request for Release of Funds and certification.

D. Applicable Rules, Statutes, Waivers, and Alternative Requirements

The funds allocated under this notice are subject to the waivers and alternative requirements provided in the November 21, 2016, January 18, 2017, and August 7, 2017 notices governing the award of CDBG–DR funds to 2016 grantees. These waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift recovery following the disasters, while also ensuring that statutory requirements are met. Texas may request additional waivers and alternative requirements from the Department, as needed, to address specific needs related to its recovery activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

E. Duration of Funding

Public Law 115–31 provides that these funds will remain available until expended. However, consistent with 31 U.S.C. 1555 and OMB Circular A–11, if the Secretary or the President determines that the purposes for which the appropriation has been made have been carried out and no disbursements have been made against the appropriation for two consecutive fiscal years, any remaining balance will be made unavailable for obligation or expenditure. Consistent with the November 21, 2016, January 18, 2017, and August 7, 2017 notices, the provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with alternative requirements. Grantees must expend 100 percent of their allocation of CDBG–DR funds on eligible activities within 6 years of HUD's execution of the grant agreement.

II. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice provides a technical correction to the previously established alternative requirement on the low- and moderate- income (LMI) national objective criteria for grantees undertaking buyouts and housing incentives with CDBG–DR funding provided by Public Laws 113–2, 114–113, 114–223, 114–254 and 115–31.

The **Federal Register** notice published by the Department on August 7, 2017 (82 FR 36812) established additional opportunities for CDBG–DR grantees to meet the LMI national objective with respect to assistance provided to LMI persons through buyouts and housing incentives. After the publication of that notice, HUD determined that the language used would make it difficult for grantees to meet those objectives. Accordingly, starting at the fifth paragraph of Section V, the August 7, 2017 notice is amended to read:

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:

(1) The CDBG–DR funds have been provided for an eligible activity that benefits LMI households by supporting their move from high risk areas. The following activities shall qualify under this criterion, and must also meet the eligibility criteria of the notices governing the use of the CDBG–DR funds:

(a) Low/Mod Buyout (LMB). When CDBG–DR funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount is greater than post-disaster (current) fair market value of that property;

(b) Low/Mod Housing Incentive (LMHI). When CDBG–DR funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

(2) Activities that meet the above criteria will be considered to benefit low- and moderate-income persons unless there is substantial evidence to the contrary.

Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG–DR grantee's overall LMI benefit to comply with the primary objective described in 24 CFR 570.200(a)(3) and 24 CFR 570.484(b). Grantees receiving an allocation of CDBG–DR funds pursuant to the following appropriations acts must specifically request a waiver and alternative requirement from HUD in order apply the new national objective criteria established in this section of the notice: Public Law 109–148, 109–234, and 110–116 (Katrina, Rita, and Wilma); Public Law 110–252 and 110–328 (2008 Disasters), Public Law 111–112 (2010 disasters), and Public Law 112–55 (2011 disasters).

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218; 14.228; and 14.269.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: December 20, 2017.

Neal J. Rackleff,

Assistant Secretary for Community Planning and Development.

[FR Doc. 2017–27960 Filed 12–26–17; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[18XD4523WS/DWSN0000.000000/DS61500000/DP.61501]

Invasive Species Advisory Committee; Request for Nominations

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, on behalf of the interdepartmental National Invasive Species Council (NISC), proposes to appoint new members to the Invasive Species Advisory Committee (ISAC). The Secretary of the Interior, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the ISAC.

DATES: Nominations must be postmarked by February 26, 2018.

ADDRESSES: Nominations should be sent to Jamie K. Reaser, Executive Director, National Invasive Species Council (OS/NISC), Regular/Express Mail: 1849 C Street NW (Mailstop 3530), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kelsey Brantley, Coordinator for NISC and ISAC Operations, at (202) 208–4122, fax: (202) 208–4118, or by email at *Kelsey_Brantley@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Advisory Committee Scope and Objectives

Executive Order (E.O.) 13112 authorized the National Invasive Species Council (NISC) to provide interdepartmental coordination, planning, and leadership for the Federal Government on the prevention, eradication, and control of invasive species. This authorization was recently reiterated in E.O. 13751. NISC is currently comprised of the senior-most leadership of thirteen Federal Departments/Agencies and three Executive Offices of the President. The Co-chairs of NISC are the Secretaries of the Interior, Agriculture, and Commerce. The Invasive Species Advisory Committee (ISAC) advises NISC. NISC is requesting nominations for individuals to serve on the ISAC.

NISC provides high-level interdepartmental coordination of Federal invasive species actions and works with other Federal and non-Federal groups to address invasive species issues at the national level. NISC duties, consistent with E.O. 13751, are to provide national leadership regarding invasive species and: (a) Work to ensure that the Federal agency and interagency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective; (b) undertake a National Invasive Species Assessment that evaluates the impact of invasive species on major U.S. assets, including food security, water resources, infrastructure, the environment, human, animal, and plant health, natural resources, cultural identity and resources, and military readiness, from ecological, social, and economic perspectives; (c) advance national incident response, data collection, and rapid reporting capacities that build on existing frameworks and programs and strengthen early detection of and rapid response to invasive species, including those that are vectors, reservoirs, or causative agents of disease; (d) publish an assessment by 2019 that identifies the most pressing scientific, technical, and programmatic coordination challenges to the Federal Government's capacity to prevent the introduction of invasive species, and that incorporate recommendations and priority actions to overcome these challenges into the National Invasive Species Council Management Plan, as appropriate; (e) support and encourage the development of new technologies and practices, and promote the use of existing technologies and practices, to prevent, eradicate, and control invasive species, including those that are vectors, reservoirs, and causative agents of disease; (f) convene annually to discuss and coordinate interagency priorities and report annually on activities and budget

requirements for programs that contribute directly to the implementation of this order; and (g) publish a National Invasive Species Council Management Plan; (h) enhancing cooperative stewardship with states, territories, and federally-recognized tribes to address invasive species, including by identifying and overcoming regulatory and non-regulatory barriers to effective and cost-efficient cooperation; (i) restoring ecosystems, included human-managed landscapes (*e.g.,* rangelands, forestlands), and other national assets impacted by invasive species; and (j) reducing the impact of invasive species on the American economy, including by safeguarding employment and income generated through the enjoyment and utilization of natural resources, as well as by creating employment opportunities for preventing, eradicating, and controlling invasive species; and engaging the hunting and fishing communities in preventing, eradicating, or controlling invasive species.

ISAC is chartered under the Federal Advisory Committee Act (FACA; 5 U.S.C. Appendix 2). At the request of NISC, ISAC provides advice to NISC members on topics related to NISC's aforementioned duties, as well as emerging issues prioritized by the Administration. As a multi-stakeholder advisory committee, ISAC is intended to play a key role in recommending plans and actions to be taken at local, tribal, state, territorial, regional, and landscape-based levels to achieve the goals and objectives of the Management Plan. It is hoped that, collectively, ISAC will represent the views of the broad range of individuals and communities knowledgeable of and affected by invasive species.

Prospective members of ISAC need to have knowledge in the prevention, eradication, and/or control of invasive species, as well as to demonstrate a high degree of capacity for: Advising individuals in leadership positions, team work, project management, tracking relevant Federal government programs and policy making procedures, and networking with and representing their peer-community of interest. ISAC members need not be scientists. Membership from a wide range of disciplines and professional sectors is encouraged. At this time, we are particularly interested in applications from representatives of tribes, states, territories, non-governmental organizations, outdoor recreational groups, the private sector, and large-scale land management entities (urban and rural).

After consultation with the other members of NISC, the Secretary of the Interior will appoint members to ISAC. Members will be selected based on their individual qualifications, as well as the overall need to achieve a balanced representation of viewpoints, subject matter expertise, regional knowledge, and representation of communities of interest. ISAC member terms are limited to three (3) years from their date of appointment to ISAC. Following completion of their first term, an ISAC member may request consideration for reappointment to an additional term. Reappointment is not guaranteed.

Typically, ISAC will hold at least one in-person meeting per year. Between meetings, ISAC members are expected to participate in committee work via conference calls and email exchanges. Members of the ISAC and its subcommittees serve without pay. However, while away from their homes or regular places of business in the performance of services of the ISAC, members may be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the government service, as authorized by section 5703 of title 5, United States Code. Employees of the Federal Government ARE NOT eligible for nomination or appointment to ISAC.

Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Nominations should include a resume that provides an adequate description of the nominee's qualifications, particularly information that will enable the Department of the Interior to make evaluate the nominee's potential to meet the membership requirements of the Committee and permit the Department of the Interior to contact a potential member. Please refer to the membership criteria stated in this notice.

Any interested person or entity may nominate one or more qualified individuals for membership on the ISAC. Self-nominations are also accepted. Persons or entities submitting nomination packages on the behalf of others must confirm that the individual(s) is/are aware of their nomination. Nominations must be postmarked no later than February 26, 2018 to Jamie K. Reaser, Executive Director, National Invasive Species Council (OS/NISC), Regular Mail: 1849 C Street NW (Mailstop 3530), Washington, DC 20240.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your nominations and/or comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your nomination/comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2

Dated: December 20, 2017.

Jamie K. Reaser,

Executive Director, National Invasive Species Council Secretariat.

[FR Doc. 2017–27829 Filed 12–26–17; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–GOGA–24579; PPPWGOGAPO, PPMPSPD1Z.YM0000]

Termination Notice for the Dog Management Plan and Environmental Impact Statement, Golden Gate National Recreation Area, California

AGENCY: National Park Service, Interior.

ACTION: Notice of termination of Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) has cancelled its planning process for the Golden Gate National Recreation Area dog management plan, and no longer intends to issue a Record of Decision.

DATES: The associated environmental impact statement (EIS) is terminated as of December 27, 2017.

FOR FURTHER INFORMATION CONTACT: Dana Polk, Public Affairs Office, Park Headquarters, Fort Mason, Building 201, San Francisco, CA 94123; phone 415–561–4728.

SUPPLEMENTARY INFORMATION: Pursuant to the National Environmental Policy Act (NEPA) and the regulations implementing NEPA (40 CFR parts 1500–1508 and 43 CFR part 46), the NPS published a notice of intent to prepare an EIS in the **Federal Register** on February 22, 2006 (71 FR 9147). The NPS has now cancelled that planning process, and terminated the associated NEPA and rulemaking processes. No

Record of Decision or final rule will be issued.

Dated: December 19, 2017.

Martha J. Lee,

Acting Regional Director, Pacific West Region.

[FR Doc. 2017–27826 Filed 12–26–17; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–565 and 731–TA–1341 (Final)]

Hardwood Plywood From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of hardwood plywood from China, provided for in subheadings 4412.10, 4412.31, 4412.32, 4412.39, 4412.94, and 4412.99 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''), and to be subsidized by the government of China.[2]

Background

The Commission, pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)), instituted these investigations applicable November 18, 2016, following receipt of a petition filed with the Commission and Commerce by the Coalition for Fair Trade of Hardwood Plywood and its individual members.[3] The final phase of the investigations was scheduled by the Commission following notification of a preliminary determinations by Commerce that imports of hardwood plywood from China were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations 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** on July 11, 2017 (82 FR 32011). The hearing was held in Washington, DC, on October 26, 2017, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on December 20, 2017. The views of the Commission are contained in USITC Publication 4747 (December 2017), entitled *Hardwood Plywood from China: Investigation Nos. 701–TA–565 and 731–TA–1341 (Final).*

By order of the Commission.

Issued: December 20, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–27845 Filed 12–26–17; 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)).

[2] The Commission also finds that imports subject to Commerce's affirmative critical circumstances determinations are not likely to undermine seriously the remedial effect of the antidumping duty order or the countervailing duty order on hardwood plywood from China.

[3] Columbia Forest Products, Greensboro, North Carolina; Commonwealth Plywood Inc., Whitehall, New York; Murphy Plywood Co., Eugene, Oregon; Roseburg Forest Products Co., Roseburg, Oregon; States Industries, Inc., Eugene, Oregon; and Timber Products Company, Springfield, Oregon.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–562 and 332–563]

Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; and Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness; Submission of Questionnaire for OMB Review

AGENCY: United States International Trade Commission.

ACTION: Notice of submission of request for approval of a questionnaire to the Office of Management and Budget. This notice is being given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Purpose of Information Collection: The information requested by the questionnaire is for use by the Commission in connection with investigation no. 332–562, *Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions, and U.S. Competitiveness;* and investigation no. 332–563, *Global Digital Trade 3: The Business-to-Consumer Market, Key Foreign Trade Restrictions, and U.S. Competitiveness.* These investigations were instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) at the request of the United States Trade Representative (USTR). The Commission will deliver the results of its investigation into the business-to-business market to the USTR by October 29, 2018 and its investigation of the business-to-consumer market to the USTR by March 29, 2019.

Summary of Proposal:

(1) Number of forms submitted: 1.

(2) Title of form: Global Digital Trade Questionnaire.

(3) Type of request: New.

(4) Frequency of use: Industry questionnaire, single data gathering, scheduled for 2018.

(5) Description of respondents: U.S. firms in industries involved in global digital trade.

(6) Estimated number of questionnaire requests to be mailed: 13,000.

(7) Estimated total number of hours to complete the questionnaire per respondent: 17 hours.

(8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm. Aggregate responses will be considered NSI as requested by USTR.

Additional Information or Comment: Copies of the draft questionnaire and other supplementary documents may be downloaded from the USITC website at *https://www.usitc.gov/globaldigitaltrade.* For any questions about these investigations, email *globaldigitaltrade@usitc.gov* or call 202–205–3225 or 202–205–3342. Comments about the proposal should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Chief Information Officer, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

General information concerning the Commission may also be obtained by accessing its internet address (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

By order of the Commission.

Issued: December 20, 2017.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2017–27847 Filed 12–26–17; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) in Arlington, VA, on January 11–12, 2018.

DATES: Thursday, January 11, 2018, from 9:00 a.m. to 5:00 p.m., and Friday, January 12, 2018, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service, 2345 Crystal Drive, Suite 400, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elizabeth Van Osten, Designated Federal Officer, Advisory Committee on Actuarial Examinations, at 703–414–2163.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at the Internal Revenue Service, 2345 Crystal Drive, Suite 400, Arlington, VA 22202, on Thursday, January 11, 2018, from 9:00 a.m. to 5:00 p.m., and Friday, January 12, 2018, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2017 Pension (EA–2F) Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2018 Basic (EA–1) Examination and the May 2018 Pension (EA–2L) Examination also will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2017 Pension (EA–2F) Examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:00 p.m. on January 11, 2018, and will continue for as long as necessary to complete the discussion, but not beyond 3:00 p.m. Time permitting, after the close of this discussion by Advisory Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should contact the Designated Federal Officer at *nhqjbea@irs.gov* and include the written text or outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. Persons who wish to attend the public session should contact the Designated Federal Officer at *nhqjbea@irs.gov* to obtain teleconference access or building access instructions. Notifications of intent to make an oral statement or to attend the meeting must be sent electronically to the Designated Federal Officer by no later than January 4, 2018. Any interested person also may file a written statement for consideration by the Joint Board and the Advisory Committee by sending it to: Internal Revenue Service; Attn: Ms. Elizabeth Van Osten, Joint Board for the Enrollment of Actuaries SE:RPO; Park 4, Floor 4; 1111 Constitution Avenue NW, Washington, DC 20224.

Dated: December 19, 2017.

Thomas V. Curtin,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 2017–27849 Filed 12–26–17; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0030]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on October 25, 2017, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 26, 2018.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any other additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, either by mail 99 New York Ave. NE, Washington, DC 20226, by email at *Anita.Scheddel@atf.gov,* or by telephone at (202)-648–7158. 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 functions of the agency, including

whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *The Title of the Form/Collection:* Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed Under Title 18 U.S.C. Chapter 40 Explosives.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Abstract: The records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40 Explosives. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent, and if lost or stolen, ATF will be immediately notified.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 9,927 respondents will utilize this collection, and it will take each respondent approximately 12.6 hours to complete this information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 625,401 hours which is equal to (49,635 (total # of annual responses) * 12.6 (# of hours per response).

(7) *An Explanation of the Change in Estimates:* The adjustments associated with this collection are a decrease in the number of respondents by 40,592, and reduction in the total responses and burden hours by 587,935 and 12,169 respectively, when compared to the previous information collection renewal.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: December 21, 2017.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2017–27922 Filed 12–26–17; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OLP Docket No. 167]

Notice of Request for Certification of Texas Capital Counsel Mechanism

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that the State of Texas has provided additional information regarding its request for certification of its capital counsel mechanism by the Attorney General, and that the period to submit public comment to the Department of Justice regarding Texas's request has been extended to 60 days from the date of publication of this notice.

DATES: Written and electronic comments must be submitted on or before February 26, 2018. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. OLP 167'' on all electronic and written correspondence. The Department encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. Paper comments that duplicate the electronic submission should not be submitted. Individuals who wish to submit written comments may send those to the contact listed in the **FOR FURTHER INFORMATION** section immediately below.

FOR FURTHER INFORMATION CONTACT: Laurence Rothenberg, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone (202) 532–4465.

SUPPLEMENTARY INFORMATION: Chapter 154 of title 28, United States Code, provides special procedures for federal habeas corpus review of cases brought by prisoners in State custody who are subject to capital sentences. These special procedures may be available to a State only if the Attorney General of the United States has certified that the State has established a qualifying mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings for indigent capital prisoners. 28 U.S.C. 2261, 2265; 28 CFR part 26.

On November 16, 2017, the Department of Justice, Office of Legal Policy published a notice in the **Federal Register** (82 FR 53530, OLP Docket No. 167, Document No. 2017–24874, available at *https://www.federalregister.gov/documents/2017/11/16/2017-24874/notice-of-request-for-certification-of-texas-capital-counsel-mechanism*), advising the public of Texas's request for certification, dated March 11, 2013, and requesting public comment regarding that request. The Department also sent a letter to Texas, dated November 16, 2017, asking whether the State wished to supplement or update that request.

This notice advises the public that the State of Texas has submitted additional information in regard to its prior request for certification. Public comment is solicited regarding Texas's request, and the comment period has been extended to 60 days from the date of publication of this notice. Texas's request and supporting materials may be viewed at *https://www.justice.gov/olp/pending-requests-final-decisions.*

One comment received by the Department in response to the Department's November 16, 2017 notice requested the comment period be extended from 60 days to 90 days from the date of publication of Texas's supplemental information. The Department declines at this time to extend the comment period to 90 days, but, as noted, has extended the deadline for public comment until 60 days from the date of publication of this notice. Further, the Department may choose to solicit additional public comment if necessary during the review process.

Dated: December 20, 2017.

Beth A. Williams,

Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2017–27885 Filed 12–26–17; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On December 20, 2017, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of Pennsylvania in the lawsuit entitled *United States and Commonwealth of Pennsylvania Department of Environmental Protection (PADEP)* v. *City of Lancaster, Pennsylvania,* Civil Action No. 17–cv–5684. In a civil action filed on December 19, 2017, under Section 309(d) of the Clean Water Act and the Pennsylvania Clean Streams Law, Act of June 22, 1987, P.S. 1937, as amended, 35 P.S. §§ 691.1–691.1001, the United States, on behalf of the Environmental Protection Agency, and PADEP alleged that Lancaster violated its National Pollutant Discharge Elimination System (''NPDES'') permit and the Clean Water Act and Pennsylvania Clean Streams Law by failing to develop and implement an adequate Long Term Control Plan (''LTCP''), violating effluent limits, failing to comply with the Nine Minimum Control Requirements, and discharging sanitary sewer overflows. In the Complaint, the United States and PADEP sought injunctive relief and penalties.

The proposed Consent Decree resolves the claims alleged in the Complaint, and requires the City to take specified actions designed to achieve compliance with the Clean Water Act, Clean Streams Law, and the City's NPDES Permit. The proposed Consent Decree requires the City to submit an Amended Long Term Control Plan in accordance with the schedules contained in the Decree. In addition, City must pay a civil penalty of $135,000, to be split equally between the United States and PADEP, and the City must complete a Supplemental Environmental Project designed to improve water quality in the Conestoga River. The SEP involves daylighting a stream in the City of Lancaster, identified as Groff's Run.23.

The publication of this notice opens a period for public comment on the Consent Decree. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division and refer to *United States and Commonwealth of Pennsylvania Department of Environmental Protection* v. *City of Lancaster,* DJ. Ref. No. 90–5–1–1–11135. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	pubcomment-ees.enrd@usdoj.gov.
By mail	Assistant Attorney General, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $23.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–27816 Filed 12–26–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under The Comprehensive Environmental Response, Compensation and Liability Act

On December 20, 2017, the Department of Justice lodged a proposed consent decree (''Decree'') with the United States District Court for the Northern District of New York in the lawsuit entitled *United States* v. *Honeywell International Inc. and Onondaga County, New York,* Civil Action No. 5:17–cv–01364–FJS–DEP.

The proposed Decree resolves claims under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), against Honeywell International Inc. (''Honeywell'') and Onondaga County (''County'') (collectively the ''Defendants'') for natural resource damages resulting from the releases of hazardous substances at or from the Defendants' facilities at the Onondaga Lake Superfund Site, located in the City of Syracuse, New York. The proposed Decree provides that Honeywell will (1) implement and maintain 20 restoration projects to restore and protect wildlife habitat and water quality, and increase recreational opportunities at Onondaga Lake; (2) pay $5 million for future restoration projects to be undertaken by the Trustees; (3) pay $500,000.00 toward stewardship activities to protect and maintain restoration projects; and (4) pay $750,000.00 for Trustees' future oversight costs. The proposed Decree also requires that the County will operate, repair, maintain, and monitor five of these restoration projects located on or adjacent to County parklands for 25 years. The Defendants' work and payment obligations under the Decree total more than $26 million.

Appendix A to the proposed Decree is the Final Onondaga Lake Natural Resource Damage Assessment Restoration Plan and Environmental Assessment (''RP/EA'') issued in August 2017. The RP/EA describes the natural resource injuries and associated losses and outlines the 20 restoration projects. The plan also includes responses to oral and written comments received from the public on the draft plan during a 90-day public comment period, which included four public meetings and one public hearing held during the spring 2017. The final RP/EA is available at *http://www.fws.gov/northeast/nyfo/ec/onondaga.htm*

The publication of this notice opens a period for public comment on the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Honeywell International Inc. and Onondaga County, New York,* D.J. Ref. No. 90–11–3–08348/1. 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 Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library U.S. DOJ–ENRD P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $93.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Decree without the appendices the cost is $12.75.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2017–27817 Filed 12–26–17; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Request for Certification of Arizona Capital Counsel Mechanism OLP Docket No. 166

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that the State of Arizona has provided additional information regarding its request for certification of its capital counsel mechanism by the Attorney General, and that the period to submit public comment to the Department of Justice regarding Arizona's request has been extended to 60 days from the date of publication of this notice.

DATES: Written and electronic comments must be submitted on or before February 26, 2018. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference ''Docket No. OLP 166'' on all electronic and written correspondence. The Department encourages that all comments be submitted electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. Paper comments that duplicate the electronic submission should not be submitted. Individuals who wish to submit written comments may send those to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section immediately below.

FOR FURTHER INFORMATION CONTACT: Laurence Rothenberg, Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone (202) 532–4465.

SUPPLEMENTARY INFORMATION: Chapter 154 of title 28, United States Code, provides special procedures for federal habeas corpus review of cases brought by prisoners in State custody who are subject to capital sentences. These special procedures may be available to a State only if the Attorney General of the United States has certified that the State has established a qualifying mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings for indigent capital prisoners. 28 U.S.C. 2261, 2265; 28 CFR part 26.

On November 16, 2017, the Department of Justice, Office of Legal Policy published a notice in the **Federal Register** (82 FR 53529, OLP Docket No. 166, Document No. 2017–24873, available at *https://www.federalregister.gov/documents/2017/11/16/2017-24873/notice-of-request-for-certification-of-arizona-capital-counsel-mechanism*), advising the public of Arizona's request for certification, dated April 18, 2013, and requesting public comment regarding that request. The Department also sent a letter to Arizona, dated November 16, 2017, asking whether the State wished to supplement or update that request.

This notice advises the public that the State of Arizona has submitted additional information in regard to its prior request for certification. Public comment is solicited regarding Arizona's request, and the comment period has been extended to 60 days from the date of this notice. Arizona's request and supporting materials may be viewed at *https://www.justice.gov/olp/pending-requests-final-decisions.*

Two comments (from a single commenter) received by the Department in response to the Department's November 16, 2017 notice requested the comment period be extended from 60 days to 180 days or, in the alternative, to extend the comment period by a lesser amount in light of supplemental information submitted by the State of Arizona. The Department declines at this time to extend the comment period to 180 days, but, as noted, has extended the deadline for public comment until 60 days from the date of publication of this notice. Further, the Department may choose to solicit additional public comment if necessary during the review process.

Dated: December 20, 2017.

Beth A. Williams,

Assistant Attorney General, Office of Legal Policy.

[FR Doc. 2017–27867 Filed 12–26–17; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF LABOR

Employment and Training Administration

Large Residential Washers (LRWs)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Publication of summary of the Department of Labor's report on the investigation.

SUMMARY: Section 224(b) of the Trade Act of 1974 (''Trade Act'') requires the United States Department of Labor (''Department'') to publish in the **Federal Register** a summary of each report that it submits to the President under section 224(a) of the Trade Act. Set forth below is a summary of the report that the Department submitted to the President on December 19, 2017, on investigation No. TA–201–76, *Large Residential Washers.* The Department conducted the investigation under section 224(a) following notification by the International Trade Commission (''Commission''), as required by section 202(a)(3) of the Trade Act that a petition was filed alleging that LRWs are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

DATES: December 19, 2017: Transmittal of the Department's report to the President.

ADDRESSES: United States Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. The public report may be viewed on the Department's website at *https://www.doleta.gov/tradeact.*

FOR FURTHER INFORMATION CONTACT: Norris Tyler, Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; Telephone: (202) 693–3560 (this is not a toll-free number). The media should contact Egan Reich, Office of Public Affairs, on (202) 693–4960, or *reich.egan@dol.gov.* Congressional inquiries may be directed

to Byron Anderson, Office of Congressional and Intergovernmental Affairs, on (202) 693–4600, or *anderson.byron.e@dol.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 224(a), the Department will investigate: (1) The number of workers in the domestic industry producing the like or directly competitive article(s) who have been or are likely to be certified as eligible for adjustment assistance, and (2) the extent to which the adjustment of such workers to the import competition may be facilitated through the use of existing programs. The full text of the report will be posted on the Department's website at *https://www.doleta.gov/tradeact*.

Procedural Summary: On October 5, 2017, the Commission issued an affirmative determination under Section 202(b)(1) of the Trade Act of 1974 in its safeguard investigation No. TA–201–76, *Large Residential Washers*. The Commission submitted a report to the President on December 4, 2017, which can be found on *https://www.usitc.gov*. A summary was also published in the **Federal Register** (82 FR 58026 (December 08, 2017)).

Section 202(c)(1) of the Trade Act directs the Department to report to the President certain information whenever the Commission makes a finding under Section 202 of the Trade Act. The Department's report to the President studies the following:

(1) The number of workers in the domestic industry for LRWs producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance; and

(2) The extent to which the adjustment of workers to the import competition may be facilitated through the use of existing programs.

Consistent with the statutory requirement, the focus of the Department's study is limited to potential future job losses related to increased imports on the domestic production of LRWs. Job losses in related domestic industries or upstream providers, if any, and consequences of potential remedies, such as foregone job growth due to less foreign direct investment are outside the scope of this report. Based on the Department's analysis, the current size of the U.S. domestic workforce responsible for the production of LRWs is approximately 4,000.

In the U.S. domestic industry, there are four companies which are currently employing workers: Whirlpool, Staber, Alliance, and General Electric. During the Commission's investigation, the petitioner (Whirlpool) maintained that in addition to tariffs, a quota on imported covered parts would be a strong final remedy that will ensure U.S. manufacturing jobs are protected. However, other interested stakeholders (LG and Samsung) suggest that among other things, the protection of U.S. jobs afforded by the tariff and quota may be offset in part by the loss of U.S. jobs that could result from higher consumer prices for LRWs and reduce overall consumer demand. We also note that Samsung and LG both have plans in the near future to open factories in the United States that would provide an estimated 1,600 new jobs in this industry. It is difficult to determine what the effect any remedies would have on long-run employment in this industry.

The Department's study on LRWs, as required under Section 224, found the following:

1. The Department received Trade Adjustment Assistance (TAA) petitions for four worker groups involved in the production of LRWs since January 2012. All four of those worker groups were certified as eligible to apply for TAA, resulting in an estimated 183 workers eligible to apply for individual benefits under the TAA Program.

2. The Department estimates that 324 additional workers are likely to be covered by certified TAA petitions before the end of 2019.

3. Sufficient funding is available to provide TAA benefits and services to these workers. In Fiscal Year 2017, the Department provided $391 million to states to provide training and other activities for TAA participants, as well as $294 million in funding for Trade Readjustment Allowances, and $31 million in Reemployment Trade Adjustment Assistance funds.

4. The Department believes that training and benefits under the Trade Act, other Department programs, and programs at other federal agencies are sufficient to assist workers in the LRWs industry to adjust to the trade impact.

As required by Section 224(f)(1) of the Trade Act of 1974 (19 U.S.C. 2274(f)(1)), the Department must provide notice of an affirmative determination by the Commission and the identity of the affected firms to the Governor in each State in which one or more firms in the affected industry are located. The Department must also notify representatives of the domestic industry, firms identified by name during the proceedings, and any recognized worker representatives of the benefits available under the TAA program, the manner in which to file a petition to apply for such benefits, and the availability of assistance in filing TAA petitions.

Finally, once the Commission's findings and the Department's report are provided to the President, the President may impose relief in the form of increased duties and/or other restrictions on imports of LRWs under Section 203 of the Trade Act (19 U.S.C. 2253).

Rosemary Lahasky,

Deputy Assistant Secretary for Employment and Training.

[FR Doc. 2017–27670 Filed 12–26–17; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Occupational Requirements Survey.'' A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before February 26, 2018.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at

202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Requirements Survey (ORS) is a nationwide survey that the Bureau of Labor Statistics (BLS) is conducting at the request of the Social Security Administration (SSA). Three years of data collection and capture for the ORS will start in 2018 and end in mid-2021.

Estimates produced from the data collected by the ORS will be used by the SSA to update occupational requirements data for administering the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs.

The ORS occupational information will allow SSA adjudicators to clearly associate the assessment of a claimant's physical and mental functional capacity and vocational profile with work requirements. BLS will compute percentages of workers with various characteristics, such as skill and strength level. SSA will use this information to provide statistical support for the medical-vocational rules used at step 5 of sequential evaluation regarding the number of unskilled jobs that exist at each level of exertion in the national economy.

The Social Security Administration, Members of Congress, and representatives of the disability community have all identified collection of updated information on the requirements of work in today's economy as crucial to the equitable and efficient operation of the Social Security Disability (SSDI) program.

The ORS collects data from a sample of employers. These requirements of work data consist of information about the duties, responsibilities, and critical job tasks for a sample of occupations for each sampled employer.

II. Current Action

Office of Management and Budget clearance is being sought for the Occupational Requirements Survey.

The ORS collects data on the requirements of work, as defined by the SSA's disability program:

(1) An indicator of ''time to proficiency,'' defined as the amount of time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average job performance, comparable to the Specific Vocational Preparation (SVP) used in the Dictionary of Occupational Titles (DOT).

(2) Physical Demand characteristics/factors of occupations, measured in such a way to support SSA disability determination needs, comparable to measures in Appendix C of the Selected Characteristics of Occupations (SCO).

(3) Environmental Conditions, measured in such a way to support SSA disability determination needs, comparable to measures in Appendix D of the SCO.

(4) Data elements that describe the mental and cognitive demands of work.

(5) Occupational task lists of occupations, defined as the critical job function and key job tasks, to validate the reported requirements of work, comparable to data identified in the Employment and Training Administration's (ETA's) O*NET Program.

The ORS data will be collected using a revised sample design. This two-stage stratified design includes new sample cell definitions and allocations to accommodate the goal to produce estimates for as many occupations as possible. Occupations for private industry establishments will be selected before the sample is fielded. Occupational selection for government units will generally occur after establishment contact. The probability of an occupation being selected after the sample is fielded will be proportionate to its employment within the establishment.

BLS will disseminate the data from the ORS on the BLS public website (*www.bls.gov/ors*). The new design will use a five-year rotation with complete estimates published after the full sample has been collected. Interim results will be produced and disseminated on an annual basis.

ORS collection will use several forms (having unique private industry and government collection versions). For those sampled establishments that are in the current National Compensation Survey (NCS), ORS will use NCS data and forms for those data elements that overlap.

ORS data are defined to balance SSA's adjudication needs with the ability of the respondent to provide data. With this clearance, BLS is: Replacing questions related to the mental and cognitive demands; adding a screening question for the presence of stooping, kneeling, crouching or crawling; modifying the categories collected for hearing; and eliminating ''Push/Pull—Feet Only'' collection.

III. Desired Focus of Comments

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

Title of Collection: Occupational Requirements Survey.

OMB Number: 1220–0189.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit; not-for-profit institutions; and State, local, and tribal government.

Total Average Burden: All figures in the table below are based on a three-year average.

%	Respondents	Average responses per year	Total # of responses	Average minutes	Total hours
Three-year average	11,200	1.04464	11,700	107.4205	20,947

COLLECTION FORMS

Occupational Requirements Survey (Private Industry sample).	List form numbers ORS Form 15–1P ORS Form 4 PPD–4P ORS Form 4 PPD–4PA	Name form Establishment. Collection Forms for Private Industry.
Occupational Requirements Survey (State and local government sample).	List form numbers ORS Form 15–1G ORS Form 4 PPD–4G ORS Form 4 PPD–4GA	Name form Establishment. Collection Forms for Governments.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 20th day of December 2017.

Kimberley Hill,

Chief, Division of Management Systems.

[FR Doc. 2017–27852 Filed 12–26–17; 8:45 am]

BILLING CODE 4510–24–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: 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 January 26, 2018.

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 petition 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: 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.

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 (Secretary) 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–2017–027–C.

Petitioner: Bronco Utah Operations, LLC, P.O. Box 527, Emery, Utah 84522.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans, require that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible

surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2017–028–C.

Petitioner: Bronco Utah Operations, LLC, P.O. Box 527, Emery, Utah 84522.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans, require that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air out of the return airway.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2017–029–C.

Petitioner: Bronco Utah Operations, LLC, P.O. Box 527, Emery, Utah 84522.

Mine: Emery Mine, MSHA I.D. No. 42–00079, located in Emery County, Utah.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of longwall faces and pillar workings. Battery-powered nonpermissible surveying equipment includes, but is not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers.

The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature, and the size and complexity of mine plans, require that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the

following as an alternative to the existing standard:

(a) Use nonpermissible electronic surveying equipment when equivalent permissible electronic surveying equipment is not available. Nonpermissible equipment will include portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings or longwall faces will be examined by surveying personnel prior to use to ensure the equipment is being maintained in safe operating condition. These examinations will include:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as defined in 30 CFR 75.320.

(g) Batteries in the surveying equipment will be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2017–27850 Filed 12–26–17; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation; Proposed Extension of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: Currently, the Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Miner's Claim for Benefits under the Black Lung Benefit's Act (CM–911) and Employment History (CM–911A). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before February 26, 2018.

ADDRESSES: You may submit comments by mail, delivery service, or by hand to Ms. Yoon Ferguson, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210; by fax to (202) 354–9647; or by Email to *ferguson.yoon@dol.gov.* Please use only one method of transmission for comments (mail/delivery, fax, or Email). Please note that comments submitted after the comment period will not be considered.

SUPPLEMENTARY INFORMATION: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95).

I. Background: The Black Lung Benefits Act (BLBA), (30 U.S.C. 901 *et seq.*) provides benefits to coal miners who are totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of miners. Miners entitled to benefits also receive medical benefits for treatment related to their pneumoconiosis and resulting disability. A miner who applies for black lung benefits must complete the CM–911 (application form). The completed form gives basic identifying information about the applicant and is the beginning of the development of the black lung claim. Title 20 CFR 725.304a authorizes this information collection. The CM–911A (employment history form), when completed, provides a complete history of the miner's employment and helps to establish whether the individual currently or formerly worked in the nation's coal mines and how long that employment lasted. Title 20 CFR 725.404(a) authorizes this information collection.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

* 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 submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently-approved

information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Miner's Claim for Benefits under the Black Lung Benefit's Act (CM–911) and Employment History (CM–911A).

OMB Number: 1240–0038.

Agency Number: CM–911 and CM–911A.

Affected Public: Individuals or households.

Form	Time to complete	Frequency of response	Number of respondents	Number of responses	Hours burden
CM–911	45	once	4,920	4,920	3,690
CM–911A	40	once	4,920	4,920	3,280
Totals			9,840	9,840	6,970

Total Respondents: 9,840.

Total Annual Responses: 9,840.

Average Time per Response: 42.5 minutes.

Estimated Total Burden Hours: 6,970.

Frequency: On occasion.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $1,791.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 20, 2017.

Yoon Ferguson,

Agency Clearance Officer, Office of Workers' Compensation Programs, US Department of Labor.

[FR Doc. 2017–27963 Filed 12–26–17; 8:45 am]

BILLING CODE 4510–CK–P

LEGAL SERVICES CORPORATION

Notice of Solicitation of Proposals for Calendar Year 2018 Basic Field Grant Awards

AGENCY: Legal Services Corporation.

ACTION: Solicitation of proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is a federally established and funded organization that funds civil legal aid organizations across the country and in the U.S. territories. Its mission is to expand access to justice by funding high-quality legal representation for low-income people in civil matters.

In anticipation of a congressional appropriation to LSC for Fiscal Year 2018, LSC hereby announces that it is reopening the basic field grants solicitation for calendar year 2018 funding for service area GU–1 in Guam. LSC is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to the eligible client population living in Guam.

The availability and the exact amount of congressionally appropriated funds, as well as the date, terms, and conditions of funds available for grants for calendar year 2018, have not been determined. LSC anticipates that the funding amount will be similar to current funding, which is $242,838.

DATES: See the **SUPPLEMENTARY INFORMATION** section for the dates of the grants process.

ADDRESSES: Legal Services Corporation—Notice of Funds Availability, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: The Office of Program Performance by email at *lscgrants@lsc.gov,* or visit the LSC website at *http://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant/lsc-service-areas.*

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) containing the Notice of Intent to Compete (NIC) and grant application guidelines, proposal content requirements, service area description, and selection criteria, is currently available from *https://www.lsc.gov/grants-grantee-resources/our-grant-programs/basic-field-grant.* Applicants are required to use the ''LSC 2018 Request for Proposals'' narrative instructions to prepare the grant proposal. Applicants must file a NIC to participate in this grants process. Applicants must file the NIC by January 31, 2018, 5:00 p.m. E.T. Applicants must submit their grant proposal and complete the LSC Fiscal Grantee Funding Application (FGFA) by February 28, 2018, 5:00 p.m. E.T. The dates in this notice supersede the dates contained in the RFP. Applicants should access and complete the grant application and FGFA at *https://lscgrants.lsc.gov/EasyGrants_Web_LSC/Implementation/Modules/Login/LoginModuleContent.aspx?Config=LoginModuleConfig&Page=Login.*

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) state or local governments; and (5) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

LSC will post all updates and/or changes to this notice at *https://www.lsc.gov/grants-grantee-resources/our-grant-programs.* Interested parties are asked to visit *https://www.lsc.gov/grants-grantee-resources/our-grant-programs* regularly for updates on the LSC grants process.

Dated: December 21, 2017.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2017–27864 Filed 12–26–17; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 17–090]

Applied Sciences Advisory Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Applied Sciences Advisory Committee (ASAC). This Committee functions in an advisory capacity to the Director, Earth Science Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the applied sciences community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, February 1, 2018, 9:00 a.m. to 5:00 p.m., and Friday, February 2, 2018, 9:00 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 5H41, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. KarShelia Henderson, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, fax (202) 358–2779, or *khenderson@nasa.gov*.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically and via WebEx. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the USA toll free conference call number (888) 677–3055, passcode 4301862, followed by the # sign, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/;* the meeting number on February 1 is 996 442 132 and the password is mTQkGK9@(case sensitive); the meeting number on February 2 is 990 233 666 and the password is C6r3GyF$ (case sensitive).

The agenda for the meeting includes the following topics:

- Continuity Study
- Status of Applied Sciences Communications Approach
- National Academy of Sciences Decadal Survey
- Review of Disaster Plan
- Future Workforce

Attendees will be requested to sign a register and to comply with NASA Headquarters security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 days prior to the meeting: Full name; gender; date/place of birth; citizenship; passport information (number, country, telephone); visa information (number, type, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizens and Permanent Residents (green card holders) may provide full name and citizenship status no less than 3 working days in advance by contacting Ms. KarShelia Henderson via email at *khenderson@nasa.gov* or by fax at (202) 358–2779.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2017–27896 Filed 12–26–17; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2018–012]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when agencies no longer need them for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records they no longer need to conduct agency business. NARA invites public comments on such records schedules.

DATES: NARA must receive requests for copies in writing by January 26, 2018. Once NARA finishes appraising the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send to you these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Appraisal and Agency Assistance (ACRA) using one of the following means:

Mail: NARA (ACRA); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Appraisal and Agency Assistance (ACRA); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: NARA publishes notice in the **Federal Register** for records schedules they no longer need to conduct agency business. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing records retention periods and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize the agency to dispose of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless otherwise specified. An item in a schedule is media neutral when an agency may apply the disposition instructions to records regardless of the medium in which it creates or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is expressly limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without Archivist of the United States' approval. The Archivist approves destruction only after thoroughly considering the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions

requesting disposition authority, this notice lists the organizational unit(s) accumulating the records (or notes that the schedule has agency-wide applicability when schedules cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of Agriculture, Rural Development Agency (DAA–0572–2017–0001, 10 items, 10 temporary items). Records relating to Single Family Housing Programs. Included are field activity reports, routine studies, loan application information, and financial documents for affordable housing for low income rural residents.

2. Department of Agriculture, Rural Development Agency (DAA–0572–2017–0008, 10 items, 10 temporary items). Rural Business Cooperative Service records. Included are field activity reports, routine studies, loan application information, and capital investment documents for business programs in rural areas.

3. Department of the Army, Agency-wide (DAA–AU–2015–0016, 1 item, 1 temporary item). Records related to civilian academic papers used in support of technical research projects.

4. Department of the Army, Agency-wide (DAA–AU–2016–0070, 1 item, 1 temporary item). Master files of an electronic information system used to maintain applicant and interview information.

5. Department of the Army, Agency-wide (DAA–AU–2017–0014, 1 item, 1 temporary item). Master files of an electronic information system used to maintain acquisitions information.

6. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2017–0013, 1 item, 1 temporary item). Master files of an electronic information system for tracking location and condition of weapons systems.

7. Department of Defense, Office of the Secretary of Defense (DAA–0330–2016–0010, 5 items, 3 temporary items). Items related to the processing of awards recommendations. Proposed for permanent retention are awards case files.

8. Department of Health and Human Services, Office of the Secretary (DAA–0468–2018–0001, 2 items, 2 temporary items). Agency-wide policy and precedent reference files including directives case history files. Included are copies of operating procedures, staff level memoranda, documents duplicated in the official policy files, background materials on final issuances, and drafts of comments.

9. Department of Labor, Office of Workers' Compensation Programs (DAA–0271–2017–0002, 12 items, 9 temporary items). Office records common throughout the program, including program subject files, claimant's correspondence, training records, accountability review records, quarterly rehabilitation reports, administrative directives, legal and legislative files, and work measurement reports. Proposed for permanent retention are record copies of publications and studies, directives, and published studies required by law or requested by Congress.

10. Department of Transportation, Federal Highway Administration (DAA–0406–2017–0001, 2 items, 1 temporary item). Outputs of an electronic information system used to inventory all tunnels on public roads. Proposed for permanent retention are system master files.

11. Department of the Treasury, Internal Revenue Service (DAA–0058–2016–0018, 1 item, 1 temporary item). Small Business and Self-Employed Collections records to include installment agreements set up by taxpayers to pay off tax balances.

12. Department of the Treasury, Internal Revenue Service (DAA–0058–2017–0001, 1 item, 1 temporary item). Copies of records relating to tax fraud cases and documents created to review the cases.

13. Federal Maritime Commission, Office of the General Counsel (DAA–0358–2017–0006, 7 items, 7 temporary items). Records relating to routine case files and legislative affairs.

14. National Archives and Records Administration, Research Services (N2–134–17–1, 1 item, 1 temporary item). Interstate Commerce Commission (I.C.C.) Operating Division Formal Dockets, 1887—1924, other than those covering important or controversial cases containing documentation that supplements the printed decisions. These records were accessioned to the National Archives but lack sufficient historical value to warrant continued preservation.

15. Peace Corps, Office of Global Operations (DAA–0490–2017–0008, 1 item, 1 temporary item). Records of an electronic information system used to track volunteer applications, demographics, and language testing results.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2017–27804 Filed 12–26–17; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts Domestic Indemnity Panel.

DATES: The meeting will be held on Tuesday, February 13, 2018, from 12:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held by teleconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606 8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning before, on, or after April 1, 2018. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified, and the methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of Title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close

Advisory Committee Meetings, dated April 15, 2016.

Dated: December 20, 2017.

Elizabeth Voyatzis,

Committee Management Officer.

[FR Doc. 2017–27830 Filed 12–26–17; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting; National Science Board

The National Science Board's Committee on National Science and Engineering Policy (SEP), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business, as follows:

TIME AND DATE: Tuesday, January 2, 2018 at 4:30–5:30 p.m. EST.

PLACE: This meeting will be held by teleconference at the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. An audio link will be available for the public. Members of the public must contact the Board Office to request the public audio link by sending an email to *nationalsciencebrd@nsf.gov* at least 24 hours prior to the teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED: Discussion of Policy Companion Statement to *Science and Engineering Indicators 2018.*

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Mateo Munoz (*mmunoz@nsf.gov*).

Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices/.jsp#sunshine.* Please refer to the National Science Board website *www.nsf.gov/nsb* for additional information.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2017–28115 Filed 12–22–17; 5:10 pm]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: It's Time To Sign Up for Direct Deposit or Direct Express, RI 38–128

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection, It's Time to Sign Up for Direct Deposit or Direct Express, RI 38–128.

DATES: Comments are encouraged and will be accepted until January 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this information collection, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995 OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0226) was previously published in the **Federal Register** on March 30, 2017, at 82 FR 15724, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Form RI 38–128 is primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all recurring benefit payments electronically to beneficiaries who live where Direct Deposit is available. Beneficiaries who do not enroll in the Direct Deposit Program will be enrolled in Direct Express.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: It's Time to Sign Up for Direct Deposit or Direct Express.

OMB Number: 3206–0226.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 20,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 10,000.

Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–27955 Filed 12–26–17; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Revised Information Collection: Organizational Assessment Surveys

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget

(OMB) a request for review of a currently approved collection, Organizational Assessment Surveys. OPM is requesting approval of Organizational Assessment Surveys, Federal Employee Viewpoint Surveys, Exit Surveys, New Leaders Onboarding Assessments, New Employee Surveys, Training Needs Assessment Surveys, and custom Program Evaluation surveys as a part of this collection. Approval of the Organizational Assessment Surveys is necessary to collect information on Federal agency and program performance, climate, engagement, and leadership effectiveness.

DATES: Comments are encouraged and will be accepted until January 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Human Resources Strategy and Evaluation Solutions, Office of Personnel Management, 1900 E. Street NW, Washington, DC 20415, Attention: Coty Hoover, or via email to *Organizational_Assessment@opm.gov* or via telephone at (202) 606–1539.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on 09/22/2017 at 82 FR 44471 allowing for a 60 day public comment period. No comments were received for this information collection (OMB No. 3206–0252). The purpose of this notice is to allow an additional 30 days for public comments. Comments are particularly invited on:

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

2. Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

3. Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

OPM's Human Resources Strategy and Evaluation Solutions performs assessment and related consultation activities for Federal agencies on a reimbursable basis. The assessments are authorized by various statutes and regulations: Section 4702 of Title 5, U.S.C; E.O. 12862; E.O. 13715; Section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136; 5 U.S.C. 1101 note, 1103(a)(5), 1104, 1302, 3301, 3302, 4702, 7701 note; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002); E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; and Section 4703 of Title 5, United States Code.

This collection request includes surveys we currently use and plan to use during the next three years to measure agency performance, climate, engagement, and leadership effectiveness. OMB No. 3206–0252 covers a broad range of surveys all focused on improving organizational performance. Non-Federal respondents will almost never receive more than one of these surveys. All of these surveys consist of Likert-type, mark-one, and mark-all-that-apply items, and may include a small number of open-ended comment items. Administration of Organizational Assessment Surveys (OAS) typically consists of a customized set of 50–150 standard items pulled from an item bank of nearly 500 items. The surveys almost always include a small set of 5–10 custom items developed to meet the agency's specific needs. The OAS is a general survey that subsumes the Federal Employee Viewpoint Survey (FEVS). OPM's Human Resources Strategy and Evaluation Solutions administers the FEVS for agencies to gather feedback from employee groups not covered by the official FEVS administration. Exit Surveys consist of approximately 60 items that assess reasons why employees decided to leave their organization. Customization is possible. The New Leaders Onboarding Assessment (NLOA) is a combined assessment consisting of approximately 130 items, including items measuring organizational climate, employee engagement, and leadership. New Employee Surveys consist of approximately 100 items that assess satisfaction with the hiring, orientation, and socialization of new employees. Training Needs Assessment Surveys consist of approximately 100 items that assess an agency's climate for training and employees' training preferences. Program Evaluation surveys evaluate the effectiveness of government initiatives, programs, and offices. Program Evaluation surveys are always customized to assess specific program elements. Program Evaluation surveys may contain from 20 to 200 items, with an average of approximately 100 items. The surveys included under OMB No. 3206–0252 are almost always administered electronically.

Analysis

Agency: Human Resources Strategy and Evaluation Solutions, Office of Personnel Management.

Title: Organizational Assessment Surveys.

OMB: 3206–0252.

Frequency: On occasion.

Affected Public: Government contractors and individuals.

Number of Respondents: Approximately 69,030.

Estimated Time per Respondent: 10.62 minutes.

Total Burden Hours: 12,218 hours.

Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–27958 Filed 12–26–17; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Revised Information Collection: Leadership Assessment Surveys

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved collection, Leadership Assessment Surveys. OPM is requesting approval of the OPM Leadership 360™, Leadership Potential Assessment, and the Leadership Profiler as a part of this collection. Approval of these surveys is necessary to collect information on Federal agency performance and leadership effectiveness.

DATES: Comments are encouraged and will be accepted until January 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW,

Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Human Resources Strategy and Evaluation Solutions, Office of Personnel Management, 1900 E. Street NW, Washington, DC 20415, Attention: Coty Hoover, or via email to *Organizational_Assessment@opm.gov* or via telephone at (202) 606–1539.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on 09/22/2017 at 82 FR 44472 allowing for a 60 day public comment period. No comments were received for this information collection (OMB No. 3206–0253). The purpose of this notice is to allow an additional 30 days for public comments. Comments are particularly invited on:

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

2. Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

3. Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

OPM's Human Resources Strategy and Evaluation Solutions performs assessment and related consultation activities for Federal agencies on a reimbursable basis. The assessments are authorized by various statutes and regulations: Section 4702 of Title 5, U.S.C; E.O. 12862; E.O. 13715; Section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136; 5 U.S.C. 1101 note, 1103(a)(5), 1104, 1302, 3301, 3302, 4702, 7701 note; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002); E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; and Section 4703 of Title 5, United States Code.

This collection request includes surveys we currently use and plan to use during the next three years to measure Federal leaders' effectiveness. These surveys all measure leadership characteristics. Non-Federal respondents will almost never receive more than one of these surveys. All of these surveys consist of Likert-type, mark-one, and mark-all-that-apply items, and may include a small number of open-ended comment items. OPM's Leadership 360™ assessment measures the 28 competencies that comprise the five Executive Core Qualifications and Fundamental Competencies in the OPM leadership model. The assessment consists of 116 items. The assessment is almost never customized, although customization to meet an agency's needs is possible. OPM's Leadership Potential Assessment consists of 104 items focused on identifying individuals ready to move into supervisory positions. OPM's Leadership Profiler consists of 245 items that measure leadership personality characteristics within a ''Big 5'' framework. These assessments are almost always administered electronically.

Analysis

Agency: Human Resources Strategy and Evaluation Solutions, Office of Personnel Management.

Title: Leadership Assessment Surveys.

OMB Number: 3206–0253.

Frequency: On occasion.

Affected Public: Individuals and government contractors.

Number of Respondents: Approximately 24,030.

Estimated Time per Respondent: 15 minutes for the OPM Leadership 360™ and Leadership Potential Assessment; 45 minutes for the Leadership Profiler. The latter will almost never be administered to non-Federal employees, so the average time is approximately 15 minutes.

Total Burden Hours: 6,007 hours.

Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–27957 Filed 12–26–17; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

Comment Request for Review of a Revised Information Collection: Customer Satisfaction Surveys

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved collection, Customer Satisfaction Surveys. Approval of these surveys is necessary to collect information on Federal agency and program performance.

DATES: Comments are encouraged and will be accepted until January 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Human Resources Strategy and Evaluation Solutions, Office of Personnel Management, 1900 E. Street NW, Washington, DC 20415, Attention: Coty Hoover, or via email to *Organizational_Assessment@opm.gov* or via telephone at (202) 606–1539.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on 09/22/2017 at 82 FR 44472 allowing for a 60 day public comment period. No comments were received for this information collection (OMB No. 3206–0236). The purpose of this notice is to allow an additional 30 days for public comments. Comments are particularly invited on:

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

2. Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

3. Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

OPM's Human Resources Strategy and Evaluation Solutions performs assessment and related consultation activities for Federal agencies on a reimbursable basis. The assessment is

authorized by various statutes and regulations: Section 4702 of Title 5, U.S.C; E.O. 12862; E.O. 13715; Section 1128 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136; 5 U.S.C. 1101 note, 1103(a)(5), 1104, 1302, 3301, 3302, 4702, 7701 note; E.O. 13197, 66 FR 7853, 3 CFR 748 (2002); E.O. 10577, 12 FR 1259, 3 CFR, 1954–1958 Comp., p. 218; and Section 4703 of Title 5, United States Code.

This collection request includes surveys we currently use and plan to use during the next three years to measure agency performance in providing services to meet customer needs. These surveys consist of Likert-type, mark-one, and mark-all-that-apply items, and may include a small number of open-ended comment items. Administration of OPM's Customer Satisfaction Surveys (OMB No. 3206–0236) typically consists of approximately 15–20 standard items drawn from an item bank of approximately 50 items; client agencies usually add a small number of custom items to assess satisfaction with specific products and services. The survey is almost always administered electronically.

Analysis

Agency: Human Resources Strategy and Evaluation Solutions, Office of Personnel Management.

Title: Customer Satisfaction Surveys.

OMB Number: 3206–0236.

Frequency: On occasion.

Affected Public: Individuals and businesses.

Number of Respondents: Approximately 180,000.

Estimated Time per Respondent: 7 minutes.

Total Burden Hours: 21,000 hours.

Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–27959 Filed 12–26–17; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Alternative Annuity Election, RI 20–80

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on the revision of a currently approved information collection request (ICR), Alternative Annuity Election, RI 20–80.

DATES: Comments are encouraged and will be accepted until January 26, 2018.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910 or reached via telephone at (202) 606–4808.

SUPPLEMENTARY INFORMATION: As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection (OMB No. 3206–0168) was previously published in the **Federal Register** on October 18, 2017, at 82 FR 48540, allowing for a 60-day public comment period. No comments were received for this collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

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

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

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

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

Form RI 20–80 is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Alternative Annuity Election.

OMB Number: 3206–0168.

Frequency: On occasion.

Affected Public: Individual or Households.

Number of Respondents: 200.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 67 hours.

U.S. Office of Personnel Management.

Kathleen M. McGettigan,

Acting Director.

[FR Doc. 2017–27953 Filed 12–26–17; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32945; File No. 812–14798]

TCG BDC, Inc., et al.

December 20, 2017.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of application for an order under Sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and Rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by Sections 17(d) and 57(a)(4) of the Act and Rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds and accounts.[1]

APPLICANTS: TCG BDC, Inc. ("BDC I"), TCG BDC II, Inc. ("BDC II"), TCG BDC

[1] The requested order ("Order") would supersede an exemptive order issued by the Commission on November 22, 2016 (*NF Investment Corp., et al.,* Investment Company Act Release Nos. 32340 (Oct. 27, 2016) (notice) and 32362 (Nov. 22, 2016) (order)) (the "Prior Order"), with the result that no person will continue to rely on the Prior Order if the Order is granted.

III, Inc. (''BDC III''), TCG BDC SPV LLC (''BDC I Sub''), Carlyle GMS Finance MM CLO 2015–1 LLC (''2015–1 Issuer''), Carlyle GMS Investment Management L.L.C. (''CGMSIM''), OC Private Capital, LLC (''OC Adviser''), Carlyle CLO Management L.L.C. (''Carlyle CLO Manager''), MC UNI LLC, MC UNI Subsidiary LLC, CPC V, LP, CPC V SPV LLC, Carlyle Global Market Strategies CLO 2013–1, Ltd., Carlyle Global Market Strategies CLO 2013–2, Ltd., Carlyle Global Market Strategies CLO 2013–3, Ltd., Carlyle Global Market Strategies CLO 2014–1, Ltd., Carlyle Global Market Strategies CLO 2014–2, Ltd., Carlyle Global Market Strategies CLO 2014–3, Ltd., Carlyle Global Market Strategies CLO 2014–4, Ltd., Carlyle Global Market Strategies CLO 2014–5, Ltd., Carlyle Global Market Strategies CLO 2015–1, Ltd., Carlyle Global Market Strategies CLO 2015–2, Ltd., Carlyle Global Market Strategies CLO 2015–3, Ltd., Carlyle Global Market Strategies CLO 2015–4, Ltd., Carlyle Global Market Strategies CLO 2015–5, Ltd., Carlyle Global Market Strategies CLO 2016–1, Ltd., Carlyle Global Market Strategies CLO 2016–2, Ltd., Carlyle Global Market Strategies CLO 2016–3, Ltd., Carlyle US CLO 2016–4, Ltd., Carlyle US CLO 2017–1, Ltd., Carlyle US CLO 2017–2, Ltd., Carlyle US CLO 2017–3, Ltd., Carlyle US CLO 2017–4, Ltd., Carlyle US CLO 2017–5, Ltd., Carlyle Structured Credit Fund, L.P., Carlyle Energy Mezzanine Opportunities Fund II, L.P., Carlyle Energy Mezzanine Opportunities Fund II–A, L.P., CEMOF II Coinvestment, L.P., CEMOF II Master Co-Investment Partners, L.P., CEMOF II Master Co-Investment Partners AIV One, L.P., CEMOF II Master Co-Investment Partners AIV, L.P., CEMOF–A Coinvestment Partners, L.P., CEMOF II AIV, L.P., CEMOF II AIV One, L.P., CEMOF II AIV Two, L.P., CEMOF II–A AIV, L.P., CEMOF II–A AIV One, L.P., CEMOF II–A AIV Two, L.P., Carlyle Credit Opportunities Fund (Parallel), L.P., Carlyle Credit Opportunities Fund, L.P., CCOF Main SPV, L.P., CCOF Master, L.P., CCOF Parallel AIV Investors, L.L.C., Carlyle Strategic Partners IV, L.P., CSP IV Coinvestment, L.P., CSP IV Coinvestment (Cayman), L.P., CSP IV (Cayman 1), L.P., CSP IV Acquisitions, L.P., CSP IV (Cayman 2), L.P., CSP IV (Cayman 3), L.P., TCG Securities, L.L.C. (''TCG Securities''), TCG Capital Markets L.L.C. (''TCG Capital Markets'') and TCG Senior Funding L.L.C. (''TCG Senior Funding'') (collectively, ''Applicants'').

FILING DATES: The application was filed on July 10, 2017, and amended on November 28, 2017, and December 12, 2017.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 520 Madison Avenue, 40th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or David J. Marcinkus, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d–1 thereunder to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [2] (or any Wholly-Owned Investment Sub (defined below) of such Regulated Fund) and one or more other Regulated Funds (or any Wholly-Owned Investment Sub of such Regulated Fund), one or more Affiliated Funds [3] and/or one or more Capital Markets Affiliates [4] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds, one or more Capital Markets Affiliates, and/or one or more other Regulated Funds (or its Wholly-Owned Investment Sub) in reliance on

[2] ''Regulated Funds'' means (a) the Existing Regulated Funds, (b) the Future Regulated Funds and (c) the BDC Downstream Funds (defined below). ''Existing Regulated Fund'' means (a) BDC I, (b) BDC II, and (c) from and after its election to be regulated as a BDC under the Act, BDC III. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser or sub-adviser is an Adviser (including the Future RIC (defined below)).

''Adviser'' means any Existing Adviser and any Future Adviser; *provided* that an Adviser serving as a sub-adviser to an Affiliated Fund (defined below) is included in this term only if such Adviser controls the entity. The term Adviser does not include any primary investment adviser to an Affiliated Fund or a Regulated Fund whose sub-adviser is an Adviser, except that such primary investment adviser is deemed to be an Adviser for purposes of Conditions 2(c)(iv), 13 and 14 only. The primary investment adviser to an Affiliated Fund or a Regulated Fund whose sub-adviser is an Adviser will not source any Potential Co-Investment Transactions under the requested Order. ''Existing Adviser'' means CGMSIM, OC Adviser and Carlyle CLO Manager. ''Future Adviser'' means any future investment adviser that (i) controls, is controlled by or is under common control with CGMSIM, (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act and that controls, is controlled by or is under common control with CGMSIM, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[3] ''Affiliated Fund'' means (a) any Existing Affiliated Fund (identified in Schedule A to the application) and (b) any entity (i) whose investment adviser or sub-adviser is an Adviser, (ii) that either (x) would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act or (y) relies on Rule 3a–7 under the Act and (iii) that is not a BDC Downstream Fund (together with each such entity's direct and indirect wholly-owned subsidiaries); *provided* that an entity sub-advised by an Adviser is included in this term only if such Adviser serving as sub-adviser controls the entity.

''BDC Downstream Fund'' means with respect to any Regulated Fund that is a BDC, an entity (a) that the BDC directly or indirectly controls, (b) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (c) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act, (d) whose investment adviser is an Adviser and (e) that is not a Wholly-Owned Investment Sub.

[4] ''Capital Markets Affiliates'' means any Carlyle Broker-Dealer Subsidiary and any Carlyle Proprietary Account. Each Capital Markets Affiliate may, from time to time, hold various financial assets in a principal capacity. ''Carlyle Broker-Dealer Subsidiary'' means (a) (i) TCG Securities and from and after its registration with the Commission as a broker-dealer under the Exchange Act (defined below), TCG Capital Markets (each an ''Existing Carlyle Broker-Dealer Subsidiary'') and (ii) any entity that (x) is a wholly- or majority-owned subsidiary of Carlyle (defined below) and (y) is registered or authorized as a broker-dealer or its foreign equivalent, and (b) any entity that is a wholly-owned subsidiary of an entity described in the preceding clause (a). ''Carlyle Proprietary Account'' means (a) TCG Senior Funding, and (b) any entity that (i) is a wholly- or majority-owned subsidiary of Carlyle, (ii) is advised by an Adviser and (iii) from time to time, may hold various financial assets in a principal capacity.

the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds, one or more Capital Markets Affiliates, and/or one or more other Regulated Funds (or its Wholly-Owned Investment Sub) without obtaining and relying on the Order.[5]

Applicants

2. Each of BDC I, BDC II and BDC III, is a closed-end management investment company incorporated in Maryland that either has elected, or, in the case of BDC III, intends to elect, to be regulated as a BDC under the Act.[6] Each of BDC I's Board[7] and BDC II's Board currently consists of five directors, three of whom are Independent Directors.[8] BDC III's Board currently consists of four directors, two of whom are Independent Directors.[9]

3. CGMSIM, a Delaware limited liability company that is registered as an investment adviser under the Advisers Act, serves as the investment adviser to BDC I, BDC II, BDC III, certain Existing Affiliated Funds (as identified in Schedule A to the application) and will serve as a sub-adviser to a Future Regulated Fund that will be a closed-end management investment company (the ''Future RIC''). OC Adviser, a Delaware limited liability company that is registered as an investment adviser under the Advisers Act, is under common control with CGMSIM, and will serve as the investment adviser to the Future RIC that will be sub-advised by CGMSIM.[10] Carlyle CLO Manager, a Delaware limited liability company, that is a wholly-owned subsidiary and a relying adviser of CIM, manages the Structured Credit Existing CLOs (as identified in Schedule A to the application).

4. Each Existing Affiliated Fund is a separate and distinct legal entity and each would either be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act or relies on Rule 3a–7 under the Act. A complete list of the Existing Affiliated Funds is included in Schedule A to the application.

5. Each of BDC I Sub and 2015–1 Issuer, is a wholly-owned subsidiary of BDC I (the ''Existing Wholly-Owned Investment Subs''), formed for the purpose of procuring financing or otherwise holding investments.

6. TCG Securities, a Delaware limited liability company and a wholly-owned subsidiary of Carlyle, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''Exchange Act''). TCG Capital Markets, a Delaware limited liability company and a majority-owned subsidiary of Carlyle, intends to register with the Commission as a broker-dealer under the Exchange Act. TCG Senior Funding, a Delaware limited liability company and a majority-owned subsidiary of Carlyle, was formed to originate and sell loans and will be advised by CGMSIM.

7. Each Applicant is directly or indirectly controlled by Carlyle, a publicly traded company. Carlyle owns controlling interests in the Advisers and, thus, may be deemed to control the Regulated Funds and the Affiliated Funds. Applicants state that Carlyle is a holding company and does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that as a result, Carlyle has not been included as an Applicant.

8. Applicants state that an Existing Regulated Fund or a Future Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[11] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund or Capital Markets Affiliate because it would be a company controlled by its parent Regulated Fund for purposes of Section 57(a)(4) and Rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Entity that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and issuing debt and, therefore, no conflicts of interest could arise between the parent Regulated Fund and the Wholly-Owned Investment Sub. The Board of the parent Regulated Fund would make all relevant determinations under the Conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the parent Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board of the parent Regulated Fund will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub.

Applicants' Representations

A. Allocation Process

9. Applicants state that each of CGMSIM and Carlyle CLO Manager is,

[5] All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

[6] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[7] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

[8] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[9] The BDC III Board intends to elect an additional Independent Director to the BDC III Board to fill a vacancy so that the BDC III Board will be comprised of a majority of Independent Directors prior to BDC III's election to be regulated as a BDC under the Act.

[10] OC Adviser is 51% owned by OFI Global Institutional, Inc. and 49% owned by Carlyle Investment Management L.L.C. (''CIM''). CIM, a registered investment adviser under the Advisers Act, is a subsidiary of and controlled by The Carlyle Group L.P. (''Carlyle''). OC Adviser will be an Adviser for purposes of the relief requested.

[11] ''Wholly-Owned Investment Sub'' means any Existing Wholly-Owned Investment Subs or an entity (i) that is wholly-owned by an Existing Regulated Fund or a Future Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments and issue debt on behalf or in lieu of such Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the Small Business Administration Act (''SBA Act'') and issue debentures guaranteed by the Small Business Administration (''SBA'')); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions to the application; and (iv) that either (a) would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act or (b) relies on Rule 3a–7 under the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the SBA to operate under the SBA Act, as a small business investment company.

and OC Adviser and the Future Advisers will be presented with many investment opportunities each year on behalf of their clients and must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

10. Applicants represent that they have established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

11. Specifically, applicants state that each of CGMSIM and Carlyle CLO Manager is, and each of OC Adviser and the Future Advisers will be, organized and managed such that the individual portfolio managers, as well as the teams and committees of portfolio managers, analysts and senior management (''Investment Teams'' and ''Investment Committees''), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients or as any Capital Markets Affiliates considering the opportunity for themselves. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [12] and any Board-Established Criteria [13] of a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, Investment Teams and Investment Committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

12. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

13. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to the pre-trade compliance system, which will be reviewed by the Chief Risk Officer of each Regulated Fund. Applicants state further that each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by a credit opportunity allocation committee to be established by the Advisers on which senior management and at least one legal/compliance person participate.[14] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[15]

14. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[16] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[17] If the aggregate Internal

[12] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current filings with the Commission under the Securities Act of 1933, as amended (the ''Securities Act''), the Exchange Act, and the Act, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[13] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum earnings before interest, taxes, depreciation and amortization (''EBITDA'') of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[14] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[15] ''Required Majority'' means a required majority, as defined in Section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to Section 57(o) and as if the committee members were directors of the fund.

[16] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under Section 57(o) of the Act.

[17] However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the

Orders for a Potential Co-Investment Transaction are less than the amount of the investment opportunity, a Capital Markets Affiliate will then have the opportunity to participate in the Potential Co-Investment Transaction in a principal capacity.

B. Follow-On Investments

15. Applicants state that from time to time the Regulated Funds, Affiliated Funds and Capital Markets Affiliates may have opportunities to make Follow-On Investments[18] in an issuer in which a Regulated Fund and one or more other Regulated Funds, one or more Affiliated Funds and/or one or more Capital Markets Affiliates previously have invested.

16. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[19] If the Regulated Funds and Affiliated Funds (and potentially Capital Markets Affiliates) had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds (and potentially Capital Markets Affiliates) have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds, Affiliated Funds and Capital Markets Affiliates would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

17. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[20] or (ii) a Non-Negotiated Follow-On Investment.[21] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

18. Applicants propose that Dispositions[22] would be divided into two categories. If the Regulated Funds and Affiliated Funds (and potentially Capital Markets Affiliates) holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[23]

19. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition[24] or (ii) the securities are Tradable Securities[25] and

remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

[18] "Follow-On Investment" means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[19] "Pre-Boarding Investments" are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds, one or more Capital Markets Affiliates and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction; (ii) were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (A) in reliance on one of the JT No-Action Letters (defined below); or (B) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[20] A "Pro Rata Follow-On Investment" is a Follow-On Investment (i) in which the participation of each Affiliated Fund, each Regulated Fund and each Capital Markets Affiliate is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[21] A "Non-Negotiated Follow-On Investment" is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds, one or more Capital Markets Affiliates and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

"JT No-Action Letters" means *SMC Capital, Inc.,* SEC No-Action Letter (pub. avail. Sept. 5, 1995) and *Massachusetts Mutual Life Insurance Company,* SEC No-Action Letter (pub. avail. June 7, 2000).

[22] "Disposition" means the sale, exchange or other disposition of an interest in a security of an issuer.

[23] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[24] A "Pro Rata Disposition" is a Disposition (i) in which the participation of each Affiliated Fund, each Regulated Fund and each Capital Markets Affiliate is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[25] "Tradable Security" means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by Section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

20. Applicants represent that under the terms and Conditions of the Application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.[26] Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

21. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and Rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and Rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, Section 57(a)(4) of the Act generally prohibits certain persons specified in Section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of Rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under Section 57(a)(4), the Commission's rules under Section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to Section 57(a)(4). Because the Commission has not adopted any rules under Section 57(a)(4), Rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d–1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds, Capital Markets Affiliates and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d–1 and/or Section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds, Affiliated Funds and Capital Markets Affiliates may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of Section 2(a)(3) by reason of common control because (i) CGMSIM controls BDC I, BDC II and BDC III and Carlyle CLO Manager and OC Adviser are, and any other Advisers will be, controlling, controlled by or under common control with CGMSIM and may be deemed to be a person related to a Regulated Fund, (ii) BDC Downstream Funds and Wholly-Owned Investment Subs are controlled by the Regulated Funds; and (iii) TCG Securities and any other Capital Markets Affiliate, as wholly- or majority-owned subsidiaries of Carlyle, and the Carlyle Proprietary Accounts are entities advised by the Advisers, which are or will be controlling, controlled by or under common control with CGMSIM. Thus, the Advisers and the entities they advise and Capital Markets Affiliates could be deemed to be a person related to the Regulated Funds in a manner described by Section 57(b) and related to the other Regulated Funds in a manner described by Rule 17d–1; and therefore the prohibitions of Rule 17d–1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds and Capital Markets Affiliates from participating in Co-Investment Transactions with the Regulated Funds.

4. In passing upon applications under Rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly

[26] Applicants state this may occur for two reasons. First, when the Affiliated Fund or Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund, each participating Affiliated Fund and each participating Capital Markets Affiliate) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds, Affiliated Fund, or Capital Markets Affiliates only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s), Affiliated Fund(s) or Capital Markets Affiliate(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s), Affiliated Fund(s) or Capital Markets Affiliate(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitments of the Affiliated Funds and Regulated Funds are made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds and Capital Markets Affiliates (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [27] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds, the Capital Markets Affiliates or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[28] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[29]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the

[27] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[28] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[29] "Related Party" means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

"Close Affiliate" means the Advisers, the Regulated Funds, the Affiliated Funds, the Capital Markets Affiliates and any other person described in Section 57(b) (after giving effect to Rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D).

"Remote Affiliate" means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

same for each participating Regulated Fund, Affiliated Fund and Capital Markets Affiliate and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund, Affiliated Fund or Capital Markets Affiliate elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds, Affiliated Funds and Capital Markets Affiliates have previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund, Affiliated Fund or Carlyle Proprietary Account, or such Carlyle Broker-Dealer Subsidiary, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds, Capital Markets Affiliates and any other Regulated Funds.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i)(A) The participation of each Regulated Fund, Affiliated Fund and Capital Markets Affiliate in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition;[30] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds, Affiliated Funds and Capital Markets Affiliates is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund, Affiliated Fund or Capital Markets Affiliate elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds, Affiliated Funds and Capital Markets Affiliates have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund, Affiliated Fund or Carlyle Proprietary Account, or such Carlyle Broker-Dealer Subsidiary, as applicable, will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds, Affiliated Funds and Capital Markets Affiliates, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Conditions 2(c)(i), (ii), (iii)(A), and (iv).

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds, the Capital Markets Affiliates and any other Regulated Funds;

(ii) *Original Investments.* All of the Affiliated Funds', Regulated Funds' and Capital Markets Affiliates' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds, Affiliated Funds and Capital Markets Affiliates that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds, Affiliated Funds and Capital Markets Affiliates hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund's, Affiliated Fund's or Capital Market Affiliates' holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial[31] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date,

[30] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and Capital Markets Affiliates' outstanding investment in the security in question immediately preceding the Disposition.

[31] In determining whether a holding is "immaterial" for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the Capital Markets Affiliates, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund, Affiliated Fund or Capital Markets Affiliate desires to make a Follow-On Investment in an issuer and the Regulated Funds, Affiliated Funds and Capital Markets Affiliates holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund, Affiliated Fund or Carlyle Proprietary Account, or such Carlyle Broker-Dealer Subsidiary, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i)(A) The proposed participation of each Regulated Fund, each Affiliated Fund and each Capital Markets Affiliate in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[32] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition, the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds', the Affiliated Funds' and the Capital Markets Affiliates' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds and Carlyle Proprietary Accounts and the amount proposed to be invested in the Follow-On Investment by any participating Carlyle Broker-Dealer Subsidiaries, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund, Affiliated Fund or Capital Markets Affiliate desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds, Affiliated Funds and Capital Markets Affiliates holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund, Affiliated Fund or Carlyle Proprietary Account, or such Carlyle Broker-Dealer Subsidiary, as applicable, will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds, Affiliated Funds and Capital Markets Affiliates, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds', Regulated Funds' and Capital Markets Affiliates' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds, Affiliated Funds and Capital Markets Affiliates that hold Pre-

[32] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds, Affiliated Funds and Capital Markets Affiliates, proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and Capital Markets Affiliate's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds, Affiliated Funds or Capital Markets Affiliates, proportionality will be measured by each participating Regulated Fund's, Affiliated Fund's and Capital Markets Affiliate's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds, Affiliated Funds and Capital Markets Affiliates hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) any Regulated Fund's, Affiliated Fund's or Capital Markets Affiliate's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the Capital Markets Affiliates, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds', the Affiliated Funds' and the Capital Markets Affiliates' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds and Carlyle Proprietary Accounts and the amount proposed to be invested in the Follow-On Investment by any participating Carlyle Broker-Dealer

Subsidiaries, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds or Capital Markets Affiliates during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or Capital Markets Affiliate or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds, Affiliated Funds or Capital Markets Affiliates that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in Rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Independent Directors (including the non-interested members of each Independent Party) will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund or Capital Markets Affiliate.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds and Capital Markets Affiliates in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.* [33] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the Capital Markets Affiliates, the other Regulated Funds or any affiliated person of the Affiliated Funds, the Capital Markets Affiliates or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of

[33] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds, the Affiliated Funds and the Capital Markets Affiliates, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

16. *Capital Markets Affiliates.* The Capital Markets Affiliates will not be permitted to invest in a Potential Co-Investment Transaction except to the extent the aggregate Internal Orders for a Potential Co-Investment Transaction, as described in Section III.A.1.b. of the application, are less than the total investment opportunity.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–27825 Filed 12–26–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82370; File No. SR–Phlx–2017–104]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Penny Pilot Program

December 20, 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 December 12, 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 and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. *Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change*

The Exchange proposes to amend Phlx Rule 1034 (Minimum Increments)[3] to extend through June 30, 2018 or the date of permanent approval, if earlier, the Penny Pilot Program in options classes in certain issues (''Penny Pilot'' or ''Pilot''), and to change the date when delisted classes may be replaced in the Penny Pilot.

The text of the proposed rule change is set forth below. Proposed new language is underlined; deleted text is in brackets.

* * * * *

Nasdaq PHLX Rules

Options Rules

* * * * *

Rule 1034. Minimum Increments

(a) Except as provided in sub-paragraphs (i)(B) and (iii) below, all options on stocks, index options, and Exchange Traded Fund Shares quoting in decimals at $3.00 or higher shall have a minimum increment of $.10, and all options on stocks and index options quoting in decimals under $3.00 shall have a minimum increment of $.05.

(i)(A) No Change.

(B) For a pilot period scheduled to expire *June 30, 2018*[December 31, 2017] or the date of permanent approval, if earlier (the ''pilot''), certain options shall be quoted and traded on the Exchange in minimum increments of $0.01 for all series in such options with a price of less than $3.00, and in minimum increments of $0.05 for all series in such options with a price of $3.00 or higher, except that options overlying the PowerShares QQQ Trust (''QQQQ'')®, SPDR S&P 500 Exchange Traded Funds (''SPY''), and iShares Russell 2000 Index Funds (''IWM'') shall be quoted and traded in minimum increments of $0.01 for all series regardless of the price. A list of such options shall be communicated to membership via an Options Trader Alert (''OTA'') posted on the Exchange's website.

The Exchange may replace any pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the pilot, based on trading activity in the previous six months. The replacement issues may be added to the pilot on the second trading day following *January 1, 2018*[July 1, 2017].

(C) No Change.

(ii)–(v) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Phlx Rule 1034 to extend the Penny Pilot through June 30, 2018 or the date of permanent approval, if earlier,[4] and to change the date when delisted classes may be replaced in the Penny Pilot. The Exchange believes that extending the Penny Pilot will allow for further analysis of the Penny Pilot and a determination of how the program should be structured in the future.

Under the Penny Pilot, the minimum price variation for all participating options classes, except for the Nasdaq-100 Index Tracking Stock (''QQQQ''), the SPDR S&P 500 Exchange Traded Fund (''SPY'') and the iShares Russell 2000 Index Fund (''IWM''), is $0.01 for all quotations in options series that are quoted at less than $3 per contract and $0.05 for all quotations in options series that are quoted at $3 per contract or greater. QQQQ, SPY and IWM are quoted in $0.01 increments for all options series. The Penny Pilot is currently scheduled to expire on December 31, 2017.[5]

The Exchange proposes to extend the time period of the Penny Pilot through June 30, 2018 or the date of permanent approval, if earlier, and to provide a revised date for adding replacement

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References herein to rules refer to rules of Phlx, unless otherwise noted.

[4] The options exchanges in the U.S. that have pilot programs similar to the Penny Pilot (together ''pilot programs'') are currently working on a proposal for permanent approval of the respective pilot programs.

[5] *See* Securities Exchange Act Release No. 80755 (May 24, 2017), 82 FR 25025 (May 31, 2017) (SR–Phlx–2017–36).

issues to the Penny Pilot. The Exchange proposes that any Penny Pilot Program issues that have been delisted may be replaced on the second trading day following January 1, 2018. The replacement issues will be selected based on trading activity in the previous six months.[6]

This filing does not propose any substantive changes to the Penny Pilot Program; all classes currently participating in the Penny Pilot will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the potential increase in quote traffic.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] 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 and, in general, to protect investors and the public interest.

In particular, the proposed rule change, which extends the Penny Pilot for an additional six months through June 30, 2018 or the date of permanent approval, if earlier, and changes the date for replacing Penny Pilot issues that were delisted to the second trading day following January 1, 2018, will enable public customers and other market participants to express their true prices to buy and sell options for the benefit of all market participants. This is consistent with the Act.

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, this proposal is pro-competitive because it allows Penny Pilot issues to continue trading on the Exchange.

Moreover, the Exchange believes that the proposed rule change will allow for further analysis of the Pilot and a determination of how the Pilot should be structured in the future; and will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

The Pilot is an industry-wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot will allow for continued competition between market participants on the Exchange trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] 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)[11] normally does not become operative prior to 30 days after the date of the filing.[12] However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will allow the Pilot Program to continue without interruption in a manner that is consistent with the Commission's prior approval of the extension and expansion of the Pilot Program and will allow the Exchange and the Commission additional time to analyze the impact of the Pilot Program. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] 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

[6] The replacement issues will be announced to the Exchange's membership via an Options Trader Alert (OTA) posted on the Exchange's website. Penny Pilot replacement issues will be selected based on trading activity in the previous six months, as is the case today. The replacement issues would be identified based on The Options Clearing Corporation's trading volume data. For example, for the January replacement, trading volume from May 30, 2017 through November 30, 2017 would be analyzed. The month immediately preceding the replacement issues' addition to the Pilot Program (*i.e.,* December) would not be used for purposes of the six-month analysis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this pre-filing requirement.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2017–104 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–Phlx–2017–104. 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 website (*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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2017–104 and should be submitted on or before January 17, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–27831 Filed 12–26–17; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32944; 812–14564]

The Hartford Mutual Funds, Inc., et al.

December 20, 2017.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

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. The order would supersede a prior order.[1]

APPLICANTS: The Hartford Mutual Funds, Inc.; The Hartford Mutual Funds II, Inc.; Hartford Series Fund, Inc.; Hartford HLS Series Fund II, Inc.; Hartford Funds Exchange-Traded Trust; Hartford Funds NextShares Trust; and Hartford Funds Master Trust (collectively, the ''Hartford Companies''), each either a Maryland corporation or a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and each of HIMCO Variable Insurance Trust (''HVI Trust'') and Lattice Strategies Trust (''LS Trust''), each a Delaware statutory trust and each also registered under the Act as an open-end management investment company with multiple series (together, the ''Trusts'' and collectively with the Hartford Companies, the ''Companies''); Hartford Funds Management Company, LLC (''HFMC''), a Delaware limited liability company; Hartford Investment Management Company (''HIMCO''), a Delaware corporation; and Lattice Strategies LLC (''Lattice''), a Delaware limited liability company, each registered as an investment adviser under the Investment Advisers Act of 1940 (each, an ''Adviser'' and together with the Companies, the ''Applicants'').

[1] *In the Matter of Fortis Series Fund, Inc. and Fortis Advisers, Inc.,* Investment Company Act Release Nos. 24158 (November 23, 1999) (notice) and 24211 (December 21, 1999) (order) (the ''Prior Order''). If the requested order is granted, Sub-Advised Series currently relying on the Prior Order may continue to do so, other than with respect to Wholly-Owned Subadvisers. Shareholder approval shall be required before such Series can rely on the relief requested with respect to Wholly-Owned Subadvisers.

FILING DATES: The application was filed October 13, 2015, and amended on March 21, 2016, September 30, 2016, February 10, 2017, and November 14, 2017.

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 January 15, 2018, 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: Walter F. Garger, Hartford Funds Management Company, LLC and Lattice Strategies LLC, 690 Lee Road, Wayne, PA 19087; and Brenda J. Page, Hartford Investment Management Company, One Hartford Plaza, Hartford, CT 06155.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, at (202) 551–6853, or David J. Marcinkus, Branch Chief, at (202) 551–6825 (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 website by searching for the file number of 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. HFMC will serve as the investment adviser to the Hartford Companies, HIMCO will serve as the investment adviser to the HVI Trust, and Lattice will serve as the investment adviser to the LS Trust, pursuant to an investment advisory agreement with, respectively, the Hartford Companies, the HVI Trust,

and the LS Trust (the ''Advisory Agreement'').[2] The Adviser will provide the Funds with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Fund's board of directors or trustees, as applicable (''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 Fund, subject to the supervision and direction of the Adviser. The primary responsibility for managing the Funds 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 exemption from the Disclosure Requirements to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund's net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Advisers; and (b) the aggregate fees paid to Non-Affiliated Sub-Advisers (collectively, ''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

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 Fund shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Funds' 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 Funds. 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 Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–27807 Filed 12–26–17; 8:45 am]

BILLING CODE 8011–01–P

[2] Applicants request relief with respect to the named Applicants, any existing or future Series of the Companies, and any Sub-Advised Series. For purposes of the requested order, ''successor'' is limited to an entity that results from reorganization into another jurisdiction or a change in the type of business organization.

[3] The requested relief will not extend to any Sub-Adviser, other than a Wholly-Owned Sub-Adviser, that is an affiliated person, as defined in Section 2(a)(3) of the Act, of a Fund or an Adviser, other than by reason of serving as a sub-adviser to one or more of the Funds (''Affiliated Sub-Adviser''). Each future Series shall obtain shareholder approval (including formal approval of the initial shareholder(s)) of the Manager of Managers Structure (including with respect to Wholly-Owned Subadvisers), prior to relying on the requested relief.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82371; File No. SR–OCC–2017–811]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning Proposed Changes to The Options Clearing Corporation's Margin Methodology

December 20, 2017.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on November 13, 2017, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I and II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed in connection with proposed changes to OCC's margin methodology to move away from the existing monthly data source provided by its current vendor and towards obtaining and incorporating daily price and returns (adjusted for any corporate actions) data of securities to estimate accurate margins.[3] This would be further supported by enhancing OCC's econometric model applied to different risk factors;[4] improving the sensitivity and stability of correlation estimates between them; and enhancing OCC's methodology around the treatment of securities with limited historical data. OCC also proposes to make a few clarifying and clean-up changes to its margin methodology unrelated to the proposed changes described above.

The proposed changes to OCC's Margins Methodology document are contained in confidential Exhibit 5 of the filing. The proposed changes are described in detail in Item III below. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A and B below, of the most significant aspects of these statements.

[3] OCC also has filed a proposed rule change with the Commission in connection with the proposed changes. *See* SR–OCC–2017–022.

[4] The use of risk factors in OCC's margin methodology is discussed in more detail in the Description of the Proposed Change section below.

[5] OCC's By-Laws and Rules can be found on OCC's public website: *http://optionsclearing.com/about/publications/bylaws.jsp.*

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''), is OCC's proprietary risk management system that calculates Clearing Member margin requirements.[6] STANS utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.[7] The STANS margin requirement is calculated at the portfolio level of Clearing Member accounts with positions in marginable securities and consists of an estimate of a 99% expected shortfall [8] over a two-day time horizon and an add-on margin charge for model risk (the concentration/dependence stress test charge).[9] The STANS methodology is used to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral.

A ''risk factor'' within OCC's margin system may be defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in the STANS methodology are total returns on individual equity securities. Other risk factors considered include: Returns on equity indexes; returns on implied volatility [10] risk factors that are a set of nine chosen volatility pivots per product; [11] changes in foreign exchange rates; and changes in model parameters that sufficiently capture the model dynamics from a larger set of data.

Under OCC's current margin methodology, OCC obtains monthly price data for most of its equity-based products [12] from a widely used industry vendor. This data arrives around the second week of every month in arrears and requires a maximum of about four weeks for OCC to process the data after any clean up and reruns as may be required prior to installing into OCC's margin system. As a result, correlations and statistical parameters for risk factors at any point in time represent back-dated data and therefore may not be representative of the most recent market data. In the absence of daily updates, OCC employs an approach where one or many identified market proxies (or ''scale-factors'') are used to incorporate day-to-day market volatility across all associated asset classes throughout.[13] The scale factor approach, however, assumes a perfect correlation of the volatilities between the security and its scale factor, which gives little room to capture the idiosyncratic risk of a given security and which may be different from the broad market risk represented by the scale factor.

In risk management, it is a common practice to establish a floor for volatility at a certain level in order to protect against procyclicality [14] in the model. OCC imposes a floor on volatility estimates for its equity-based products using a 500-day look back period. These monthly updates coupled with the dependency of margins on scale factors and the volatility floor can result in imprecise changes in margins charged to Clearing Members, specifically across periods of heavy volatility when the correlation between the risk factor and a scale factor fluctuate.

OCC's current methodology for estimating covariance and correlations between risk factors relies on the same monthly data described above, resulting in a similar lag time between updates. In addition, correlation estimates are based off historical returns series, with estimates between a pair of risk factors being highly sensitive to the volatility of either risk factor in the chosen pair. The current approach therefore results in potentially less stable correlation estimates that may not be representative of current market conditions.

Finally, under OCC's existing margin methodology, theoretical price scenarios for ''defaulting securities'' [15] are simulated using uncorrelated return scenarios with an average zero return and a pre-specified volatility called ''default variance.'' The default variance is estimated as the average of the top 25 percent quantile of the conditional variances of all securities. As a result, these default estimates may be impacted by extremely illiquid securities with discontinuous data. In addition, the default variance (and the associated scale factors used to scale up volatility) is also subject to sudden jumps with the monthly simulation installations across successive months because it is derived from monthly data updates, as opposed to daily updates, which are prone to wider fluctuations and are subject to adjustments using scale factors.

[6] *See* Securities Exchange Act Release No. 53322 (February 15, 2006), 71 FR 9403 (February 23, 2006) (SR–OCC–2004–20).

[7] *See* OCC Rule 601.

[8] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[9] A detailed description of the STANS methodology is available at *http://optionsclearing.com/risk-management/margins/*.

[10] Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the value of the option's annualized standard deviation of the price of the underlying security, index, or future at exercise, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and given the current risk-free rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the then-current intrinsic value (*i.e.,* the difference between the price of the underlying and the exercise price of the option) of the option, discounted to reflect its time value.

[11] In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filing by OCC to its modify margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Securities Exchange Act Release No. 34–76781 (December 28, 2015), 81 FR 135 (January 4, 2016) (SR–OCC–2015–016) and Securities Exchange Act Release No. 34–76548 (December 3, 2015), 80 FR 76602 (December 9, 2015) (SR–OCC–2015–804).

[12] The securities underlying these products are also known as risk factors within OCC's margin system.

[13] Earlier this year, the Commission approved a proposed rule change, and issued a Notice of No Objection to an advance notice filing, by OCC which, among other things: (1) Expanded the number of scale factors used for equity-based products to more accurately measure the relationship between current and long-run market volatility with proxies that correlate more closely to certain products carried within the equity asset class, and (2) applied relevant scale factors to the greater of (i) the estimated variance of 1-day return scenarios or (ii) the historical variance of the daily return scenarios of a particular instrument, as a floor to mitigate procyclicality. *See* Securities Exchange Act Release No. 80147 (March 3, 2017), 82 FR 13163 (March 9, 2017) (SR–OCC–2017–001) and Securities Exchange Act Release No. 80143 (March 2, 2017), 82 FR 13036 (March 8, 2017) (SR–OCC–2017–801).

[14] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' For example, procyclicality may be evidenced by increasing margin or Clearing Fund requirements in times of stressed market conditions and low margin or Clearing Fund requirements when markets are calm. Hence, anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

[15] Within the context of OCC's margin system, securities that do not have enough historical data for calibration are classified as ''defaulting securities.''

Proposed Changes

OCC proposes to modify its margin methodology by: (1) Obtaining daily price data for equity products (including daily corporate action-adjusted returns of equities where price and thus returns of securities are adjusted for any dividends issued, stock splits, etc.) for use in the daily estimation of econometric model parameters; (2) enhancing its econometric model for updating statistical parameters (*e.g.,* parameters concerning correlations or volatility) for all risk factors that reflect the most recent data obtained; (3) improving the sensitivity and stability of correlation estimates across risk factors by using de-volatized [16] returns (but using a 500 day look back period); and (4) improving OCC's methodology related to the treatment of defaulting securities that would result in stable and realistic risk estimates for such securities.[17]

The purpose of the proposed changes is to enhance OCC's margin methodology to mitigate the issues described above that arise from the current monthly update and scale factor approach. Specifically, by introducing daily (as opposed to monthly) updates for price data (and thereby allowing for daily updates of statistical parameters in the model) and making other proposed model enhancements described herein, the proposed changes are designed to result in more accurate and responsive margin requirements and a model that is more stable and proactive during times of market volatility, with margins that are based off of the most recent market data. In addition, the proposed changes are intended to improve OCC's approach to estimating covariance and correlations between risk factors in an effort to achieve more stable and sensitive correlation estimations and improve OCC's methodology related to the treatment of defaulting securities by reducing the impact that illiquid securities with discontinuous data have on default variance estimates.

The proposed changes are described in further detail below.

1. Daily Updates of Price Data

OCC proposes to introduce daily updates for price data for equity products, including daily corporate action-adjusted returns of equities, Exchange Traded Funds (''ETFs''), Exchange Traded Notes (''ETNs'') and certain indexes. The daily price data would be obtained from a widely used external vendor, as is the case with the current monthly updates. The purpose of the proposed change is to ensure that OCC's margin methodology is reliant on data that is more representative of current market conditions, thereby resulting in more accurate and responsive margin requirements.

As described above, OCC currently obtains price data for all securities on a monthly basis from a third party vendor. After obtaining the monthly price data, additional time is required for OCC to process the data prior to installing into OCC's margin system. As a result, correlations and statistical parameters for risk factors at any point in time represent back-dated data and therefore may not be representative of the most recent market data. To mitigate pro-cyclicality within its margin methodology in the absence of daily updates, OCC employs the use of scale-factors to incorporate day-to-day market volatility across all associated asset classes. While the scale factors help to reduce procyclicality in the model, the scale factors do not necessarily capture the idiosyncratic risks of a given security, which may be different from the broad market risk represented by the scale factor.

OCC proposes to address these issues associated with its current margin methodology by eliminating its dependency on monthly price data, which arrives in arrears and requires additional time for OCC to process prior to installing into OCC's margin system, through the introduction of daily updates for price data for equity products. The introduction of daily price updates would enable OCC's margin methodology to better capture both market as well idiosyncratic risk by allowing for daily updates to the parameters associated with of the econometric model (discussed below) that capture the risk associated with a particular product, and therefore ensure that OCC's margin requirements are based on more current market conditions. As a result, OCC would also reduce its reliance on the use of scale factors to incorporate day-to-day market volatility, which, as noted above, give little room to capture the idiosyncratic risk of a given security and which may be different from the broad market risk represented by the scale factor. In addition, the processing time between receipt of the data and installation into the margin system would be reduced as the data review and processing for daily prices would be incorporated into OCC's daily price editing process.

2. Proposed Enhancements to the Econometric Model

In addition to introducing daily updates for price and corporate action-adjusted returns data, OCC is proposing enhancements to its econometric model for calculating statistical parameters for all qualifying risk factors that reflect the most recent data obtained (*e.g.,* OCC would be able to calculate parameters such as volatility and correlations on a daily basis using the new daily price data discussed above). Specifically, OCC proposes to enhance its econometric model by: (i) Introducing daily updates for statistical parameters; (ii) introducing features in its econometric model that are designed to take into account asymmetry in the model used to forecast volatility associated with a risk factor; (iii) modifying the statistical distribution used to model the returns of equity prices; (iv) introducing a second-day forecast for volatility into the model to estimate the two-day scenario distributions for risk factors; and (v) imposing a floor on volatility estimates using a 10-year look back period.

These proposed model enhancements are described in detail below.

i. Daily Updates for Statistical Parameters

Under the proposal, the statistical parameters for the model would be updated on a daily basis using the new daily price data obtained by OCC (as described in section 1 above).[18] As a result, OCC would no longer need to rely on scale factors to approximate day-to-day market volatility for equity-based products. Statistical parameters would be calibrated on daily basis, allowing OCC to calculate more accurate margin requirements that are representative of the most recent market data.

ii. Proposed Enhancements To Capture Asymmetry in Conditional Variance

In addition to the daily update of statistical parameters, OCC proposes to include new features in its econometric model that are designed to take into account asymmetry in the conditional variance process. The econometric model currently used in STANS for all

[16] De-volatization is a process of normalizing historical data with the associated volatility thus enabling any comparison between different sets of data.

[17] In addition to the proposed methodology changes described herein, OCC also would make some clarifying and clean-up changes, unrelated to the proposed changes described above, to update its margin methodology to reflect existing practices for the daily calibration of seasonal and non-seasonal energy models and the removal of methodology language for certain products that are no longer cleared by OCC.

[18] OCC notes that this change would apply to most risk factors with the exception of certain equity indexes, Treasury securities, and energy futures products, which are already updated on a daily basis.

risk factors is a GARCH(1,1) with Student's *t*-distributed innovations of logarithmic returns [19], which is a relatively straightforward and widely used model to forecast volatility.[20] The current approach for forecasting the conditional variance for a given risk factor does not, however, consider the asymmetric volatility phenomenon observed in financial markets (also called the ''leverage effect'') where volatility is more sensitive and reactive to market downturns. As a result, OCC proposes to enhance its model by adding new features (*i.e.,* incorporating asymmetry into its forecast volatility) designed to allow the conditional volatility forecast to be more sensitive to market downturns and thereby capture the most significant dynamics of the relationship between price and volatility observed in financial markets. OCC believes the proposed enhancement would result in more accurate and responsive margin requirements, particularly in market downturns.

iii. Proposed Change in Statistical Distribution

OCC further proposes to change the statistical distribution used to model the returns of equity prices. OCC's current methodology uses a fat tailed distribution [21] (the Student's *t*-distribution) to model returns; however, price scenarios generated using very large log-return scenarios (positive) that follow this distribution can approach infinity and could potentially result in excessively large price jumps, a known limitation of this distribution. OCC proposes to move to a more defined distribution (Standardized Normal Reciprocal Inverse Gaussian or NRIG) for modeling returns, which OCC believes would more appropriately simulate future returns based on the historical price data for the products in question (*i.e.,* it has a better ''goodness of fit'' [22] to the historical data) and allows for more appropriate modeling of fat tails. As a result, OCC believes that the proposed change would lead to more consistent treatment of log returns both on the upside as well as downside of the distribution.

iv. Second-Day Volatility Forecast

OCC also proposes to introduce a second-day forecast for volatility into the model to estimate the two-day scenario distributions for risk factors.[23] Under the current methodology, OCC typically uses a two-day horizon to determine its risk exposure to a given portfolio. This is done by simulating 10,000 theoretical price scenarios for the two-day horizon using a one-day forecast conditional variance, and the value at risk and expected shortfall components of the margin requirement are then determined from the simulated profit/loss distributions. These one-day and two-day returns scenarios are both simulated using the one-day forecast conditional variance estimate. This could lead to a risk factor's coverage differing substantially on volatile trading days. As a result, OCC proposes to introduce a second-day forecast variance for all equity-based risk factors. The second-day conditional variance forecast would be estimated for each of the 10,000 Monte Carlo returns scenarios, resulting in more accurately estimated two-day scenario distributions, and therefore more accurate and responsive margin requirements.

v. Anti-Procyclical Floor for Volatility Estimates

Additionally, OCC proposes to modify its floor for volatility estimates. OCC currently imposes a floor on volatility estimates for its equity-based products using a 500-day look back period. OCC proposes to extend this look back period to 10-years (2520 days) in the enhanced model and to apply this floor to volatility estimates for other products (excluding implied volatility risk factor scenarios). The proposed model described herein is calibrated from historical data, and as a result, the level of the volatilities generated by the model will vary from time to time. OCC is therefore proposing to establish a volatility floor for the model using a 10-year look back period to reduce the risk of procyclicality in its margin model. OCC believes that using a longer 10-year look back period will ensure that OCC captures sufficient historical events/market shocks in the calculation of its anti-procyclical floor. The 10-year look back period also is in line with requirements of the European Market Infrastructure Regulation (including regulations thereunder) [24] concerning the calibration of risk factors.

3. Proposed Enhancements to Correlation Estimates

As described above, OCC's current methodology for estimating covariance and correlations between risk factors relies on the same monthly price data feeding the econometric model, resulting in a similar lag time between updates. In addition, correlation estimates are based off historical returns series, with estimates between a pair of risk factors being highly sensitive to the volatility of either risk factors in the chosen pair. The current approach therefore results in correlation estimates being sensitive to volatile historical data.

In order to address these limitations, OCC proposes to enhance its methodology for calculating correlation estimates by moving to a daily process for updating correlations (with a minimum of one week's lag) to ensure Clearing Member account margins are more current and thus more accurate. Moreover, OCC proposes to enhance its approach to modeling correlation estimates by de-volatizing [25] the returns series to estimate the correlations. Under the proposed approach, OCC would first consider the returns excess of the mean (*i.e.,* the average estimated from historical data sample) and then further scale them by the corresponding estimated conditional variances. OCC believes that by using de-volatized returns, which is a widely suggested approach in relevant literature, it would lead to normalizing returns across a variety of asset classes and make the correlation estimator less sensitive to sudden market jumps and therefore more stable.

4. Defaulting Securities Methodology

Finally, OCC proposes to enhance its methodology for estimating the defaulting variance in its model. OCC's margin system is dependent on market

[19] The Student's *t*-distribution is a widely used statistical distribution to model the historical logarithmic price returns data of a security that allows for the presence of fat tails (aka kurtosis) or a non-zero conditional fourth moment.

[20] *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986). The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. The general distinction between the ''GARCH variance'' and the ''sample variance'' for a given time series is that the GARCH variance uses the underlying time series data to forecast volatility.

[21] A data set with a ''fat tail'' is one in which extreme price returns have a higher probability of occurrence than would be the case in a normal distribution.

[22] The goodness of fit of a statistical model describes the extent to which observed data match the values generated by the model.

[23] This proposed change would not apply to STANS implied volatility scenario risk factors. For those risk factors, OCC's existing methodology would continue to apply. *See supra* note 11.

[24] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. Specifically, the proposed floor would be compliant with Article 28 of Commission Delegated Regulation (EU) No. 153/2013 of 19 December 2012 Supplementing Regulation (EU) No. 648/2012 of the European Parliament and of the Council with regard to Regulatory Technical Standards on Requirements for Central Counterparties (the ''Regulatory Technical Standards'').

[25] *See supra* note 16.

data to determine Clearing Member margin requirements. Securities that do not have enough historical data are classified as to be a ''defaulting security'' within OCC systems (*e.g.,* IPO securities). As noted above, within current STANs systems, the theoretical price scenarios for defaulting securities are simulated using uncorrelated return scenarios with a zero mean and a default variance, with the default variance being estimated as the average of the top 25 percent quantile of the conditional variances of all securities. As a result, these default estimates may be impacted by extremely illiquid securities with discontinuous data. In addition, the default variance (and the associated scale factors used to scale up volatility) is also subject to sudden jumps with the monthly simulation installations across volatile months. To mitigate these concerns, OCC proposes to: (i) Use only optionable equity securities to estimate the default variance; (ii) use a shorter time series to enable calibration of the model for all securities; and (iii) simulating default correlations with the driver Russell 2000 index (''RUT'').

i. Proposed Modifications to Securities and Quantile Used in Estimation

OCC proposes that only optionable equity securities, which are typically more liquid, be considered while estimating the default variance. This limitation would eliminate from the estimation almost all illiquid securities with discontinuous data that could contribute to high conditional variance estimates and thus a high default variance. In addition, OCC proposes to estimate the default variance as the lowest estimate of the top 10% of the floored conditional variance across the risk factors. This change in methodology is designed to ensure that while the estimate is aggressive it is also robust to the presence of outliers caused by a few extremely volatile securities that influence the location parameter of a distribution. Moreover, as a consequence of the daily updates described above, the default variances would change daily and there would be no scale factor to amplify the effect of the variance on risk factor coverage.

ii. Proposed Change in Time Series

In addition, OCC proposes to use a shorter time series to enable calibration of the model for all securities. Currently, OCC does not calibrate parameters for defaulting securities that have historical data of less than two years. OCC is proposing to shorten this time period to around 6 months (180 days) to enable calibration of the model for all securities within OCC systems. OCC believes that this shorter time series is sufficient to produce stable calibrated parameters.

iii. Proposed Default Correlation

Finally, OCC proposes that returns scenarios for defaulting securities, securities with insufficient historical data, be simulated using a default correlation with the driver RUT.[26] The RUT Index is a small cap index and is hence a natural choice to represent most new issues that are small cap and deemed to be a ''defaulting security.'' The default correlation is roughly equal to the median of all positively correlated securities with the index. Since 90% of the risk factors in OCC systems correlate positively to the RUT index, OCC would only consider those risk factors to determine the median. OCC believes that the median of the correlation distribution has been steady over a number of simulations and is therefore proposing that it replace the current methodology of simulating uncorrelated scenarios, which OCC believes is not a realistic approach.

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because they would result in a margin methodology that is more accurate, responsive, stable, and robust, thereby reducing risks to OCC, its Clearing Members, and the markets it serves.

As noted above, OCC's current margin methodology relies on monthly price data being obtained from a third party vendor. This data arrives monthly in arrears and requires additional time for OCC to process the data prior to installing into OCC's margin system. As a result, correlations and statistical parameters for risk factors at any point in time represent back-dated data and therefore may not be representative of the most recent market data. To mitigate procyclicality within its margin methodology in the absence of daily updates, OCC employs a scale factor approach to incorporate day-to-day market volatility across all associated asset classes throughout.[27] For the reasons noted above, these monthly updates coupled with the dependency of margins on scale factors can result in imprecise changes in margins charged to Clearing Members, specifically across periods of heavy volatility.

OCC proposes to enhance its margin methodology to introduce daily updates for equity price data, thereby allowing for daily updates of statistical parameters in its margin model for most risk factors. In addition, the proposed changes would introduce features to the model to better account for the asymmetric volatility phenomenon observed in financial markets and allow for conditional volatility forecast to be more sensitive to market downturns. The proposed changes would also introduce a new statistical distribution for modeling equity price returns that OCC believes would have a better goodness of fit and would more appropriately account for fat tails. Moreover, the proposed changes would introduce a second-day volatility forecast into the model to provide for more accurate and timely estimations of its two-day scenario distributions. OCC also proposes to enhance its econometric model by establishing a volatility floor using a 10-year look back period to reduce procyclicality in the margin model. OCC believes the proposed changes would result in more accurate and responsive margin requirements and a model that is more stable and proactive during times of market volatility, with risk charges that are based off of most recent market data.

In addition, the proposed changes are intended to improve OCC's approach to estimating covariance and correlations between risk factors in an effort to achieve more stable and sensitive correlation estimations and improve OCC's methodology related to the treatment of defaulting securities by reducing the impact that illiquid securities with discontinuous data have on default variance estimates.

The proposed methodology changes would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants, and OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses that may result from such a default. As a result, OCC believes the proposed changes would result in the reduction of risk for OCC, its Clearing Members, and the markets it serves.

Clearing Member Outreach

OCC has discussed the proposed changes with its Financial Risk

[26] OCC notes that, in certain limited circumstances where there are reasonable grounds backed by the existing return history to support an alternative approach in which the returns are strongly correlated with those of an existing risk factor (a ''proxy'') with a full price history, the Margins Methodology allows OCC's Financial Risk Management staff to construct a ''conditional'' simulation to override any default treatment that would have otherwise been applied to the defaulting security.

[27] *See supra* note 13 and accompanying text.

Advisory Council[28] at a meeting held on October 25, 2016. OCC also provided general updates to members at OCC Roundtable[29] meetings on June 20, 2017, and November 9, 2017. Clearing Members expressed interest in seeing how reactive margin changes would be under the proposal; however, there were no objections or significant concerns expressed regarding the proposed changes. OCC will provide at least 30-days of parallel reporting prior to implementation so that Clearing Members can see the impact of the proposed changes. In addition, OCC would publish an Information Memorandum to all Clearing Members describing the proposed change and will provide additional periodic Information Memoranda updates prior to the implementation date. Additionally, OCC would perform targeted and direct outreach with Clearing Members that would be most impacted by the proposed changes to the margin methodology and OCC would work closely with such Clearing Members to coordinate the implementation and associated funding for such Clearing Members resulting from the proposed change.[30]

Consistency With the Payment, Clearing and Settlement Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[31] Section 805(a)(2) of the Clearing Supervision Act[32] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[33] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Act, which include Commission Rules 17Ad–22(b)(1), (b)(2) and (e)(6).[34]

Rules 17Ad–22(b)(1) and (2)[35] require that a registered clearing agency that performs central counterparty services establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part: (1) Measure its credit exposures to its participants at least once a day and limit its exposures to potential losses from defaults by its participants under normal market conditions so that the operations of the clearing agency would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control and (2) use margin requirements to limit its credit exposures to participants under normal market conditions and use risk-based models and parameters to set margin requirements.

As noted above, the proposed changes would introduce the use of daily price updates into OCC's margin methodology, which allows for daily updates to the statistical parameters in the model (*e.g.,* parameters concerning volatility and correlation). These changes would be supported by a number of other risk-based enhancements to OCC's econometric model designed to: (i) More appropriately account for asymmetry in conditional variance; (ii) more appropriately model the statistical distribution of price returns; (iii) provide for an anti-procyclical floor for volatility estimates based on a 10-year look back period; and (iv) more accurately model second-day volatility forecasts. Moreover, the proposed changes would improve OCC's approach to estimating covariance and correlations between risk factors in an effort to achieve more stable and sensitive correlation estimations and improve OCC's methodology related to the treatment of defaulting securities by reducing the impact that illiquid securities with discontinuous data have on default variance estimates.

OCC would use the risk-based model enhancements described herein to measure its credit exposures to its participants on a daily basis and determine margin requirements based on such calculations. The proposed enhancements concerning daily price updates, daily updates of statistical parameters, and to more appropriately account for asymmetry in conditional variance would result in more accurate and responsive margin requirements and a model that is more stable and proactive during times of market volatility, with margin charges that are based off of the most recent market data. In addition, the proposed modifications to extend the look back period for determining volatility estimates for equity-based products from 500 days to 10 years will help to ensure that OCC captures sufficient historical events/market shocks in the calculation of its anti-procyclical floor. Additionally, the proposed changes would enhance OCC's margin methodology for calculating correlation estimates by moving to a daily process for updating correlations (with a minimum of one week's lag) so that Clearing Member account margins are more current and thus more accurate and using de-volatized returns to normalize returns across a variety of asset classes and make the correlation estimator less sensitive to sudden market jumps and therefore more stable. Finally, the proposed changes to OCC's methodology for the treatment of defaulting securities is designed to result in stable and realistic risk estimates for such securities The proposed changes are therefore designed to ensure that OCC sets margin requirements, using risk-based models and parameters, that would serve to limit OCC's exposures to potential losses from defaults by its participants under normal market conditions so that the operations of OCC would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control. Accordingly, OCC believes the proposed changes are consistent with Rules 17Ad–22(b)(1) and (2).[36]

[28] The Financial Risk Advisory Council is a working group consisting of representatives of Clearing Members and exchanges formed by OCC to review and comment on various risk management proposals.

[29] The OCC Roundtable was established to bring Clearing Members, exchanges and OCC together to discuss industry and operational issues. It is comprised of representatives of the senior OCC staff, participant exchanges and Clearing Members, representing the diversity of OCC's membership in industry segments, OCC-cleared volume, business type, operational structure and geography.

[30] Specifically, OCC will discuss with those Clearing Members how they plan to satisfy any increase in their margin requirements associated with the proposed change.

[31] 12 U.S.C. 5461(b).

[32] 12 U.S.C. 5464(a)(2).

[33] 12 U.S.C. 5464(b).

[34] 17 CFR 240. 17Ad–22. *See* Securities Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016, 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies''). The Standards for Covered Clearing Agencies became effective on December 12, 2016. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5) and therefore OCC must comply with new section (e) of Rule 17Ad–22.

[35] 17 CFR 240.17Ad–22(b)(1) and (2).

[36] *Id.*

Rule 17Ad–22(e)(6) [37] further requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things: (i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (ii) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (iii) uses reliable sources of timely price data and uses procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

As described in detail above, the proposed changes are designed to ensure that, among other things, OCC's margin methodology: (i) More appropriately accounts for asymmetry in conditional variance; (ii) more appropriately models the statistical distribution of price returns, (iii) more accurately models second-day volatility forecasts; (iv) improves OCC's approach to estimating covariance and correlations between risk factors to provide for stable and sensitive correlation estimations; and (v) improves OCC's methodology related to the treatment of defaulting securities by reducing the impact that illiquid securities with discontinuous data have on default variance estimates. These methodology enhancements would be used to calculate daily margin requirements for OCC's Clearing Members. In this way, the proposed changes are designed to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market and to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

Moreover, the proposed changes would introduce daily updates for price data for equity products, including daily corporate action-adjusted returns of equities, ETFs, ETNs, and certain indexes. This daily price data would be obtained from a widely used and reliable industry vendor. In this way, the proposed changes would ensure that OCC uses reliable sources of timely price data in its margin methodology, which better reflect current market conditions than the current monthly updates, thereby resulting in more accurate and responsive margin requirements.

For these reasons, OCC believes that the proposed changes are consistent with Rule 17Ad 22(e)(6).[38]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of: (i) The date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–OCC–2017–811 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2017–811. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website 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 OCC and on OCC's website at *hhttps://www.theocc.com/about/publications/bylaws.jsp.*

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2017–811 and should be submitted on or before January 17, 2018.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–27832 Filed 12–26–17; 8:45 am]

BILLING CODE 8011–01–P

[37] 17 CFR 240.17Ad–2(e)(6).

[38] *Id.*

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA 2017–0002]

Privacy Act of 1974; Matching Program

AGENCY: Social Security Administration (SSA).

ACTION: Notice of a New Matching Program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a new matching program with the Railroad Retirement Board (RRB).

DATES: The deadline to submit comments on the proposed matching

program is 30 days from the date of publication of this notice. The matching program will be effective on October 1, 2017 and will expire on March 30, 2019.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 966–0869, writing to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, or email at *Mary.Ann.Zimmerman@ssa.gov.* All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Interested parties may submit general questions about the matching program to Mary Ann Zimmerman, Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, by any of the means shown above.

SUPPLEMENTARY INFORMATION: The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving, Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

SSA has taken action to ensure that all of its matching programs comply with the requirements of the Privacy Act, as amended.

Mary Ann Zimmerman,

Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

PARTICIPATING AGENCIES:

SSA and RRB

AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

The legal authority for SSA to conduct this matching activity is sections 1144 and 1860D–14 of the Social Security Act (Act) (42 U.S.C. 1320b–14 and 1395w–114).

PURPOSE(S):

This matching agreement establishes the conditions under which the RRB will disclose to SSA information necessary to verify an individual's self-certification of eligibility for the Extra Help with Medicare Prescription Drug Plan Costs program (Extra Help). It will also enable SSA to identify individuals who may qualify for Extra Help as part of the agency's Medicare outreach efforts.

CATEGORIES OF INDIVIDUALS:

The individuals whose information is involved in this matching program are individuals who self-certify for Extra Help or may qualify for Extra Help. SSA matches RRB's information with its Medicare Database File, which includes claimants, applicants, beneficiaries, ineligible spouses and potential claimants for Medicare Part A, Medicare Part B, Medicare Advantage Part C, Medicare Part D and for Medicare Part D prescription drug coverage subsidies.

CATEGORIES OF RECORDS:

RRB will transmit its annuity payment data monthly from its RRB–22 system of records. The file will consist of approximately 600,000 electronic records.

RRB will transmit its Post Entitlement System file daily. The number of records will differ each day, but consist of approximately 3,000 to 4,000 records each month.

RRB will transmit files on all Medicare eligible Qualified Railroad Retirement Beneficiaries from its RRB–20 and RRB–22 systems of records to report address changes and subsidy changing event information monthly. The file will consist of approximately 520,000 electronic records. The number of people who apply for Extra Help determines in part the number of records matched.

SSA's comparison file will consist of approximately 90 million records obtained from MDB.

SSA will conduct the match using each individual's Social Security number, name, date of birth, RRB claim number, and RRB annuity payment amount in both RRB and MDB files.

SYSTEM(S) OF RECORDS:

RRB will provide SSA with data from its RRB–22 system of records, *Railroad Retirement Survivors and Pension Benefits System,* last published on September 30, 2014 (79 FR 58886), and RRB–20 systems of records, *Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (Medicare),* last published on May 15, 2015 (80 FR 28018).

SSA will match RRB's data with its Medicare Database (MDB) File, system of records No. 60–0321, published on July 25, 2006 (71 FR 42159), and amended on December 10, 2007 (72 FR 69723).

[FR Doc. 2017–27848 Filed 12–26–17; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 10240]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition Determinations: "Jasper Johns: 'Something Resembling Truth' " Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that two objects to be included in the exhibition ''Jasper Johns: 'Something Resembling Truth,' '' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Broad, Los Angeles, California, from on or about February 10, 2018, until on or about May 13, 2018, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of

March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015). I have ordered that Public Notice of these determinations be published in the **Federal Register**.

Alyson Grunder,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2017–27921 Filed 12–26–17; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36149]

New Orleans Public Belt Railroad Corporation—Acquisition and Operation Exemption—Public Belt Railroad Commission of the City of New Orleans

On November 22, 2017, New Orleans Public Belt Railroad Corporation (NOPB Corp.),[1] a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Public Belt Railroad Commission of the City of New Orleans (Public Belt), and operate approximately 26.7 miles of rail line and approximately 10.25 miles of assigned trackage rights pursuant to a Cooperative Endeavor Agreement (Agreement) to be entered into by NOPB Corp., Public Belt, the City of New Orleans (the City), and the Port. On December 11, 2017, the Board issued a decision holding this proceeding in abeyance and requesting supplemental information from NOPB Corp. NOPB Corp. provided that information on December 18, 2017.

NOPB Corp. describes the lines and trackage rights it seeks to acquire as follows:

1. The Public Belt main line from the connection with BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP) at milepost J8.3 at West Bridge Junction in Avondale, La. to milepost J1.1 at Southport Junction in Jefferson, La. and from milepost J0.3 at Lampert Junction in Jefferson to milepost J0.0 at the Jefferson/Orleans Parish, La. border, a total distance of approximately 7.5 miles in two sections connected by the overhead trackage rights described in Segment #6 below. The West Belt Junction-Southport Junction section of this Segment #1 includes the Huey P. Long Bridge.

2. The Public Belt main line from a milepost equation at the Jefferson/Orleans Parish border where milepost J0.0 = milepost 0.26 to the connection with CSX Transportation, Inc. (CSXT) at milepost 14.2 at Almonaster in New Orleans, a distance of approximately 13.94 miles.

3. The Burma West Lead in New Orleans from milepost 14.2 at Almonaster to the end of track at milepost 15.3, a distance of approximately 1.1 miles.

4. The Burma East Lead in New Orleans from the connection with CSXT at milepost 14.4 east of the Industrial Canal to the end of track at milepost 16.3, a distance of approximately 1.9 miles.

5. The Bulk Terminal Lead in New Orleans from the connection with CSXT at milepost G0.0 east of the Industrial Canal to milepost G1.5, a distance of approximately 1.5 miles.

6. Overhead trackage rights on Illinois Central Railroad Company (IC) from IC milepost 449.9 at East Bridge Junction in Shrewsbury, La. through Southport Junction (Public Belt milepost J1.1) to IC milepost 921.14 at Lampert Junction (Public Belt milepost J0.3), a distance of approximately 2.6 miles.[2] There is a milepost equation a Southport Junction, where IC milepost 451.7=IC milepost 921.9.

7. Overhead trackage rights on IC from IC Station 120+0.00 (Public Belt milepost 3.4) at Nashville Avenue to IC Station 175+68.09 (Public Belt milepost 4.4) at Valence Street in New Orleans, including the connection to the NOPB locomotive maintenance facility lead track at IC Station 163+80.0 (Public Belt milepost 4.2) near Upperline Street, a distance of approximately 1.05 miles.[3]

8. Overhead trackage rights on CSXT from the connection with Segment #2 at CSXT milepost 801.5 at Almonaster in New Orleans across the Port-owned Industrial Canal bridge to the connections with Segments #4 and #5 at CSXT milepost 801.2 in New Orleans, a distance of approximately 0.3 miles.

9. Temporary overhead trackage rights on IC from IC milepost 906.4 at East Bridge Junction in Shrewsbury to IC Milepost 900.8 at Orleans Junction in New Orleans and from IC milepost 444.2 at Orleans Junction to IC milepost 443.5 at Frellsen Junction in New Orleans, a distance of approximately 6.3 miles.[4]

NOPB Corp. will also acquire Public Belt's ownership or operating interests in all yard, industry, wharf, and lead tracks associated with the above line segments, including the Southern Recycling Lead, East Bridge Yard, Pacific Fruit Express Yard, Cotton Warehouse Yard, Race Yard, French Market Station, Pauline Yard, Claiborne Yard, France Yard, North Bulk Terminal Yard, and South Bulk Terminal Yard. Upon completion of the transaction, NOPB Corp. will be a Class III switching and terminal railroad and will continue to provide local and intermediate switching service in place of Public Belt.

NOPB Corp. certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.[5] Because NOBP Corp.'s annual revenues will exceed $5 million, on October 13, 2017, NOBP Corp. certified to the Board that it had complied with the requirements of 49 CFR 1150.32(e) by posting notice on October 13, 2017, at workplaces of Public Belt employees and by serving notice on the national offices of the labor unions representing Public Belt employees on the same date. NOPB Corp. further certifies that the Agreement does not include any provision limiting NOPB Corp.'s future interchange of traffic with any connecting carrier.

The transaction may be consummated on or after January 17, 2018, the effective date of the exemption (30 days after the verified notice of exemption was filed).[6] If the verified notice

[1] NOPB Corp. is a newly-formed public non-profit corporation and subsidiary of the Board of Commissioners of the Port of New Orleans (the Port).

[2] *See New Orleans Pub. Belt R.R.—Trackage Rights Exemption—Ill. Cent. R.R.,* FD 33182 (STB served Oct. 30, 1996). The eastern segment of these trackage rights, from Southport Junction to Lampert Junction, connects the two sections of Public Belt's main line described in Segment #1 above. The western segment of the trackage rights, from East Bridge Junction to Southport Junction, is adjacent to and north of Public Belt's main line between those points.

[3] *See Ill. Cent. R.R.—Joint Relocation Project Exemption—in New Orleans, La.,* FD 33533 (STB served January 16, 1998); *Ill. Cent. R.R.—Joint Relocation Project Exemption—in New Orleans, La.,* FD 32598 (ICC served Nov. 16, 1994). These trackage rights are parallel to Public Belt's main line described in Segment #2 above and serve as a bypass around Cotton Warehouse Yard.

[4] *See New Orleans Pub. Belt R.R.—Temp. Trackage Rights Exemption—Ill. Cent. R.R.,* FD 36067 (STB served Oct. 14, 2016 and Jan. 30, 2017). NOPB Corp. acknowledges that it will be subject to employee protective conditions imposed in *New Orleans Public Belt Railroad—Temporary Trackage Rights Exemption—Illinois Central Railroad,* FD 36067 (STB served Oct. 14, 2016).

[5] NOPB Corp. notes that, because it will operate as a switching and terminal railroad, it presumably would be classified as a Class III carrier in any event. 49 CFR 1201(1–1)(d).

[6] Because NOPB Corp.'s supplement was filed on December 18, that is considered the filing date of the verified notice for purposes of calculating the effective date of the exemption. In its supplement, NOPB Corp. requests that the effective date of the

contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than January 4, 2018.

An original and 10 copies of all pleadings, referring to Docket No. FD 36149, 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 Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Dr., Suite 920, Chicago, IL 60606–2832.

According to NOPB Corp., this action is excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available on our website at *WWW.STB.GOV.*

Decided: December 21, 2017.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2017–27931 Filed 12–26–17; 8:45 am]

BILLING CODE 4915–01–P

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exemption be advanced to January 11, 2018. This request will be addressed in a separate decision.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2017–0024]

Request for Comments and Notice of a Public Hearing Regarding the 2018 Special 301 Review

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing.

SUMMARY: Each year, the Office of the United States Trade Representative conducts a Special 301 review to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Based on this review, the United States Trade Representative (Trade Representative) determines which, if any, of these countries to identify as Priority Foreign Countries. USTR requests written comments that identify acts, policies, or practices that may form the basis of a country's identification as a Priority Foreign Country or placement on the Priority Watch List or Watch List. USTR also requests notices of intent to appear at the public hearing.

DATES: *February 8, 2018 at midnight EST:* Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from the public.

February 22, 2018 at midnight EST: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.

February 27, 2018: The Special 301 Subcommittee will hold a public hearing at the Office of the United States Trade Representative, 1724 F Street NW, Rooms 1 & 2, Washington, DC. If necessary, the hearing may continue on the next business day. Please consult the USTR website for confirmation of the date and location and the schedule of witnesses.

March 2, 2018 at midnight EST: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.

On or about April 30, 2018: USTR will publish the 2018 Special 301 Report within 30 days of the publication of the National Trade Estimate (NTE) Report.

ADDRESSES: USTR strongly encourages electronic submissions made through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the submission instructions in section IV below. The docket number is USTR–2017–0024. For alternatives to on-line submissions, please contact USTR at *Special301@ustr.eop.gov* before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Sung Chang, Director for Innovation and Intellectual Property, at 202–395–7548 or *special301@ustr.eop.gov.* You can find information about the Special 301 Review at *www.ustr.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), commonly known as the ''Special 301'' provisions, requires the Trade Representative to identify countries that deny adequate and effective IPR protections or fair and equitable market access to U.S. persons who rely on intellectual property protection. The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301–305 of the Trade Act (19 U.S.C. 2411–2415),

In addition, USTR has created a ''Priority Watch List'' and ''Watch List'' to assist the Administration in pursuing the goals of the Special 301 provisions Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs the Special 301 Subcommittee (Subcommittee) of the Trade Policy Staff Committee. The Subcommittee reviews information from many sources, and consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from the public are a key source of information for the Special 301 review process. In 2018, USTR will conduct a public hearing as part of the review process and will allow hearing participants to provide additional information relevant to the review. At the conclusion of the process, USTR will publish the results of the review in a Special 301 Report.

USTR requests that interested persons identify through the process outlined in this notice those countries whose acts, policies, or practices deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

Section 182 also requires the Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, was adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). USTR invites the public to submit views relevant to this aspect of the review.

Section 182 requires the Trade Representative to identify all such acts, policies, or practices within 30 days of the publication of the NTE Report. In accordance with this statutory requirement, USTR will publish the annual Special 301 Report on or about April 30, 2018.

II. Public Comments

To facilitate the review, written comments should be as detailed as possible and provide all necessary information to identify and assess the

effect of the acts, policies, and practices. USTR invites written comments that provide specific references to laws, regulations, policy statements, including innovation policies, executive, presidential or other orders, and administrative, court or other determinations that should factor in the review. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Finally, submissions proposing countries for review should include data, loss estimates, and other information regarding the economic impact on the United States, U.S. industry and the U.S. workforce caused by the denial of adequate and effective intellectual property protection. Comments that include quantitative loss claims should include the methodology used to calculate the estimated losses.

III. Public Hearing

The Special 301 Subcommittee will convene a public hearing on February 27, 2018, in Rooms 1 and 2, 1724 F Street NW, Washington, DC, 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. Because the hearing will take place in Federal facilities, attendees must show photo identification and will 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 website as soon after the hearing as possible. Witnesses must deliver prepared oral testimony, which is limited to five minutes, before the Special 301 Subcommittee in person and in English. Subcommittee member agencies may ask questions following the prepared statement.

Notices of intent to testify and hearing statements from the public are due on February 8, 2017, and from foreign governments on February 22, 2018. The submissions must be in English and should include: (1) The name, address, telephone number, fax number, email address, and firm or affiliation of the individual wishing to testify, and (2) a hearing statement that is relevant to the Special 301 review.

IV. Submission Instructions

All submissions must be in English and sent electronically via *www.regulations.gov* using docket number USTR–2017–0024. To submit comments, locate the docket (folder) by entering the number USTR–2017–0024 in the ''Enter Keyword or ID'' window at the *www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Comment Now!.''

USTR requests that you provide comments in an attached document, and that you name the file according to the following protocol, as appropriate: Commenter Name, or Organization_ 2018 Special 301_Review_Comment, or Notice of Intent to Testify or Hearing Testimony. Please include the following information in the ''Type Comment'' field: ''2018 Special 301 Review'' and whether the submission is a comment, a request to testify at the hearing, or hearing testimony. Please submit documents prepared in (or compatible with) Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If you prepare the submission in a compatible format, please indicate the name of the relevant software application in the ''Type Comment'' field. For further information on using the *www.regulations.gov* website, please select ''How to Use Regulations.gov'' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comments submitted electronically that contains business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and would not customarily be released to the public by the submitter. Additionally, the submitter should type ''Business Confidential'' in the ''Type Comment'' field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. The non-business confidential version will be placed in the docket at *www.regulations.gov* and be available for public inspection.

As noted, USTR strongly urges commenters to submit comments through *www.regulations.gov.* You must make any alternative arrangements before transmitting a comment and in advance of the relevant deadline by contacting USTR at *Special301@ ustr.eop.gov.*

USTR will place comments in the docket and they will be open to public inspection, except business confidential information. You can view comments on the *www.regulations.gov* website by entering Docket Number USTR–2017–0024 in the ''Search'' field on the home page.

Elizabeth L. Kendall,

Assistant U.S. Trade Representative for Innovation and Intellectual Property (Acting), Office of the United States Trade Representative.

[FR Doc. 2017–27798 Filed 12–26–17; 8:45 am]

BILLING CODE 3290–F8–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifty Fourth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Fifty Fourth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of Fifty Fourth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary.

DATES: The meeting will be held January 25, 2018 10 a.m.–1 p.m.

ADDRESSES: The meeting will be held at: RTCA Headquarters, 1150 18th Street NW, Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Karan Hofmann at *khofmann@rtca.org* or 202–330–0680, or The RTCA Secretariat, 1150 18th Street NW, Suite 910, Washington, DC 20036, or by

telephone at (202) 833–9339, fax at (202) 833–9434, or website at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of the Fifty Fourth RTCA SC–224 Standards for Airport Security Access Control Systems Plenary. The agenda will include the following:

1. Welcome/Introductions/Administrative Remarks
2. Review/Approve Previous Meeting Summary
3. Report on TSA Participation
4. Report on Document Distribution Mechanisms
5. Report on the New Guidelines and Other Safe Skies Reports
6. Discussion on DO–230I
7. Action Items for Next Meeting
8. Time and Place of Next Meeting
9. Any Other Business
10. Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 21, 2017.

Mohannad Dawoud,

Management & Program Analyst, Partnership Contracts Branch, ANG–A17, NextGen, Procurement Services Division, Federal Aviation Administration.

[FR Doc. 2017–27932 Filed 12–26–17; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Bank Secrecy Act Advisory Group; Solicitation of Application for Membership

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

ACTION: Notice and request for nominations.

SUMMARY: FinCEN is inviting the public to nominate financial institutions, trade groups, and non-federal regulators or law enforcement agencies for membership on the Bank Secrecy Act Advisory Group. New members will be selected for three-year membership terms.

DATES: Nominations must be received by January 26, 2018.

ADDRESSES: Nominations must be emailed to *BSAAG@fincen.gov.*

FOR FURTHER INFORMATION CONTACT: FinCEN Resource Center at 800–767–2825.

SUPPLEMENTARY INFORMATION: The Annunzio-Wylie Anti-Money Laundering Act of 1992 required the Secretary of the Treasury to establish a Bank Secrecy Act Advisory Group (BSAAG) consisting of representatives from federal regulatory and law enforcement agencies, financial institutions, and trade groups with members subject to the requirements of the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.* or Section 6050I of the Internal Revenue Code of 1986. The BSAAG is the means by which the Treasury receives advice on the operations of the Bank Secrecy Act. As chair of the BSAAG, the Director of FinCEN is responsible for ensuring that relevant issues are placed before the BSAAG for review, analysis, and discussion.

BSAAG membership is open to financial institutions, trade groups, and non-federal regulators and law enforcement agencies. Membership is granted to organizations, not to individuals. Organizational members will be selected to serve a three-year term and must designate one individual to represent that member at plenary meetings. The designated representative should be knowledgeable about Bank Secrecy Act requirements and must be able and willing to make the necessary time commitment to participate on committees throughout the year by phone and attend biannual plenary meetings held in Washington, DC in May and October.

It is important to provide complete answers to the following items, as nominations will be evaluated on the information provided through this application process. There is no formal application; interested organizations may submit their nominations via email or email attachment. Nominations should consist of:

- Name of the organization requesting membership
- Point of contact, title, address, email address and phone number
- Description of the financial institution or trade group and its involvement with the Bank Secrecy Act, 31 CFR 1000–1099 *et seq.*
- Reasons why the organization's participation on the BSAAG will bring value to the group

Organizations may nominate themselves, but nominations for individuals who are not representing an organization will not be considered. Members will not be remunerated for their time, services, or travel. In making the selections, FinCEN will seek to complement current BSAAG members in terms of affiliation, industry, and geographic representation. The Director of FinCEN retains full discretion on all membership decisions. The Director may consider prior years' applications when making selections and does not limit consideration to institutions nominated by the public when making selections.

Dated: December 20, 2017.

Jamal El-Hindi,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2017–27846 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Subscription for Purchase and Issue of U.S. Treasury Securities, State and Local Government Series

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Subscription for Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

DATES: Written comments should be received on or before February 26, 2018 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street, Room 4006–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Subscription for Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

OMB Number: 1530–0065.

Transfer of OMB Control Number: The Bureau of Public Debt (BPD) and Financial Management Service (FMS) have consolidated to become the Bureau

of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by BPD and FMS will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number:

FS Form 4144—Subscription for Purchase and Issuing of U.S. Securities State and Local Government Series Time Deposits
FS Form 4144–1—Account Information for U.S. Treasury Securities State and Local Government Series Time Deposits
FS Form 4144–2—Schedule of U.S. Treasury Securities State and Local Government Series Time Deposits
FS Form 4144–5—Application for Internet Access—U.S. Treasury Securities State and Local Government Series
FS Form 4144–6—SLGSafe User Acknowledgement
FS Form 4144–7—SLGSafe Template Worksheet

Abstract: The information is requested to establish and maintain accounts for the owners of securities of the State and Local Government Series.

Current Actions: Extension of a currently approved collection.

Type of Review: Emergency.

Affected Public: State and Local Government.

Estimated Number of Respondents: 6,708.

Estimted Time per Respondent: 24 minutes.

Estimated Total Annual Burden Hours: 2,713.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 21, 2017.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2017–27926 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*http://www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 20, 2017, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. KADYROV, Ramzan Akhmatovich (a.k.a. KADYROW, Ramzan Achmatowisch); DOB 05 Oct 1976; POB Tsentoroi, Chechen Republic, Russia; nationality Russia; Gender Male (individual) [MAGNIT]. Designated pursuant to the Magnitsky Act because he is responsible for the extrajudicial killing, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to expose illegal activity carried out by officials of the Government of the Russian Federation or to obtain, exercise, defend, or promote internationally recognized human rights and freedoms, such as the freedoms of religion, expression, association, and assembly, and the rights to a fair trial and democratic elections in Russia, or acted as an agent of or on behalf of a person in a matter relating to such activity.

2. KATAEV, Ayub Vakhaevich (Cyrillic: КАТАЕВ, Аюб Вахаевич) (a.k.a. KATAEV, Aiub; a.k.a. KATAEV, Ayubkhan Vakhaevich (Cyrillic: КАТАЕВ, Аюбхан Вахаевич)); DOB 01 Dec 1984; alt. DOB 01 Dec 1980; nationality Russia; Gender Male (individual) [MAGNIT]. Designated pursuant to the Magnitsky Act because he is responsible for the extrajudicial killing, torture, or other gross violations of internationally recognized human rights committed against individuals seeking to exercise internationally recognized human rights and freedoms, such as the freedom of expression, association, and assembly, in Russia.

3. MAYOROVA, Yulia (Cyrillic: МАЙОРОВА, Юлия) (a.k.a. MAYOROVA, Yulya); DOB 23 Apr 1979; nationality Russia; Gender Female (individual) [MAGNIT]. Designated pursuant to the Magnitsky Act because she was involved in the criminal conspiracy uncovered by Sergei Magnitsky.

4. PAVLOV, Andrei (a.k.a. PAVLOV, Andrei Alexeyevich; a.k.a. PAVLOV, Andrey; a.k.a. PAVLOV, Andrey Aleksandrovich); DOB 07 Aug 1977; nationality Russia; Gender Male (individual) [MAGNIT]. Designated pursuant to the Magnitsky Act because he was involved in the criminal conspiracy uncovered by Sergei Magnitsky.

5. SHESHENYA, Alexei Nikolaevich (Cyrillic: ШЕШЕНЯ, Алексей Николаевич) (a.k.a. SHESHENYA, Alexey), Novokosinskaya Street 38, Building 3, Apartment 3, Moscow 111539, Russia; DOB 16 Apr 1971; citizen Russia; Gender Male; Passport 4506550500 (Russia) (individual) [MAGNIT]. Designated pursuant to the Magnitsky Act because he was involved in the criminal conspiracy uncovered by Sergei Magnitsky.

Dated: December 20, 2017.

John E. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2017–27819 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 26, 2018 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (FS)

Title: Special Form of Assignment for U.S. Registered Definitive Securities.

OMB Control Number: 1530–0058.

Type of Review: Extension without change of a currently approved collection.

Abstract: FS Form 1832 is completed by the owner (or authorized representative) of registered securities to convert the definitive (paper) registered securities to an account in TreasuryDirect®; convert the definitive (paper) registered securities to a book-entry account with a commercial financial institution, or allow matured or called definitive (paper) registered securities to be paid to another party.

Form: FS Form 1832.

Affected Public: Individuals and households.

Estimated Total Annual Burden Hours: 1,600.

Title: Disclaimer and Consent with Respect to United States Savings Bond/Notes.

OMB Control Number: 1530–0059.

Type of Review: Extension without change of a currently approved collection.

Abstract: Used to obtain a disclaimer and consent as the result of an error in registration or otherwise the payment, refund of the purchase price, or reissue as requested by one person would appear to affect the right, title or interest of some other person.

Form: FS Form 1849.

Affected Public: Individuals and households.

Estimated Total Annual Burden Hours: 300.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 21, 2017.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2017–27871 Filed 12–26–17; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple IRS Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit 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. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 26, 2018 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 Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8142, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Acquisition or Abandonment of Secured Property.

OMB Control Number: 1545–0877.

Type of Review: Revision of a currently approved collection.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Form: 1099–A.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 90,080.

Title: T.D. 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

OMB Control Number: 1545–1672.

Type of Review: Extension without change of a currently approved collection.

Abstract: This document contains final regulations that apply to certain transactions or events that result in a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) owning property that has a basis determined by reference to a C corporation's basis in the property. These regulations affect RICs, REITs, and C corporations and clarify the tax treatment of transfers of C corporation property to a RIC or REIT.

Forms: None.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 70.

Title: Rev Proc 2017–41 modifying Revenue Procedure 2015–36 Master and Prototype and Volume Submitter Plans (previously Rev. Proc. 2011–49 & 2005–16).

OMB Control Number: 1545–1674.

Type of Review: Extension without change of a currently approved collection.

Abstract: The issuance of an opinion letter for a pre-approved plan by the Employee Plans function of the Tax Exempt and Government Entities Division approves a plan as to form. Typically, once a plan is submitted for an opinion letter the entity that submits the plan (the ''provider'') will begin marketing the plan for its adoption by various employers. The issuance of the opinion letter allows the provider to make retroactive changes to the form of the plan to conform to recent changes in statutory requirements. Form 4461, Form 4461–A, and Form 4461–B are used by providers to apply for approval of their employee benefit plans under section 401(a).

Forms: 4461, 4461–A, 4461–B.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,108,225.

Title: TD 9472 (Final)—Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.

OMB Control Number: 1545–1780.

Type of Review: Extension without change of a currently approved collection.

Abstract: Regulations provide guidance relating to the application of the section 204(h) notice requirements to a pension plan amendment that is permitted to reduce benefits accrued before the plan amendment's applicable amendment date and reflect certain amendments made to the section 204(h) notice requirements by the Pension Protection Act of 2006. These final regulations generally affect sponsors, administrators, participants, and beneficiaries of pension plans.

Forms: 4461, 4461–A, 4461–B.

Affected Public: Businesses or other for-profits.

Estimated Total Annual Burden Hours: 40,000.

Title: Suspension or Reduction of Safe Harbor Contributions.

OMB Control Number: 1545–2191.

Type of Review: Extension without change of a currently approved collection.

Abstract: This rule relates to certain cash or deferred arrangements under section 401(k) and matching contributions and employee contributions under section 401(m). The collection of information relates to the new supplemental notice requirements in the case of a reduction or suspension of safe harbor non-elective or matching contributions and the requirement to include additional information in the notice for certain plans that would be permitted to reduce or suspend safe harbor non-elective or matching contributions for a plan year even if the employer had not experienced a business hardship.

Forms: None.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Annual Burden Hours: 10,000.

Title: Health Insurance Premium Tax Credit.

OMB Control Number: 1545–2232.

Type of Review: Revision of a currently approved collection.

Abstract: This document covers regulations previously approved under 26 CFR 1.36B–5 which relate to the health insurance premium assistance credit enacted by the Patient Protection and Affordable Care Act (PPACA). The regulations provide guidance to individuals who claim the premium assistance credit and exchanges that make qualified health plans available to individuals and employers. The IRS developed Form 1095–A under the authority of ICR section 36B(f)(3) for individuals to compute the amount of premium tax credit and file an accurate tax return.

Form: 1095–A.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Estimated Total Annual Burden Hours: 16,250.

Title: Form 8976, Notice of Intent to Operate Under Section 501(c)(4).

OMB Control Number: 1545–2268.

Type of Review: Extension without change of a currently approved collection.

Abstract: This collection of information satisfies the statutory mandate in section 506. This information will be used by IRS to process the submitted notification form for completeness and to determine applicability of the penalties for failure to timely submit the notification imposed by section 6652(c)(4) of the Code.

Form: 8976.

Affected Public: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 1,875.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 19, 2017.

Spencer Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2017–27828 Filed 12–26–17; 8:45 am]

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Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Activities Conducted in the Eglin Gulf Test and Training Range in the Gulf of Mexico; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 170831846–7846–01]

RIN 0648–BH21

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Activities Conducted in the Eglin Gulf Test and Training Range in the Gulf of Mexico

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

ACTION: Proposed rule: request for comments

SUMMARY: NMFS has received a request from the United States Air Force (USAF), 96th Civil Engineer Group/Environmental Planning Office (96 CEG/CEIEA) at Eglin Air Force Base (hereafter referred to as Eglin AFB) for authorization to take marine mammals incidental to conducting testing and training activities in the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico over the course of five years, from February 4, 2018 to February 3, 2023. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take, and requests comments on the proposed regulations.

DATES: Comments and information must be received no later than January 26, 2018.

ADDRESSES:

You may submit comments on this document by either of the following methods:

• *Federal e-Rulemaking Portal:* Go to *www.regulations.gov,* enter 0648–BH21 in the ''Search'' box, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. To help NMFS process and review comments more efficiently, please use only one method to submit comments. All comments received are a part of the public record and will generally be posted on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8408. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

This proposed rule, to be issued under the authority of the MMPA, would establish a framework for authorizing the take of marine mammals incidental to military aircraft testing and training activities at EGTTR. We received an application from Eglin AFB requesting 5-year regulations and authorization for the take by Level A and Level B harassment of two marine mammal species. The regulations would be valid from February 4, 2018, through February 3, 2023. Please see *Background* below for definitions of Level A and Level B harassment.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity, as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing five-year regulations, and for any subsequent Letters of Authorization (LOA) issued pursuant to those regulations. As directed by this legal authority, this proposed rule contains mitigation, monitoring, and reporting requirements.

The National Defense Authorization Act for Fiscal Year 2004 (Section 319, Public Law 108–136, November 24, 2003) (NDAA of 2004) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of harassment as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA, 16 U.S.C. 1362(18)(B)): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Summary of Major Provisions Within the Proposed Rule

Following is a summary of some of the major provisions in this proposed rule for Eglin AFB's proposed EGTTR activities. We have preliminarily determined that Eglin AFB's adherence to the proposed mitigation, monitoring, and reporting measures listed below would achieve the least practicable adverse impact on the affected marine mammals. They include:

• Monitoring will be conducted by personnel who have completed Eglin's Marine Species Observer Training Course, which was developed in cooperation with the National Marine Fisheries Service;

• For each live mission, at a minimum, pre- and post-mission monitoring will be required. Monitoring will be conducted from a given platform depending on the specific mission. The purposes of pre-mission monitoring are to (1) evaluate the mission site for environmental suitability and (2) verify that the zone of influence (ZOI) is free of visually detectable marine mammals and potential marine mammal indicators. Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting sightings of any dead or injured marine mammals;

• Mission delay will be implemented during live ordnance mission activities if protected species, large schools of fish, or large flocks of birds are observed feeding at the surface within the ZOI. Mission activities may not resume until

the animals are observed moving away from the ZOI or 30 minutes have passed;

- Mission delay will be implemented if daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life. EGTTR missions may not resume until adequate sea conditions exist for monitoring;
- If unauthorized takes of marine mammals (*i.e.,* serious injury or mortality) occur, ceasing operations and reporting to NMFS immediately and submitting a report to NMFS within 24 hours;
- Use of aerial-based monitoring which provides an excellent viewing platform for detection of marine mammals at or near the surface;
- Use of video-based monitoring via live high-definition video feed. Video monitoring typically facilitates data collection for the mission but can also allow remote viewing of the area for determination of environmental conditions and the presence of marine species up to the release time of live munitions;
- Use of vessel-based monitoring; and
- Ramp-up procedures for gunnery operations.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

National Environmental Policy Act (NEPA)

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

The U.S. Air Force developed an EA in 2015 titled *Eglin Gulf Test and Training Range Environmental Assessment* (Navy 2015). NMFS will review and evaluate the EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, and determine whether or not to adopt the EA. Information in Eglin AFB's application, the EA, and this notice collectively provide the environmental information related to proposed issuance of the regulations for public review and comment. We will review all comments submitted in response to this notice as we complete the NEPA process, including the decision of whether to sign a Finding of No Significant Impact (FONSI) prior to a final decision on the LOA request. The NEPA documents are available for review at *www.nmfs.noaa.gov/pr/permits/incidental/military.html.*

Summary of Request

On September 16, 2015, NMFS received a request for regulations from Eglin AFB for the taking of marine mammals incidental to testing and training activities in the EGTTR (defined as the area and airspace over the Gulf of Mexico controlled by Eglin AFB, beginning at a point three nautical miles (NM) off the coast of Florida) for a period of five years. Eglin AFB worked with NMFS to revise the model used to calculate take estimates and submitted a revised application on April 15, 2017.

On August 24, 2017, we published a notice of receipt of Eglin AFB's application in the **Federal Register** (82 FR 40141), requesting comments and information for thirty days related to Eglin AFB's request. We did not receive any comments from the public. The application was considered adequate and complete on September 29, 2017.

Eglin AFB proposes taking marine mammals incidental to EGTTR activities by Level A and Level B harassment of Atlantic bottlenose dolphins (*Tursiops truncates)* and Atlantic spotted dolphins (*Stenella frontalis*). On April 23, 2012, NMFS promulgated rulemaking and issued an LOA for takes of marine mammals incidental to Eglin AFB's Naval Explosive Ordnance Disposal School (NEODS) training operations at Eglin AFB. This rule expired on April 24, 2017 (77 FR 16718, March 22, 2012). On March 5, 2014, NMFS promulgated rulemaking and issued an LOA for takes of marine mammals incidental to Eglin AFB's Air Force Special Operations Command (AFSOC) precision strike weapons (PSW) and air-to-surface (AS) gunnery activities in the EGTTR, which is valid through March 4, 2019 (79 FR 13568, March 11, 2014). In addition to these rules and LOAs, NMFS has issued Incidental Harassment Authorizations (IHA) for take of marine mammals incidental to Eglin AFB's Maritime Strike Operations (78 FR 52135, August 22, 2013; valid August 19, 2013 through August 18, 2014) and Maritime Weapons Systems Evaluations Program (WSEP) annually in 2015 (80 FR 17394), 2016 (81 FR 7307), and 2017 (82 FR 10747) which currently expires on February 3, 2018. Eglin AFB complied with all conditions of the LOAs and IHAs issued, including submission of final reports. Based on these reports, NMFS has determined that impacts to marine mammals were not beyond those anticipated. Eglin AFB's current rulemaking/LOA application would supersede the existing PSW and AS gunnery rule that is in effect until March 4, 2019, and would include all of Eglin AFB's testing and training activities, including WSEP activities, into one new rule with the exception of NEODS training activities. Eglin AFB has never conducted any NEODS training activities and is not including these activities as part of the new rulemaking. The regulations proposed in this action, if issued, would be effective from February 4, 2018, through February 3, 2023.

Description of Proposed Activity

Overview

Eglin AFB proposes to conduct military aircraft missions within the EGTTR that involve the employment of multiple types of live (explosive) and inert (non-explosive) munitions against various surface targets. Munitions may be delivered by multiple types of aircraft including, but not limited to, fighter jets, bombers, and gunships. Munitions consist of bombs, missiles, rockets, and gunnery rounds. The targets may vary, but primarily consist of stationary, towed, or remotely controlled boats, inflatable targets, or marking flares. Detonations may occur in the air, at the water surface, or approximately 10 feet (ft) below the surface. Mission activities proposed in the EGTTR have the potential to expose cetaceans to sound or pressure levels

currently associated with mortality, Level A harassment, and Level B harassment, as defined by the MMPA.

Testing and training missions would be conducted during any time of the year. Missions that involve inert munitions and in-air detonations may occur anywhere in the EGTTR. Aside from gunnery operations, mission activities that release live ordnance resulting in surface or subsurface detonations would be conducted at a pre-determined location approximately 17 miles offshore of Santa Rosa Island, in a water depth of about 35 meters (m) (115 ft).

Dates and Duration

Due to the total number and variability in types of air-to-surface test and training missions included in this LOA request, missions may occur during any season or month. Missions involving the use of live bombs, missiles, and rockets will occur during daylight hours. However, some activities, such as gunnery training, may occur during day or night. Missions are typically conducted on weekdays, with multiple weapons releases typically occurring per day. The LOA would be valid from February 4, 2018 through February 3, 2023.

Specific Geographic Region

All activities will take place within the EGTTR, which is defined as the airspace over the Gulf of Mexico controlled by Eglin AFB, beginning at a point 3 NM from shore. This airspace is controlled by the Federal Aviation Administration, but scheduled by Eglin AFB. The EGTTR is subdivided into blocks consisting of Warning Areas W–155, W–151, W–470, W–168, and W–174, as well as Eglin Water Test Areas 1 through 6 (See Figure 1–2 in Application). Most of the blocks are further sub-divided into smaller airspace units for scheduling purposes (for example, W–151A, B, C, and D). Warning Area W–155 is controlled by the U.S. Navy but is used occasionally to support missions scheduled through Eglin. Over 102,000 square nautical miles (nmi^2) of Gulf of Mexico surface waters occur under the EGTTR airspace. However, most of the activities described in this document will occur in W–151, and the great majority will occur specifically in sub-area W–151A due to its proximity to shore (Figure 1–3 in Application). Descriptive information for all of W–151 and for W–151A specifically is provided below.

The inshore and offshore boundaries of W–151 are roughly parallel to the shoreline contour. The shoreward boundary is 3 nmi from shore, while the seaward boundary extends approximately 85 to 100 nmi offshore, depending on the specific location. W–151 covers a surface area of approximately 10,247 nmi^2 (35,145 square kilometers (km^2), and includes water depths ranging from about 20 to 700 m (66 to 2,297 ft). This range of depth includes continental shelf and slope waters. Approximately half of W–151 lies over the shelf.

W–151A, which occurs directly south of Eglin AFB, extends approximately 60 nmi offshore and has a surface area of 2,565 nmi^2 (8,797 km^2). Water depths range from about 30 to 350 m (98 to 1,148 ft) and include continental shelf and slope zones. However, most of W–151A occurs over the continental shelf, in water depths less than 250 m (820 ft). Most of the air-to-surface missions occur in the shallower, northern inshore portion of the sub-area (Maritime WSEP test site), in a water depth of about 35 m (115 ft).

Detailed Description of Specific Activity

Eglin AFB proposes to conduct the following actions in the EGTTR: (1) 86th Fighter Weapons Squadron (86 FWS) Maritime Weapons System Evaluation Program (WSEP) test missions that involve the use of multiple types of live and inert munitions (bombs and missiles) detonated above, at, or slightly below the water surface; (2) Advanced Systems Employment Project actions that involve deployment of a variety of pods, air-to-air missiles, bombs, and other munitions (all inert ordnances in relation to EGTTR); (3) Air Force Special Operations Command (AFSOC) training, including air-to-surface gunnery missions involving firing live gunnery rounds at targets on the water surface in EGTTR, small diameter bomb (SDB) and Griffin/Hellfire missile training involving the use of live missiles and SDBs in the EGTTR against small towed boats, and CV–22 tiltrotor aircraft training involving the firing of 0.50 caliber (cal.)/7.62 mm ammunition at flares floating on the EGTTR water surface; (4) 413th Flight Test Squadron (FLTS) Precision Strike Program (PSP) activities involving firing munitions at flare targets on the EGTTR water surface and Stand-Off Precision Guided Munitions (SOPGM) testing involving captive-carry, store separation, and weapon employment tests; (5) 780th Test Squadron (TS) activities involving precision strike weapon (PSW) test missions (launch of munitions against targets in the EGTTR) and Longbow Littoral Testing (data collection on tracking and impact ability of the Longbow missile on small boats); (6) 96th Test Wing Inert Missions (developmental testing and evaluation for wide variety of air-delivered weapons and other systems using inert bombs); and (7) 96 Operations Group (OG) missions, which involve the support of air-to-surface missions for several user groups within EGTTR.

During these activities, ordnances may be delivered by multiple types of aircraft, including bombers and fighter aircraft. The actions include air-to-ground missiles (AGM); air intercept missiles (AIM); bomb dummy units (BDU); guided bomb units (GBU); projectile gun units (PGU); cluster bomb units (CBU); wind-corrected munitions dispensers (WCMD); small-diameter bombs (SDB) and laser small diameter bombs (LSDB); high explosive incendiary units (HEI); joint direct attack munitions (JDAM) and laser joint direct attack munitions (LJDAM); research department explosives (RDX); joint air-to-surface stand-off missiles (JASSM); high altitude anti-submarine warfare weapons (inert); high-speed maneuverable surface targets; and gunnery rounds. Net explosive weight (NEW) of the live munitions ranges from 0.1 to 945 pounds (lb).

The EGTTR testing and training missions are classified as military readiness activities and involve the firing or dropping of air-to-surface weapons. Depending on the requirements of a given mission, munitions may be inert (contain no or very little explosive charges) or live (contain explosive charges). Live munitions may detonate above, at, or slightly below the water surface. In most cases, missions consisting of live bombs, missiles, and rockets that detonate at or below the water surface will occur at a site in W–151A that has been designated specifically for these types of activities. Typically, test data collection is conducted from an instrumentation barge known as the Gulf Range Armament Test Vessel (GRATV) anchored on-site, which provides a platform for cameras and weapon-tracking equipment. Therefore, the mission area is referred to as the GRATV target location. Alternative site locations may be selected, if necessary, within a 5-mile radius around the GRATV point. Missions that involve inert munitions and in-air detonations may occur anywhere in the EGTTR but are typically conducted in W–151.

For this LOA request, descriptions of mission activities that involve in-water detonations include a section called Mission-Day Categorization. This subsection describes the mission-day scenario used for acoustic modeling and is based on the estimated number of weapons released per day. This

approach is meant to satisfy NMFS' requests to analyze and assess acoustic impacts associated with accumulated energy from multiple detonations occurring over a 24-hour timeframe. Eglin AFB used all available information to develop each mission-day scenario, including historical release records; however, these scenarios may not represent exact weapon releases because military needs and requirements are in a constant state of flux. The mission-day categorizations provide high-, medium-, and low-intensity mission-day scenarios for some groups and an average scenario for other groups. Mission-day scenarios vary for each user group and are described in the following sections.

Note that additional testing and training activities are planned for the EGTTR that will not result in any acoustic impacts to marine mammals and, therefore, not require any acoustic analyses. Examples include the firing of 0.50 caliber and 7.62 gunnery rounds that do not contain explosives, use of airburst-only detonations, and operations involving simulated weapons delivery. Those activities are described in detail in the Application but are not discussed here.

86th Fighter Weapons Squadron Maritime Weapons System Evaluation Program

The 86 FWS would continue to use multiple types of live and inert munitions in the EGTTR against small boat targets for the Maritime WSEP Operational Testing Program. The purpose of the testing is to continue the development of tactics, techniques and procedures (TTP) for USAF strike aircraft to counter small maneuvering surface vessels in order to better protect vessels or other assets from small boat threats. Damage effects of these munitions must be known to generate TTPs to engage small moving boats. The test objectives are to (1) develop TTPs to engage small boats in all weather and (2) determine the impact of TTPs on Combat Air Force training. The test results would be used to develop publishable TTPs for inclusion in Air Force TTP 3–1 series manuals. Maritime WSEP testing is considered a high national defense priority. Incidental Harassment Authorizations have been issued for 2015 (80 FR 17394, April 1, 2015), 2016 (81 FR 7307, February 11, 2016) and 2017 (82 FR 10747, February 15, 2017) Maritime WSEP activities, but these activities will now be part of this new rulemaking to avoid annual IHAs.

Proposed aircraft and munitions associated with Maritime WSEP activities are shown in Table 1. Because the focus of the tests would be weapon/target interaction, no particular aircraft would be specified for a given test as long as it met the delivery requirements. Various USAF active duty units, National Guard, Navy, and USAF reserve units would participate as interceptors and weapons release aircrews, with multiple types of aircraft typically operating within the same airspace.

TABLE 1—MARITIME WSEP MUNITIONS AND EXAMPLE AIRCRAFT

Munitions	Aircraft
AGM–114 (Hellfire)	F–15 fighter aircraft.
AGM–176 (Griffin)	F–16 fighter aircraft.
AGM–65 (Mavericks)	F–18 fighter aircraft.
AIM–9X	F–22 fighter aircraft.
BDU–56	F–35 fighter aircraft.
CBU–105 (WCMD)	AC–130 gunship.
GBU–12/GBU–54	A–10 fighter aircraft.
GBU–10/GBU–24	B–1 bomber aircraft.
GBU–31	B–52 bomber aircraft.
GBU–38	B–2 bomber aircraft.
PGU–13/B	MQ–1.
PGU–27	MQ–9.
2.75 in Rockets.	
7.62mm/50 Cal.	
GBU–39 (Laser SDB).	
GBU–53 (SDB II).	

AGM = air-to-ground missile; AIM = air intercept missile; BDU = Bomb, Dummy Unit; GBU = Guided Bomb Unit; PGU = Projectile Gun Unit; CBU = Cluster Bomb Unit; WCMD = Wind-Corrected Munitions Dispenser; mm = millimeters; SDB = Small Diameter Bomb.

Tests would be conducted at the GRATV target location in various sea states and weather conditions, up to a wave height of 4 ft. Live munitions would be deployed against static (anchored), towed, and remotely controlled boat targets. Static and controlled targets would consist of stripped boat hulls with plywood simulated systems and, in some cases, heat sources. Moving targets would be towed by remotely controlled High Speed Maneuverable Surface Target (HSMST) boats. Damaged boats would be recovered for data collection. Test data collection would be conducted from the GRATV. HSMST boats would be remotely controlled from a facility on Eglin main base and would follow set track lines with specific waypoints at least 2 to 3 nautical miles (NM) away from the GRATV. Additional air assets such as chase aircraft or unmanned aerial vehicles would transit to the target area and set up flight orbits to provide aerial video of the mission site including weapon impacts on boat targets and assisting with range clearing activities. Missions would be controlled and monitored from the Eglin Central Control Facility (CCF) on the main base.

Live munitions would be set to detonate either in the air, instantaneously upon contact with a target boat, or after a slight delay (up to 10 millisecond) after impact, which would correspond to a water depth of about 5 to 10 ft. The annual number, height or depth of detonation, explosive material, and net explosive weight (NEW) of each live munition associated with Maritime WSEP is provided in Table 2. The quantity of live munitions tested is considered necessary to provide the intended level of tactics and weapons evaluation, including a number of replicate tests sufficient for an acceptable confidence level regarding munitions capabilities.

In addition to the live munitions described above, 86 FWS also proposes to expend inert munitions in W–151. The expected number of each munition type expended during a typical year is included in Table 2. Use of inert munitions was analyzed in the 2002 *Eglin Gulf Test and Training Range (EGTTR) Programmatic Environmental Assessment* (2002 PEA) and found to have no significant environmental impact (U.S. Air Force, 2002). The 2002 PEA estimated that a maximum of 0.2 marine mammals could potentially be struck by projectiles, falling debris, and inert munitions each year. This calculation assumed there would be over 600 events conducted per year which accounted for the maximum annual number of expendables over a five-year period (1995–1999), totaling over 626,000 inert items. Live gunnery rounds (*e.g.,* 25-mm, 40-mm, 105-mm) were not included in the direct physical impact analysis since the acoustic analyses constituted a more conservative assessment for exploding rounds. Since 1999, Range Utilization Reports have shown through 2010 the annual average number of inert expendables has decreased to approximately 311,000 items, about 50 percent of the maximum annual number used for calculations for the 2002 PEA. The additional use of inert munitions under the Proposed Action for the 2015 EGTTR Programmatic EA would add another 76,000 items, resulting in a 19 percent increase in inert expendables, based on the annual average from 1999 through 2010. This proposed increase compared to historic use is still less than the maximum baseline levels analyzed in 2002. The estimated abundance of local stocks of bottlenose and Atlantic spotted dolphins has likely increased since the 2002 PEA according to NMFS stock assessment reports. For example, the northern Gulf of Mexico continental shelf stock of bottlenose dolphin increased from 21,531 in 1991–2001 to 51,192 in 2011–2012, which is the most recent available data. Even

with these estimated increases in abundance, the Navy and NMFS believe that the potential for direct physical impacts remains nominal and can be considered discountable. Actual numbers of inert releases may vary somewhat from those shown in the table. However, the items are included in this LOA in order to document the programmatic use of the EGTTR.

TABLE 2—MARITIME WSEP MUNITIONS USE IN THE EGTTR

Type of munition	Number of munitions	Detonations scenario	Warhead—explosive material	NEW (lbs)
GBU–10 or GBU–24	2	Surface or Subsurface	MK–84—Tritonal	945
GBU–49	4	Surface	Tritonal	300
JASSM	4	Surface	Tritonal	240
GBU–12/–54 (LJDAM)/–38/–32 (JDAM).	10	Surface or Subsurface	MK–82—Tritonal	192
AGM–65 (Maverick)	8	Surface	WDU–24/B penetrating blast-fragmentation warhead.	86
CBU–105	4	Airburst	10 BLU–108 submunitions with 4 projectiles, parachute, rocket motor & altimeter. 10.69 lbs NEW/submunition (includes 2.15 lbs/projectile).	107.63
GBU–39 (LSDB)	4	Airburst, Surface, or Subsurface.	AFX–757 (Insensitive munition)	37
AGM–114 (Hellfire)	30	Airburst or Surface, Subsurface	High Explosive Anti-Tank (HEAT) tandem anti-armor metal augmented charge.	29
GBU–53 (SDB II)	4	Airburst, Surface or Subsurface	PBX–N–109 Aluminized Enhanced Blast, Scored Frag Case, Copper Shape Charge.	22.84
AIM–9X	2	Surface	PBXN–3	7.9
AGM–176 (Griffin)	10	Airburst or Surface	Blast fragmentation	4.58
Rockets (including APKWS).	100	Surface	Comp B–4 HEI	10
PGU–13 HEI 30 mm	1,000	Surface	30 x 173 mm caliber with aluminized RDX explosive. Designed for GAU–8/A Gun System.	0.1
GBU–10	21	Inert	N/A	N/A
GBU–12	27	Inert	N/A	N/A
GBU–24	17	Inert	N/A	N/A
GBU–31	6	Inert	N/A	N/A
GBU–38	3	Inert	N/A	N/A
GBU–54	16	Inert	N/A	N/A
BDU–56	13	Inert	N/A	N/A
AIM–9X	3	Inert	N/A	N/A
PGU–27	46,000	Inert	N/A	N/A

AGM = air-to-ground missile; AIM = air intercept missile; BDU = Bomb, Dummy Unit; CBU = Cluster Bomb Unit; GBU = Guided Bomb Unit; HEI = high explosive incendiary; lbs = pounds; LJDAM = laser joint direct attack munition; LSDB = Laser Small Diameter Bombs; MK = mark; mm = millimeters; NEW = Net Explosive Weight; PGU = Projectile Gun Unit; RDX = research department explosive; SDB = Small Diameter Bomb.

Mission-day categorizations of weapon releases listed in Table 3 were developed based on historical mission data, project engineer input, and future Maritime WSEP requirements. Categories of missions were grouped first using historical weapon releases per day (refer to Maritime Strike and Maritime WSEP annual reports for 2015 and 2016). Next, the most recent weapons evaluation needs and requirements were considered to develop three different scenarios: Categories A, B, and C. Mission-day Category A represents munitions with larger NEW (192 to 945 pounds) with both surface and subsurface detonations. This category includes future requirements and provides flexibility for the military mission. To date, Category A levels of activity have not been conducted under the 86 FWS Maritime WSEP missions and is considered a worst-case scenario. Category B represents munitions with medium levels of NEW (20 to 86 pounds) including surface and subsurface detonations. Category B was developed using actual levels of weapon releases during Maritime WSEP missions (refer to Maritime WSEP annual reports for 2015 and 2016). Category C represents munitions with smaller NEW (0.1 to 13 pounds) and includes surface detonations only.

TABLE 3—MARITIME WSEP MUNITIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/year
A	GBU–10/–24/–31	945	Subsurface (10-ft depth)	1	2	2
	GBU–49	300	Surface	2		4
	JASSM	240	Surface	2		4
	GBU–12/–54 (LJDAM)/–38/–32 (JDAM).	192	Subsurface (10-ft depth)	5		10
B	AGM–65 (Maverick)	86	Surface	2	4	8
	GBU–39 (SDB)	37	Surface	1		4
	AGM–114 (Hellfire)	20	Subsurface (10-ft depth)	5		20

TABLE 3—MARITIME WSEP MUNITIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS—Continued

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/ year
C	AGM–176 (Griffin)	13	Surface	5	2	10
	2.75 rockets	12	Surface	50		100
	AIM–9X	7.9	Surface	1		2
	PGU–12 HEI 30 mm	0.1	Surface	500		1,000

AGM = air-to-ground missile; CBU = Cluster Bomb Unit; GBU = Guided Bomb Unit; HEI = high explosive incendiary; JDAM = Joint Direct Attack Munition; LJDAM = Laser Joint Direct Attack Munition; lbs = pounds; NEW = net explosive weight; PGU = Projectile Gun Unit; mm = millimeter; SDB = Small Diameter Bomb.

A human safety zone will be established around the test area prior to each mission and will be enforced by up to 25 safety boats. The size of this zone may vary, depending upon the particular munition and delivery method used in a given test. A composite safety footprint has been developed for previous tests using live munitions. This composite safety footprint consisted of a circle with a 29 mile-wide diameter circle (14.5 mile-wide radius), which was converted to an octagon shape for ease of support vessel placement and range clearance.

Potential post-test activities consist of Air Force Explosive Ordnance Disposal (EOD) personnel detonating in place any munitions components or items remaining on the target boats that would be considered unexploded ordnance (UXO), debris retrieval, and post-mission protected species surveys. Unexploded bombs, missiles, or other similarly large items would sink to the seafloor and would not be recovered or detonated. However, smaller unexploded items such as cluster bomb submunitions could remain intact on target boats. Once the area has been cleared by the Eglin EOD team, the range will be re-opened for the debris clean-up team and the protected species survey vessels (when live munitions are used). Depending on the specific weapon system used and the location or position of the UXO, the test area could be closed for an extended period of time.

Advanced Systems Employment Project

The proposed Advanced Systems Employment Project (ASEP) action includes evaluating upgrades to numerous research and development, as well as Air Force hardware and software, initiatives. F16, F15E, and BAC1–11 aircraft would be used to deploy a variety of pods, air-to-air missiles, bombs, and other munitions. Many of the missions are conducted over Eglin land ranges. However, inert instrumented MK–84 Joint Direct Attack Munition (JDAM) bombs would be expended in W–151 under the Proposed Action. Bombs would be dropped on target boats located 20 to 25 miles offshore. A maximum of 12 over-water missions could be conducted annually, although the number could be as low as 4. There would be no live ordnance associated with ASEP actions in the EGTTR.

Air Force Special Operations Command Training

The Air Force Special Operations Command (AFSOC) conducts various training activities with multiple types of munitions in nearshore waters of the EGTTR (W–151). Training activities include air-to-surface gunnery and small diameter bomb/Griffin/Hellfire missile proficiency training. The following subsections describe the proposed actions included in Eglin AFB's LOA request.

Air-to-surface gunnery missions involve firing of live gunnery rounds from the AC–130 aircraft at targets on the water surface in the EGTTR. Ordnance used in this training includes 25 mm high explosive incendiary (HEI), 30 mm HEI, 40 mm HEI, and 105 mm HEI rounds. NEW ranges from about 0.07 to 4.7 pounds. The Air Force has developed a 105 mm training round (TR) that contains less than 10 percent of the amount of explosive material contained in the 105 mm full up (FU) round. The TR variant was developed as a means to mitigate acoustic impacts on marine mammals that could not be adequately surveyed at night by aircraft sensors. Today's AC–130 sensors allow for effective nighttime visual surveys but with reduced explosive material the TR rounds remain a valuable mitigation for reducing acoustic impacts.

Water ranges within the EGTTR that are typically used for gunnery operations include W–151A, W–151B, W–151C, and W–151D. However, W–151A is the most frequently used water range due to its proximity to Hurlburt Field (where the gunnery flights originate). AC–130s normally transit from Hurlburt Field to the water ranges at a minimum of 4,000 ft above surface level. Potential target sites are typically established at least 15 miles from the coast (beyond the 12 nmi territorial sea boundary). Such a location places most mission activities over shallower continental shelf waters where marine mammal densities are typically lower and thus avoids the slope waters where more sensitive species (*e.g.,* Endangered Species Act (ESA)-listed sperm whale) generally reside. Targets consist of either an MK–25 floating flare or an inflatable target. For missions where flares are used, the aircrew scans a 5–NM radius around the potential target area to ensure it is clear of surface craft, protected species, and other objects that would make the site unsuitable. Scanning is accomplished using radar, Electro Optical (EO), infrared (IR) sensors, and visual means. An alternative area is selected if any non-mission vessels or protected marine species are detected within the 5 nmi search area. Once the scan is completed, the marking flare is dropped onto the water surface. The flare's burn time is typically 10 to 20 minutes but could be less if actually hit by one of the rounds. However, flares may burn as long as 40 minutes.

Missions using an inflatable target proceed under the same general protocol. A tow boat transits to a potential target site located at least 15 miles from the coast. The AC–130 then arrives at the site and, as with missions using flares, the aircrew scans an appropriate area around the potential target area (5 nmi radius for non-mission vessels and protected species) using visual observation and the aircraft's sensors. An alternative area would be selected if any protected marine species or non-mission vessels were detected within the search area. Once the scan is complete, the 20-foot target is inflated and deployed into the water. The tow boat then proceeds to pull the target, which is attached to a 2,200-foot cable. The target continues to float even when struck by ordnance and deflated. After the mission, the tow boat recovers any debris produced by rounds

striking the target, although little debris is expected.

After target deployment, the firing sequence is initiated. A typical gunship mission lasts approximately five hours without air-to-air refueling, and six hours when refueling is accomplished. A typical mission includes 1.5 to 2 hours of live fire. This time includes clearing the area and transiting to and from the range. Actual firing activities typically do not exceed 30 minutes. The number and type of munitions deployed during a mission varies with each type of mission flown. The 105-mm TR variants are used during nighttime training. Live fire events are continuous, with pauses during the firing usually well under a minute and rarely from two to five minutes.

Gunnery missions could occur any season of year, during daytime or nighttime hours. The quantity of live rounds expended is based on estimates provided by AFSOC regarding the annual number of missions and number of rounds per mission. The 105 mm FU rounds would typically be used during daytime missions, while the 105 mm TR variants would be used at night.

On March 5, 2014, NMFS issued a 5-year LOA in accordance with the MMPA for AFSOC's air-to-surface gunnery activities which is currently valid through March 4, 2019. This LOA request would supersede that authorization for AC–130 air-to-surface gunnery activities for another five years (2018–2023); it incorporates the updated approach to analysis requested by NMFS. No significant changes to these mission activities are anticipated in the foreseeable future. Table 4 shows the annual number of missions and gunnery rounds currently authorized under the existing LOA which will be carried forward for this LOA request.

TABLE 4—SUMMARY OF ANNUAL AFSOC AC–130 GUNNERY OPERATIONS

Munition	NEW (lbs)	Total munitions/ year	Number of daytime missions	Number of LI≤ nighttime missions
105 mm HE (FU)	4.7	750	25	45
105 mm HE (TR)	0.35	1,350		
40 mm HE	0.87	4,480		
30 mm HE	0.1	35,000		
25 mm HE	0.067	39,200		
Total		80,780		

HE = High Explosive; lbs = pounds; mm = millimeter; NEW = net explosive weight; TR = Training Round; FU = Full Up.

Two mission-day scenarios were developed to represent the average number of gunnery rounds expended during daytime and nighttime AC–130 air-to-surface gunnery missions; category D for daytime missions and category E for nighttime missions. Eglin AFB coordinated with the AFSOC Planning Office to confirm that annual allotments provided in Table 5 would still meet their training needs and averaged the annual number of each gunnery round with the annual number of mission days proposed for daytime and nighttime. The mission-day scenarios developed for AC–130 air-to-surface gunnery missions are shown in Table 5.

TABLE 5—AC–130 GUNNERY OPERATIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/ year
D	105 mm HE (FU)	4.7	Surface	30	25	750
	40 mm HE	0.87	Surface	64		1,600
	30 mm HE	0.1	Surface	500		12,500
	25 mm HE	0.067	Surface	560		14,000
E	105 mm HE (TR)	0.35	Surface	30	45	1,350
	40 mm HE	0.87	Surface	64		2,880
	30 mm HE	0.1	Surface	500		22,500
	25 mm HE	0.067	Surface	560		25,200
Total					70	80,780

HE = High Explosive; lbs = pounds; mm = millimeter; NEW = net explosive weight; TR = Training Round; FU = Full Up.

413th Flight Test Squadron

The United States Special Operations Command (SOCOM) has requested the 413th Flight Test Squadron (413 FLTS) to demonstrate the feasibility and capability of the Precision Strike Package and the Stand-Off Precision Guided Munitions (SOPGM) missile system on the AC–130 aircraft. SOCOM, in conjunction with A3 Operations at Wright-Patterson AFB, is fielding the new AC–130J for flight characterization, as well as testing and evaluation. AFSOC is integrating some of the same weapons on the AC–130W. Therefore, the activities described below for the 413 FLTS may involve either of these aircraft variants.

The proposed AC–130J gunnery testing associated with the 413 FLTS's Precision Strike Package would be similar to that described above for AFSOC AC–130 gunnery training in terms of location and general procedures. Testing would occur in W–151A and would involve firing either (1) PGU–44/B (105 mm HE] with FMU–153/B point detonation/delay fuse) or PGU–43B Target Practice (TP) rounds (105 mm TR) from a 105 mm M102 (U.S. Air Force designation M137A1) light-weight Howitzer cannon, or (2) PGU–13 HEI, PGU–46 HEI rounds, or PGU–15 TP rounds (inert) from a 30 mm GAU–23/A gun system. A MK–25 flare would be dropped prior to firing and used as a

target. Management measures would be the same as those described for AFSOC's AC–130 gunnery missions.

413 FLTS mission day scenarios were developed based on the number of mission days planned annually. Up to eleven mission days are planned for 413 FLTS operations annually. The total number of munitions were averaged over each day and are shown in Table 6. All missions would be conducted shoreward of the continental shelf break/200 m isobath as shown in Figure 1–7 in the Application).

TABLE 6—413 FLTS PRECISION STRIKE PACKAGE GUNNERY TESTING CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/ year
F	30 mm	0.1	Surface	33	3	99
G	105 mm FU	4.7	Surface	15	4	60
H	105 mm TR	0.35	Surface	15	4	60

FU = full up; lbs = pounds; mm = millimeter; NEW = net explosive weight; TR = Training Round.

Stand off precision guided missiles (SOPGMs) are proposed for use in testing feasibility of these missiles on AC–130 aircraft. Weapons include AGM–176 Griffin missiles, AGM–114 Hellfire missiles, GBU–39/B SDBs, and GBU–39B/B Laser Small Diameter Bombs (LSDBs). Initial actions would consist of various ground tests. After ground testing is completed, captive carry, store separation, and weapon employment tests would be conducted. Captive-carry missions would be conducted with an Instrumented Measurement Vehicle (IMV) to collect environmental data or an inert telemetry (TM) missile in order to evaluate the integration of the SOPGM with the AC–130J. Store separation missions would require a TM missile with an inert warhead and a live motor, if applicable, to verify that the weapon can be employed without significant risk to the aircraft.

Weapon employment missions would be flown using any combination of inert and/or live weapons for a final end-to-end check of the system. Missions could be conducted over land or water ranges, with water ranges used for SDB/LSDB and Griffin missile tests. It is expected that over-water testing would be conducted at the GRATV target location. Similar to preceding mission descriptions, pre- and post-test surveys will be conducted within the applicable human and protected species safety zones.

Table 7 shows the mission-day scenarios and annual number of munitions expended annually for SOPGM testing. The 413 FLTS provided the number of munitions required over a span of four years. The numbers in the table represent the average per year (total number of munitions divided by four).

TABLE 7—413 FLTS SOPGM ANNUAL TESTING CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/ year
I	AGM–176 (Griffin)	4.58	Surface	5	2	10
J	AGM–114 (Hellfire)	29	Surface	5	2	10
K	GBU–39 (SDB I)	36	Surface	3	2	6
L	GBU–39 (LSDB)	36	Surface	5	2	10

AGM = Air-To-Ground Missile; GBU = Guided Bomb Unit; lbs = pounds; LSDB = Laser Small Diameter Bomb; SDB = Small Diameter Bomb.

780th Test Squadron

Testing activities conducted by the 780th Test Squadron (780 TS) include Precision Strike Weapon, Longbow missile littoral testing, and several other various future actions.

The U.S. Air Force Life Cycle Management Center and U.S. Navy, in cooperation with the 780 TS, conducts Precision Strike Weapon (PSW) test missions utilizing resources within the Eglin Military Complex, including sites in the EGTTR. The weapons used in testing are the AGM–158 A and B (Joint Air-to-Surface Standoff Missile (JASSM), and the GBU–39/B (SDB I).

The JASSM is a precision cruise missile designed for launch from outside area defenses against hardened, medium-hardened, soft, and area type targets. The JASSM has a range of more than 200 nmi and carries a 1,000-pound warhead. The JASSM has approximately 240 pounds of 2,4,6-trinitrotoluene (TNT) equivalent NEW. The specific explosive used is AFX–757, a type of plastic bonded explosive (PBX). The JASSM would be launched more than 200 nmi from the target location. Platforms for the launch would include B–1, B–2, B–52, F–16, F–18, and F–15E aircraft. Launch from the aircraft would occur at altitudes greater than 25,000 ft. The JASSM would cruise at altitudes greater than 12,000 ft for the majority of the flight profile until making the terminal maneuver toward the target.

The SDB is a guided bomb that is an important element of the Air Force's Global Strike Task Force. The SDB I carries a 217-pound warhead with approximately 37 pounds NEW. The explosive used is AFX–757. The SDB I may be launched from over 50 nmi away from the target location. Platforms for the launch include F–15E, F–16, and AC–130W aircraft. Launch from the aircraft occurs at altitudes greater than 5,000 ft above ground level (AGL). The SDB I then commences a non-powered glide to the intended target.

Up to two live and four inert JASSM missiles per year may be launched to impact a target at the GRATV target location. The JASSM missile would detonate upon impact with the target. Although impact would typically occur about 5 ft (1.5 m) above the water surface, detonations are assumed to occur at the water surface for purposes of impacts analysis.

Additionally, up to 6 live and 12 inert SDBs could also be deployed against targets in the same target area. Two SDB-Is could be launched simultaneously during two of the live

missions and four of the inert missions. Detonation of the SDBs would occur under one of two scenarios:

- Detonation upon impact with the target.
- Height of burst (HOB) test, which involves detonation 7 to 14 ft (2.2 to 4.5 m) in the air above the surface target.

There would generally be only one detonation per test event and thus no more than one detonation in any 24-hour period. In instances of a simultaneous SDB launch scenario, two bombs are deployed from the same aircraft at nearly the same time to strike the same target. It is expected that the bombs would strike the target within five seconds or less of each another. Under this scenario, the detonations are considered a single event (NEW is doubled) for the purpose of acoustic modeling and marine species impacts analysis. Modeling both detonations as a single event results in a conservative impact estimate. PSW munitions are shown in Table 8.

TABLE 8—SUMMARY OF ANNUAL PRECISION STRIKE WEAPON TESTS

Munitions	Number of live tests/year	Total number of live munitions	Number of inert tests/year	Total number of inert munitions
AGM–158 (JASSM)	2	2	4	4
GBU–39 (SDB I) Single Launch	2	2	4	4
GBU–39 (SDB I) Simultaneous Launch	2	4	4	8

JASSM = Joint Air-To-Surface Stand-Off Missile; SDB = Small Diameter Bomb.

Based on availability, one of two potential target types would be used during PSW tests. The first is a Container Express (CONEX) target that consists of up to five containers (each of which is 8 ft 6 in. length, 6 ft 3 in. in width and 6 ft 10.5 in. in height), strapped, braced, and welded together to form a single structure. The CONEX target would be constructed on land and shipped to the target location two to three days prior to the test. The other target type would be a barge target (125 ft in length, 30 ft in width and 12 ft in height), which would also be stationed at the target location two to three days prior to the test. During an inert mission, the JASSM would pass through the target and the warhead would sink to the bottom of the Gulf. Immediately following impact, the JASSM recovery team would pick up surface debris originating from the missile and target. Depending on the test schedule, the target could remain in the Gulf of Mexico for up to one month at a time. If the target is significantly damaged, and it is deemed impractical and unsafe to retrieve it, the target remains could be sunk through coordination with the U.S. Coast Guard or Tyndall AFB. Coordination with the U.S. Army Corps of Engineers would be required prior to sinking a target. PSW test activities would occur in W–151 at the GRATV target location. Targets are located in approximately 115 to 120 ft of water, about 17 miles offshore of Test Area A–3 on Santa Rosa Island (actual distance could range from 15 to 24 miles offshore). This area is the same as the Maritime WSEP test site, which is located 17 miles offshore. Test missions could occur during any time of the year but during daylight hours only.

In addition to the above description, future (Phase 2) testing of the SDB is planned by the Air Force Operational Test and Evaluation Center (AFOTEC) as shown in Table 9. AFOTEC proposes to expend two live and one inert GBU–53 (SDB II) weapons in the EGTTR. The live weapons would be deployed against moving boats with a length of 30 to 40 ft, while the inert weapon would be used against a smaller fiberglass boat.

TABLE 9—SUMMARY OF PHASE 1 AND PHASE 2 PRECISION STRIKE WEAPON LIVE TESTS

Weapon	NEW (lbs)	Number of live munitions released	Number of inert munitions released
AGM–158 (JASSM)	240	2	4
GBU–39 (SDB I)	37	2	4
GBU–39 (SDB I) Double Shot *	74	2	4
GBU–53 (SDB II)	22.84	2	1

AGM = Air-To-Ground Missile; GBU = Guided Bomb Unit; JASSM = Joint Air-To-Surface Standoff Missile; lbs = pounds; SDB = Small Diameter Bomb.

* NEW is doubled for each simultaneous launch.

The 780 TS/OGMT missions have been categorized based on the number of weapons released per day, assuming three mission days are planned annually. Representative mission days are shown in Table 10.

TABLE 10—780 TS/OGMT PRECISION STRIKE WEAPON TESTING CATERGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/year
M	AGM–158 (JASSM)	240	Surface	2	1	2
N	GBU–39 (SDB I)	37	Surface	2	1	2
	GBU–39 (SDB I) Double Shot *.	74	Surface	2		2

TABLE 10—780 TS/OGMT PRECISION STRIKE WEAPON TESTING CATERGORIZED AS REPRESENTATIVE MISSION DAYS—Continued

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/year
O	GBU–53 (SDB II)	22.84	Surface	2	1	2

AGM = Air-To-Ground Missile; GBU = Guided Bomb Unit; JASSM = Joint Air-To-Surface Standoff Missile; lbs = pounds; SDB = Small Diameter Bomb.
* NEW is doubled for each simultaneous launch.

The 780 TS plans to conduct other various testing activities that involve targets on the water surface in the EGTTR. Many of the missions would target small boats or barges. Weapons would primarily be delivered by aircraft, although a rail gun would be used for one test. Live warheads would be used for some missions, while others would involve inert warheads with a live fuse (typically contains a very small NEW). Total future munitions for 780 TS are listed in Table 11. As with the preceding missions using live weapons, safety zone enforcement and pre- and post-mission marine species monitoring would be required.

TABLE 11—780 TS ANNUAL MUNITIONS, OTHER FUTURE ACTIONS

Munition	NEW (lbs)	Number of releases	Proposed location	Target type	Detonation type
Joint Air-Ground Missile	27.41	2	W–151 (subareas A, S5, and S6).	HSMST or Boston Whaler type boat.	1—Point Detonation 1—Airburst.
Navy Rail Gun	Inert	19	W–151	Barge	Penetrating Rod.
	1	5	W–151	Barge	Airburst.
JDAM—Extended Range	Inert	3	W–151	Water surface (2) Barge (1)	Inert.
Navy HAAWC	Inert	2	W–151	Water surface	Inert.
Laser SDB (live fuse only)	0.4	4	W–151A	Small boats	Airburst or Surface.
SDB II Guided Test Vehicle (live fuse only).	0.4	4	W–151A	Small boats	Surface.

HAAWC = High Altitude Anti-Submarine Warfare Weapon Capability; HSMT = High Speed Maneuverable Surface Target; JDAM = Joint Direct Attack Munition; NEW = net explosive weight; SDB = Small Diameter Bomb.

The 780 TS/OGMT future missions primarily consist of one-day test events for each type of munition. Inert munitions and munitions being detonated as airbursts were not included in the development of these scenarios because no in-water acoustic impacts are anticipated. Therefore representative mission days were developed for live munitions resulting in surface detonations, as shown in Table 12.

TABLE 12—780 TS OTHER FUTURE ACTIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation type	Munitions per day	Mission days/year	Total munitions/year
P	Joint Air-Ground Missile	27.41	Surface	1	1	1
Q	Laser SDB (fuse only) and SDB II Guided Test Vehicle (fuse only).	0.4	Surface	2	4	8

HAAWC = High Altitude Anti-Submarine Warfare Weapon Capability; HSMT = High Speed Maneuverable Surface Target; JDAM = Joint Direct Attack Munition; N/A = not applicable; NEW = net explosive weight; SDB = Small Diameter Bomb.

96 Operations Group

The 96 Operations Group (OG), which conducts the 96 TW's primary missions of developmental testing and evaluation of conventional munitions, and command and control systems, anticipates support of air-to-surface missions for several user groups on an infrequent basis. As the organization that oversees all users of Eglin ranges, they have the authority to approve new missions that could be conducted in the EGTTR. Specific details on mission descriptions under this category have not been determined, as this is meant to capture future unknown activities. Subsurface detonations would be at 5 to 10 ft below the surface. Projected annual munitions expenditures and detonation scenarios are listed in Table 13.

TABLE 13—ANNUAL MUNITIONS FOR 96TH OPERATIONS GROUP SUPPORT

Munition	NEW (lbs)	Detonation scenario	Number annual releases
GBU–10 or GBU–24	945	Subsurface	1
AGM–158 (JASSM)	240	Surface	1

TABLE 13—ANNUAL MUNITIONS FOR 96TH OPERATIONS GROUP SUPPORT—Continued

Munition	NEW (lbs)	Detonation scenario	Number annual releases
GBU–12 or GBU–54	192	Subsurface	1
AGM–65 (Maverick)	86	Surface	2
GBU–39 (SDB I or LSDB)	37	Subsurface	4
AGM–114 (Hellfire)	20	Subsurface	20
105 mm full-up	4.7	Surface	125
40 mm	0.9	Surface	600
Live fuse	0.4	Surface	200
30 mm	0.1	Surface	5,000

AGM = air-to-ground missile; GBU = Guided Bomb Unit; lbs = pounds; LSDB = Laser Small Diameter Bomb; SDB = Small Diameter Bomb.

The 96 OG future missions have been categorized based on the number of weapons released per day, instead of treating each weapon release as a separate event. This approach is meant to satisfy NMFS requests for analysis and modeling of accumulated energy from multiple detonations over a 24-hour timeframe. Eglin AFB used all available information to determine these daily estimates, including historic release reports; however, these scenarios may not represent exact weapon releases because military needs and requirements are in a constant state of flux. The mission day scenarios for 96 OG annually are shown in Table 14.

Categories of missions for 96 OG were grouped (similar to Maritime WSEP) first using historical weapon releases per day. Next, the most recent weapons evaluation needs and requirements were considered to develop three different scenarios: Categories R, S, and T. Mission-day Category R represents munitions with larger NEW (192 to 945 pounds) and both surface and subsurface detonations. This category includes future requirements and provides flexibility for the military mission. To date, Category R levels of activity have not been conducted under 96 OG missions, and is considered a worst-case scenario. Category S represents munitions with medium levels of NEW (20 to 86 pounds) including surface and subsurface detonations. Category T represents munitions with smaller NEW (0.1 to 13 pounds) and includes surface detonations only.

TABLE 14—96 OG FUTURE MISSIONS CATEGORIZED AS REPRESENTATIVE MISSION DAYS

Mission category	Munition	NEW (lbs)	Detonation Type	Munitions per day	Mission days/year	Total munitions/year
R	GBU–10/–24	945	Subsurface (10-ft depth)	1	1	1
	AGM–158 (JASSM)	240	Surface	1		1
	GBU–12 or GBU–54	192	Subsurface (10-ft depth)	1		1
S	AGM–65 (Maverick)	86	Surface	1	2	2
	GBU–39 (SDB I or LSDB)	37	Subsurface	2		4
	AGM–114 (Hellfire)	20	Subsurface (10-ft depth)	10		20
T	105 mm full-up	4.7	Surface	13	10	130
	40 mm	0.9	Surface	60		600
	Live fuse	0.4	Surface	20		200
	30 mm	0.1	Surface	500		5,000

AGM = air-to-ground missile; GBU = Guided Bomb Unit; HEI = high explosive incendiary; JDAM = Joint Direct Attack Munition; LJDAM = Laser Joint Direct Attack Munition; LSDB = Laser Small Diameter Bomb; lbs = pounds; PGU = Projectile Gun Unit; mm = millimeter; SDB = Small Diameter Bomb.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see ''Proposed Mitigation'' and ''Proposed Monitoring and Reporting'').

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the Application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SAR; *www.nmfs.noaa.gov/pr/sars/*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.nmfs.noaa.gov/pr/species/mammals/*).

Table 15 lists all species with expected potential for occurrence in the EGTTR that could be subjected to acoustic impacts and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent

the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2016 US Atlantic and Gulf of Mexico Marine Stock Assessment Report (Hayes *et al.* 2017). All values presented in Table 15 are the most recent available at the time of publication and are available in the 2016 Stock assessment report (available online at: *http://www.nmfs.noaa.gov/pr/sars/*).

As described below, two marine mammal species (with 7 managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

TABLE 15—SPECIES PROPOSED FOR AUTHORIZED TAKE *

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Common Bottlenose dolphin.	*Tursiops truncatus*	Choctawatchee Bay ..	-/-:Y	179 (0.04,173, 2007)	1.7	3.4 (0.99)
		Pensacola/East Bay ..	-/-:Y	33 (0.80, UNK, 1993)	UND	UND
		St. Andrew Bay	-/-:Y	124 (0.21, UNK, 1993).	UND	UND
		Gulf of Mexico Northern Coastal.	-/-:N	7,185 (0.21, 6,044, 2012).	60	21 (0.66)
		Northern Gulf of Mexico Continental Shelf.	-/-:N	51,192 (0.10, 46,926, 2012).	469	56 (0.42)
		Northern Gulf of Mexico Oceanic.	-/-:N	5,806 (0.39, 4,230, 2009).	42	6.5 (0.65)
Atlantic spotted dolphin.	*Stenella frontalis*	Northern Gulf of Mexico.	-/-:N	37,611 (0.28, UNK, 2004).	UND	42 (0.45)

* Hayes *et al.* 2017.

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/*. CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

An additional 19 cetacean species could occur within the northeastern Gulf of Mexico, mainly occurring at or beyond the shelf break (*i.e.,* water depth of approximately 200 m (656.2 ft)) located beyond the W–151A test area. NMFS and Eglin AFB consider these 19 species to be rare or extralimital within the W–151A test location area. These species are the Bryde's whale (*Balaenoptera edeni*), sperm whale (*Physeter macrocephalus*), dwarf sperm whale (*Kogia sima*), pygmy sperm whale (*K. breviceps*), pantropical spotted dolphin (*Stenella attenuata*), Clymene dolphin (*S. clymene*), spinner dolphin (*S. longirostris*), striped dolphin (*S. coeruleoalba*), Blainville's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*M. europaeus*), Cuvier's beaked whale (*Ziphius cavirostris*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), Risso's dolphin (*Grampus griseus*), Fraser's dolphin (*Lagenodelphis hosei*), melon-headed whale (*Peponocephala electra*), rough-toothed dolphin (*Steno bredanensis*), and short-finned pilot whale (*Globicephala macrorhynchus*).

Of these species, only the sperm whale is listed as endangered under the ESA and as depleted throughout its range under the MMPA. Sperm whale occurrence within W–151A is unlikely because almost all reported sightings have occurred in water depths greater than 200 m (656.2 ft). The uncommon Bryde's whale occurs in waters at a depth of 100–300 m and has been proposed for listing under the ESA. However, trained observers will be vigilant in watching for these whales and ensuring they are not in the ZOI during mission activities. As such, Eglin AFB is not anticipating or requesting take for these species.

Because marine mammals from the other 19 species with potential occurrence within the northeast Gulf of Mexico listed above are unlikely to occur within the W–151A area, or are likely to move away from the target area in response to proposed mitigation measures, Eglin AFB has not requested authorization for, nor are we proposing to authorize take for them. Thus, we do not consider these species further in this notice.

Below we offer a brief introduction to the two species and relevant stocks that are likely to be affected by testing and training activities in the EGTTR. We provide a summary of available information regarding population trends and threats, and describe any information regarding local occurrence.

Common Bottlenose Dolphin

This species is not listed under the ESA but is protected under the MMPA. Along the United States east coast and northern Gulf of Mexico, the bottlenose dolphin stock structure is well studied. There are currently 34 stocks identified by NMFS in northern Gulf of Mexico including the Continental Shelf stock, Northern Coastal stock, Oceanic stock,

and 31 bay, sound and estuary stocks (BSE) (Waring *et al.* 2016).

Genetic, photo-identification, and tagging data support the concept of relatively discrete bay, sound, and estuary stocks (Waring *et al.,* 2016; Duffield and Wells 2002). NMFS has provisionally identified 31 such stocks which inhabit areas of contiguous, enclosed, or semi-enclosed water bodies adjacent to the northern Gulf of Mexico. The stocks are based on a description of dolphin communities in some areas of the Gulf coast. A community is generally defined as resident dolphins that regularly share a large portion of their range; exhibit similar genetic profiles; and interact with each other to a much greater extent than with dolphins in adjacent waters. Although the shoreward boundary of W–151 is beyond these environments, individuals from these stocks could potentially enter the project area. Movement between various communities has been documented (Waring *et al.,* 2016; Fazioli *et al.* 2006) reported that dolphins found within bays, sounds, and estuaries on the west central Florida coast move into the nearby Gulf waters used by coastal stocks. Air-to-surface activities will occur directly seaward of the area occupied by the Choctawhatchee Bay stock. The best abundance estimate for this stock, as provided in the Stock Assessment Report, is 179. Stocks immediately to the west and east of Choctawhatchee Bay include Pensacola/East Bay and St. Andrew Bay stocks. PBR for the Choctawhatchee Bay stock is 1.7 individuals. NMFS considers all bay, sound, and estuary stocks to be strategic.

Of the 31 stocks of Bay, Sound and Estuary (BSE) bottlenose dolphins recognized by NMFS, only 11 met the criteria for small and resident populations as a biologically important area. The Choctawhatchee Bay Stock has published data suggesting small and resident populations; however, it was one of the 21 remaining stocks that did not meet the biologically important area criteria (LaBrecque *et al.,* 2015). Therefore, no biologically important areas have been identified within or around the EGTTR Study Area.

The bottlenose dolphin is the most widespread and common cetacean in coastal waters of the Gulf of Mexico (Würsig *et al.,* 2000). The species is abundant in continental shelf waters throughout the northern Gulf of Mexico (Fulling *et al.,* 2003; Waring *et al.,* 2016), including the outer continental shelf, upper slope, nearshore waters, the DeSoto Canyon region, the West Florida Shelf, and the Florida Escarpment. Mullin and Fulling (2004) noted that in oceanic waters, bottlenose dolphins are encountered primarily in upper continental slope waters (less than 1,000 m (3281 ft) in bottom depth) and that highest densities are in the northeastern Gulf. Significant occurrence is expected near all bays in the northern Gulf.

Three coastal stocks have been identified in the northern Gulf of Mexico, occupying waters from the shore to the 20-m (66-ft) isobath: Eastern Coastal, Northern Coastal, and Western Coastal stocks. The Western Coastal stock inhabits nearshore waters from the Texas/Mexico border to the Mississippi River Delta. The Northern Coastal stock's range is considered to be from the Mississippi River Delta to the Big Bend region of Florida (approximately 84° W). The Eastern Coastal stock is defined from 84° W to Key West, Florida. Of the coastal stocks, the Northern Coastal Stock is geographically associated with the GRATV target location. PBR is 60 individuals. Prior to 2012, this stock was not considered strategic. However, beginning February 1, 2010 an Unusual Mortality Event of unprecedented size and duration has been ongoing (Litz *et al.,* 2014) that has resulted in NMFS' reclassification of this stock as strategic.

The Northern Gulf of Mexico Oceanic stock is provisionally defined as bottlenose dolphins inhabiting waters from the 200-m (656-ft) isobath to the seaward extent of the U.S. Exclusive Economic Zone. This stock is believed to consist of the offshore form of bottlenose dolphins. The continental shelf stock may overlap with the oceanic stock in some areas and may be genetically indistinguishable. PBR is 42 individuals, and the stock is not considered strategic.

Sounds emitted by bottlenose dolphins have been classified into two broad categories: Pulsed sounds (including clicks and burst-pulses) and narrow-band continuous sounds (whistles), which usually are frequency modulated. Clicks and whistles have a dominant frequency range of 110 to 130 kiloHertz (kHz) and a source level of 218 to 228 decibels (dB) referenced to one microPascal-meter (dB re 1 µPa-m peak-to-peak) (Au, 1993) and 3.4 to 14.5 kiloHertz (kHz) and 125 to 173 dB re 1 µPa-m peak-to-peak, respectively (Ketten, 1998). Whistles are primarily associated with communication and can serve to identify specific individuals (*i.e.,* signature whistles) (Janik *et al.,* 2006). Sound production is influenced by group type (single or multiple individuals), habitat, and behavior (Nowacek, 2005). Bray calls (low-frequency vocalizations; majority of energy below 4 kHz), for example, are used when capturing fishes in some regions (Janik, 2000). Additionally, whistle production has been observed to increase while feeding (Acevedo-Gutiérrez and Stienessen, 2004; Cook *et al.,* 2004). Whistles and clicks may vary geographically in terms of overall vocal activity, group size, and specific context (*e.g.,* feeding, milling, traveling, and socializing) (Jones and Sayigh, 2002; Zaretsky *et al.,* 2005; Baron, 2006).

Bottlenose dolphins can hear within a broad frequency range of 0.04 to 160 kHz (Au, 1993; Turl, 1993). Electrophysiological experiments suggest that the bottlenose dolphin brain has a dual analysis system: one specialized for ultrasonic clicks and another for lower-frequency sounds, such as whistles (Ridgway, 2000). Scientists have reported a range of highest sensitivity between 25 and 70 kHz, with peaks in sensitivity at 25 and 50 kHz (Nachtigall *et al.,* 2000). Recent research on the same individuals indicates that auditory thresholds obtained by electrophysiological methods correlate well with those obtained in behavior studies, except at lower (10 kHz) and higher (80 and 100 kHz) frequencies (Finneran and Houser, 2006).

Atlantic Spotted Dolphin

The Atlantic spotted dolphin occurs in two forms that may be distinct subspecies (Perrin *et al.,* 1987, 1994; Viricel and Rosel 2014): the large, heavily spotted form, which inhabits the continental shelf and is usually found inside or near the 200-m isobath; and the smaller, less spotted island and offshore form, which occurs in the Atlantic Ocean but is not known to occur in the Gulf of Mexico (Fulling *et al.,* 2003; Mullin and Fulling 2004; Viricel and Rosel 2014). In the Gulf of Mexico, Atlantic spotted dolphins occur primarily from continental shelf waters 10–200 m deep to slope waters less than 500 m deep (Fulling *et al.,* 2003; Mullin and Fulling 2004).

The most recent abundance estimate is 37,611 individuals in the northern Gulf of Mexico (outer continental shelf and oceanic waters) and is derived from fall surveys in 2000–2011 and spring/summer surveys in 2003–2004. According to the 2016 Stock Assessment Report, since these data are more than 8 years old, the current best population estimate is unknown (Hayes *et al.,* 2017). The northern Gulf of Mexico population is considered to be genetically distinct from western North Atlantic populations. PBR for this species is undetermined and the stock is not considered strategic.

A variety of sounds including whistles, echolocation clicks, squawks, barks, growls, and chirps have been recorded for the Atlantic spotted dolphin. Whistles have dominant frequencies below 20 kHz (range: 7.1 to 14.5 kHz), but multiple harmonics extend above 100 kHz, while burst pulses consist of frequencies above 20 kHz (dominant frequency of approximately 40 kHz) (Lammers *et al.,* 2003). Other sounds typically range in frequency from 0.1 to 8 kHz (Thomson and Richardson, 1995). Recorded echolocation clicks had two dominant frequency ranges at 40 to 50 kHz and 110 to 130 kHz, depending on source level (Au and Herzing, 2003). Echolocation click source levels as high as 210 dB re 1 μPa-m peak-to-peak have been recorded (Au and Herzing, 2003). Spotted dolphins in the Bahamas were frequently recorded during aggressive interactions with bottlenose dolphins (and their own species) to produce squawks (0.2 to 12 kHz broad band burst pulses; males and females), screams (5.8 to 9.4 kHz whistles; males only), barks (0.2 to 20 kHz burst pulses; males only), and synchronized squawks (0.1–15 kHz burst pulses; males only in a coordinated group) (Herzing, 1996).

Hearing ability for the Atlantic spotted dolphin is unknown. However, odontocetes are generally adapted to hear in relatively high frequencies (Ketten, 1997).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The hearing groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 Hz and 35 kHz, with best hearing estimated to be from 100 Hz to 8 kHz;
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz, with best hearing from 10 to less than 100 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera Kogia and Cephalorhynchus; including two members of the genus Lagenorhynchus, on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz.
- Pinnipeds in water; Phocidae (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kHz, with best hearing between 1–50 kHz;
- Pinnipeds in water; Otariidae (eared seals): Generalized hearing is estimated to occur between 60 Hz and 39 kHz, with best hearing between 2–48 kHz.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

Two marine mammal species (common bottlenose and Atlantic spotted dolphins) have the reasonable potential to co-occur with the proposed survey activities. Both species are classified as mid-frequency cetaceans.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The ''Estimated Take by Incidental Harassment'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis and Determination'' section considers the content of this section, the ''Estimated Take by Incidental Harassment'' section, and the ''Proposed Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

The proposed Eglin AFB mission activities have the potential to incidentally take marine mammals by exposing them to impulsive noise and pressure waves generated by live ordnance detonation at and below the surface of the water. Exposure to energy or pressure resulting from these detonations could result in Level A harassment (PTS and slight lung injury) and by Level B harassment (temporary threshold shift (TTS) and behavioral harassment).

Description of Sound Sources

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks of a sound wave. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound, and is typically measured using the dB scale. A dB is the ratio between a measured pressure (with sound) and a reference pressure (sound at a constant pressure, established by scientific standards). It is a logarithmic unit that accounts for large variations in amplitude; therefore, relatively small changes in dB ratings correspond to large changes in sound pressure. When referring to sound pressure levels (SPLs; the sound force per unit area), sound is referenced in the context of underwater sound pressure to 1 μPa. One pascal is the pressure resulting from a force of one newton exerted over an area of one square meter. The source level (SL) represents the sound level at a distance of 1 m from the source (referenced to 1 μPa). The received level is the sound level at the listener's position. Note that we reference all underwater sound levels in this document to a pressure of 1 μPa, and all airborne sound levels in this document are referenced to a pressure of 20 μPa.

Root mean square (rms) is the quadratic mean sound pressure over the

duration of an impulse. Rms is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Rms accounts for both positive and negative values; squaring the pressures makes all values positive so that one can account for the values in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in all directions away from the source (similar to ripples on the surface of a pond), except in cases where the source is directional. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, earthquakes, ice, and atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, and construction). A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient noise for frequencies between 200 Hz and 50 kHz (Mitson 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf noise becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions.
- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total noise at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times.
- *Biological:* Marine mammals can contribute significantly to ambient noise levels, as can some fish and shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz.
- *Anthropogenic:* Sources of ambient noise related to human activity include transportation (surface vessels and aircraft), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Shipping noise typically dominates the total ambient noise for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz; and, if higher frequency sound levels are created, they attenuate rapidly (Richardson *et al.,* 1995). Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

The sounds produced by proposed military operations in the EGTTR are considered impulsive, which is one of two general sound types, the other being non-pulsed. The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, and impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI 1986; Harris, 1998; NIOSH 1998; ISO 2003), and occur either as isolated events or repeated in some succession. These sounds have a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Acoustic Impacts

Please refer to the information given previously (*Description of Sound Sources*) regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Non-auditory physical or physiological effects; temporary or permanent hearing impairment; behavioral disturbance; stress; and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, duration of the sound exposure, and animal's activity at time of exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively as a result of exposure to noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to Eglin AFB's activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible

to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We briefly describe certain non-auditory physical effects which are categorized as Level A harassment as defined in the MMPA. These blast related effects include slight lung injury and gastrointestinal (GI) tract injury (Finneran and Jenkins, 2012).

The threshold for slight lung injury is based on a level of lung injury from which all exposed animals are expected to survive (zero percent mortality) (Finneran and Jenkins, 2012). Similar to the mortality determination, the metric is positive impulse and the equation for determination is that of the Goertner injury model (1982), corrected for atmospheric and hydrostatic pressures and based on the cube root scaling of body mass (Richmond *et al.,* 1973; U.S. Department of the Navy, 2001b). The equation is provided in Appendix A of the Application.

Gastrointestinal (GI) tract injuries are correlated with the peak pressure of an underwater detonation. GI tract injury thresholds are based on the results of experiments in the 1970s in which terrestrial mammals were exposed to small charges. The peak pressure of the shock wave was found to be the causal agent in recoverable contusions (bruises) in the GI tract (Richmond *et al.,* 1973, in Finneran and Jenkins, 2012). The experiments found that a peak SPL of 237 dB re 1 μPa predicts the onset of GI tract injuries, regardless of an animal's mass or size. Therefore, the unweighted peak SPL of 237 dB re 1 μPa is used in explosive impacts assessments as the threshold for slight GI tract injury for all marine mammals.

Marine mammals may experience auditory impacts when exposed to high-intensity sound, or to lower-intensity sound for prolonged periods. They may experience hearing threshold shift (TS) which is the loss of hearing sensitivity at certain frequency ranges (Kastak *et al.,* 1999; Schlundt *et al.,* 2000; Finneran *et al.,* 2002, 2005). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage); whereas, TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals. PTS data exists only for a single harbor seal (Kastak *et al.,* 2008) but are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dB above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as bombs) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

When a live or dead marine mammal swims or floats onto shore and is incapable of returning to sea, the event is termed a ''stranding'' (16 U.S.C. 1421h(3)). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series (*e.g.,* Geraci *et al.,* 1999). However, the cause or causes of most strandings are unknown (*e.g.,* Best 1982). Combinations of dissimilar stressors may combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other would not be expected to produce the same outcome (*e.g.,* Sih *et al.,* 2004). For further description of stranding events see, *e.g.,* Southall *et al.,* 2006; Jepson *et al.,* 2013; Wright *et al.,* 2013.

Temporary threshold shift (TTS) is the mildest form of hearing impairment that can occur during exposure to sound (Kryter 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the data published at the time of this writing concern TTS elicited by exposure to multiple pulses of sound.

Marine mammal hearing plays a critical role in communication with conspecifics, and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Currently, TTS data exist only for four species of cetaceans ((bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal (*Phoca vitulina*), and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Popov *et al.,* 2011). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on

noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007) and Finneran and Jenkins (2012).

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, and time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, and distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied, but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone to the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). There are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.;* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging), or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors, and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once

the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, and rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in subtler ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil 1997; Fritz *et al.,* 2002; Purser and Radford 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruptions of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory masking occurs when sound disrupts behavior by masking or interfering with an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, and navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, and precipitation) or anthropogenic (*e.g.,* shipping, sonar, and seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, and direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in

survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but it may result in a behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes, but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals caused by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007b; Di Iorio and Clark, 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's oceans from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic), contribute to elevated ambient sound levels, thus intensifying masking.

Acoustic Effects, Underwater

Explosive detonations at the water surface send a shock wave and sound energy through the water and can release gaseous by-products, create an oscillating bubble, or cause a plume of water to shoot up from the water surface. The shock wave and accompanying noise are of most concern to marine animals. Depending on the intensity of the shock wave and size, location, and depth of the animal, an animal can be injured, killed, suffer non-lethal physical effects, experience hearing related effects with or without behavioral responses, or exhibit temporary behavioral responses (*e.g.,* flight responses, temporary avoidance) from hearing the blast sound. Generally, exposures to higher levels of impulse and pressure levels would result in greater impacts to an individual animal.

The effects of underwater detonations on marine mammals are dependent on several factors, including the size, type, and depth of the animal; the depth, intensity, and duration of the sound; the depth of the water column; the substrate of the habitat; the standoff distance between activities and the animal; and the sound propagation properties of the environment. Thus, we expect impacts to marine mammals from EGTTR activities to result primarily from acoustic pathways. As such, the degree of the effect relates to the received level and duration of the sound exposure, as influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be.

The potential effects of underwater detonations from the proposed EGTTR mission activities may include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). However, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

In the absence of mitigation, impacts to marine species could result from physiological and behavioral responses to both the type and strength of the acoustic signature (Viada *et al.,* 2008). The type and severity of behavioral impacts are more difficult to define due to limited studies addressing the behavioral effects of impulsive sounds on marine mammals.

Hearing Impairment and Other Physical Effects—Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shift. Given the available data, the received level of a single pulse (with no frequency weighting) might need to be approximately 186 dB re 1 μPa2-s (*i.e.,* 186 dB sound exposure level (SEL) or approximately 221–226 dB p-p (peak)) in order to produce brief, mild TTS. Exposure to several strong pulses that each have received levels near 190 dB rms (175–180 dB SEL) might result in cumulative exposure of approximately 186 dB SEL and thus slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007).

Serious Injury/Mortality: The explosions from munitions would send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. In general, potential impacts from explosive detonations can range from brief effects (such as short term behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs, and death of the animal (Yelverton *et al.,* 1973; O'Keeffe and Young 1984). Physical damage of tissues resulting from a shock wave (from an explosive detonation) constitutes an injury. Blast effects are greatest at the gas-liquid interface (Landsberg 2000) and gas-containing organs, particularly the lungs and gastrointestinal tract, are especially susceptible to damage (Goertner 1982; Yelverton *et al.,* 1973). Nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble (Reidenberg and Laitman 2003). Severe damage (from the shock wave) to the ears can include tympanic membrane rupture, fracture of the ossicles, cochlear damage, hemorrhage, and cerebrospinal fluid leakage into the middle ear.

Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of

proximity to the point of detonation (DoN 2001).

Disturbance Reactions

Because the few available studies show wide variation in response to underwater sound, it is difficult to quantify exactly how sound from military operations at the EGTTR would affect marine mammals. It is likely that the onset of surface detonations could result in temporary, short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located.

The biological significance of any of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However generally, one could expect the consequences of behavioral modification to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Habitat abandonment due to loss of desirable acoustic environment; and
- Cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

While it may occur temporarily, we do not expect auditory masking to result in detrimental impacts to an individual's or population's survival, fitness, or reproductive success. Dolphin movement is not restricted within EGTTR area, allowing for movement out of the area to avoid masking impacts, and the sound resulting from the detonations is short in duration. Also, masking is typically of greater concern for those marine mammals that utilize low frequency communications, such as baleen whales and, as such, is not likely to occur for marine mammals in the EGTTR area.

Vessel and Aircraft Presence

The marine mammals most vulnerable to vessel strikes are slow-moving and/or spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* North Atlantic right whales (*Eubalaena glacialis*), fin whales, and sperm whales). Smaller marine mammals, including dolphins, are agile and move more quickly through the water, making them less susceptible to ship strikes.

Aircraft produce noise at frequencies that are well within the frequency range of cetacean hearing and also produce visual signals such as the aircraft itself and its shadow (Richardson *et al.,* 1995, Richardson and Wursig, 1997). A major difference between aircraft noise and noise caused by other anthropogenic sources is that the sound is generated in the air, transmitted through the water surface and then propagates underwater to the receiver, diminishing the received levels significantly below what is heard above the water's surface. Sound transmission from air to water is greatest in a sound cone 26 degrees directly under the aircraft.

There are fewer reports of reactions of odontocetes to aircraft than those of pinnipeds. Responses to aircraft by pinnipeds include diving, slapping the water with pectoral fins or tail fluke, or swimming away from the track of the aircraft (Richardson *et al.,* 1995). The nature and degree of the response, or the lack thereof, are dependent upon the nature of the flight (*e.g.,* type of aircraft, altitude, straight vs. circular flight pattern). Wursig *et al.* (1998) assessed the responses of cetaceans to aerial surveys in the north central and western Gulf of Mexico using a DeHavilland Twin Otter fixed-wing airplane. The plane flew at an altitude of 229 m (751.3 ft) at 204 km/hr (126.7 mph) and maintained a minimum of 305 m (1,000 ft) straight line distance from the cetaceans. Water depth was 100 to 1,000 m (328 to 3,281 ft). Bottlenose dolphins most commonly responded by diving (48 percent), while 14 percent responded by moving away. Other species (*e.g.,* beluga (*Delphinapterus leucas*) and sperm whales) show considerable variation in reactions to aircraft but diving or swimming away from the aircraft are the most common reactions to low flights (less than 500 m; 1,640 ft).

Direct Strike by Ordnance

Another potential risk to marine mammals is direct strike by ordnance, in which the ordnance physically hits an animal. Although strike from an item at the surface of the water while the animals are at the surface is possible, the potential risk of a direct hit to an animal within the target area would be low. Marine mammals spend the majority of their time below the surface of the water, and the potential for one bomb or missile to hit that animal at that specific time is highly unlikely. The 2002 *Eglin Gulf Test and Training Range (EGTTR) Programmatic Environmental Assessment* (Navy 2002) estimated that a maximum of 0.2 marine mammals could potentially be struck by projectiles, falling debris, and inert munitions each year.

Anticipated Effects on Habitat

The primary sources of marine mammal habitat impact are noise and pressure waves resulting from live weapon detonations. However, neither the noise nor overpressure constitutes a long-term physical alteration of the water column or ocean floor. Further, these effects are not expected to substantially affect prey availability, are of limited duration, and are intermittent. Impacts to marine fish were analyzed in the *Eglin Gulf Test and Training Range Environmental Assessment* (Department of the Air Force, 2015). While detonations of live ordnance from EGTTR activities have the potential to kill or injure marine fish, most fish species experience large numbers of natural mortalities. Any behavioral reactions of fish in the vicinity of underwater detonations would be relatively short term, localized, and are not expected to have lasting effects on the survival, growth, or reproduction of fish populations. Additionally, the relatively small levels of mortality potentially caused by EGTTR missions would not likely affect fish populations as a whole and would therefore not limit prey availability for marine mammals.

Other factors related to air-to-surface activities that could potentially affect marine mammal habitat include the introduction of metals, explosives and explosion by-products, other chemical materials, and debris into the water column and substrate due to the use of munitions and target vessels. The effects of each were analyzed under National Environmental Policy Act documentation (*Eglin Gulf Test and Training Range Environmental Assessment;* in preparation) and were determined to not be significant. The

analysis in the Range Environmental Assessment is provided in the following paragraphs.

Various metals would be introduced into the water column through expended munitions. The casings, fins, or other parts of large munitions such as bombs and missiles are typically composed primarily of steel but usually also contain small amounts of lead, manganese, phosphorus, sulfur, copper, nickel, and several other metals (U.S. Navy, 2013). Many smaller caliber rounds contain aluminum, copper, and zinc. Aluminum is also present in some explosive materials such as tritonal and PBXN–109. Lead is present in batteries typically used in vessels such as the remotely controlled target boats. Many metals occur naturally in seawater at varying concentrations and some, such as aluminum, would not necessarily be detrimental to the substrate or water column. However, at high concentrations, a number of metals (*e.g.,* lead) may be toxic to microbial communities in the substrate.

Munitions and other metal items would sink to the seafloor and would typically undergo one of three processes: (1) Enter the sediment where there is reduced oxygen content, (2) remain exposed on the ocean floor and begin to react with seawater, or (3) remain exposed on the ocean floor and become encrusted with marine organisms. The rate of deterioration would therefore depend on the specific composition of an item and its position relative to the seafloor/water column. Munitions located deep in the sediment would typically undergo slow deterioration. Some portion of the metal ions would become bound to sediment particles. Metal materials exposed to seawater would begin to slowly corrode. This process typically creates a layer of corroded material between the seawater and metal, which slows the movement of the metal ions into the adjacent sediment and water column. Therefore, elevated levels of metals in sediment would be restricted to a small zone around the munitions, and releases to the overlying water column would be diluted. A similar process would occur with munitions that become covered by marine growth. Direct exposure to seawater would be reduced, thereby decreasing the rate of corrosion.

Munitions that come to rest on the seafloor would slowly corrode and would release small amounts of metals to adjacent sediment and the water column. Metal particles that migrate into the water column would be diluted by diffusion and water movement. Elevated concentrations would be localized and would not be expected to significantly affect overall local or regional water quality. This expectation is supported by the results of two U.S. Navy studies related to munitions use and water quality, as summarized in U.S. Navy (2013). In one study, water quality sampling for lead, manganese, nickel, vanadium, and zinc was conducted at a shallow bombing range in Pamlico Sound off North Carolina immediately following a bomb training event with inert practice munitions. With the exception of nickel, all water quality parameters tested were within the state limits. The nickel concentration was significantly higher than the state criterion, although the concentration did not differ significantly from a control site located outside the bombing range. This suggests that bombing activities may not have been responsible for the elevated nickel concentration. The second study, conducted by the U.S. Marine Corps, included sediment and water quality sampling for 26 munitions constituents at several water training ranges. Metals included lead and magnesium. No levels were detected above screening values used at the water ranges.

Chemical materials with potential to affect substrates and the water column include explosives, explosion by-products, and fuel, oil, and other fluids (including battery acid) associated with vessel operations and the use of remotely controlled target boats. Explosives are complex chemical mixtures that may affect water or sediment quality through the by-products of their detonation and the distribution of unconsumed explosives. Some of the more common types of explosive materials used in air-to-surface activities include tritonal and research department explosive (RDX). Tritonal is primarily composed of 2,4,6-trinitrotoluene (TNT). Therefore, discussion in the remainder of this section will consider TNT and RDX to be representative of all explosives. During detonation, energetic compounds may undergo high-order (complete) detonation or low-order (incomplete) detonation, or they may fail to detonate altogether. High-order detonations consume almost all of the explosive material, with the remainder released into the environment as discrete particles. Analysis of live-fire detonations on terrestrial ranges have indicated that over 99.9 percent of TNT and RDX explosive material is typically consumed during a high-order detonation (USACE, 2003). Pennington *et al.* (2006) reported a median value of 0.006 percent and 0.02 percent for TNT and RDX residue, respectively, remaining after detonation. The annual total NEW for all combined munitions is 30,488 pounds. Using the more conservative (higher) value of 0.02 percent for residual material, a total of about 6.1 pounds of explosive material could be deposited into the EGTTR annually. For purposes of analysis, it may be conservatively assumed that all residual materials are deposited simultaneously and remain within W–151A and within the top 10 ft of the water column (10 ft is the maximum detonation scenario for any munition). In this case, the resulting concentration of explosive material would be about 8×10^{-8} milligrams/liter (mg/L). In reality, the materials would be dispersed throughout a larger surface area and water volume by currents, waves, and wind (for in-air detonations). Although there are no regulatory standards specifically for explosive materials in marine waters, this value may be compared with the Department of Defense Range and Munitions Use Working Group marine screening value for the amount of C–4 (another type of explosive composed of mostly RDX) remaining after detonation (as provided in U.S. Navy, 2013). The screening value is 5 mg/L, which is many orders of magnitude greater than the concentration calculated above.

Various by-products are produced during and immediately after detonation of TNT and RDX. During the brief time that a detonation is in progress, intermediate products may include carbon ions, nitrogen ions, oxygen ions, water, hydrogen cyanide, carbon monoxide, nitrogen gas, nitrous oxide, cyanic acid, and carbon dioxide (Becker, 1995). However, reactions quickly occur between the intermediates, and the final products consist mainly of carbon (*i.e.,* soot), carbon dioxide (CO_2), water, carbon monoxide (CO), and nitrogen gas (Swisdak, 1975). These substances are natural components of seawater. Other products, occurring at substantially lower concentrations, include hydrogen, ammonia, methane, and hydrogen cyanide, among others.

After detonation, the residual explosive materials and detonation by-products would be dispersed throughout the northern Gulf of Mexico by diffusion and by the action of wind, waves, and currents. A portion of the carbon compounds, such as CO and CO_2, would likely become integrated into the carbonate system (alkalinity and pH buffering capacity of seawater). Some of the nitrogen and carbon compounds would be metabolized or assimilated by phytoplankton and bacteria. Most of the gas products that do not react with the water or become

assimilated by organisms would be released to the atmosphere. In addition, many of the detonations would occur in the air or at the water surface. In these cases, some portion of the by-products could be widely distributed by wind. Given that the residual concentration of explosive material would be small, that most of the explosion by-products would be harmless or natural seawater constituents, and that by-products would dissipate or be quickly diluted, impacts resulting from high-order detonations would be negligible.

Low-order detonations consume a lower percentage of the explosive; and, therefore, a portion of the material is available for release into the environment. If the ordnance fails to detonate, the entire amount of energetic compound remains largely intact and is released to the environment over time as the munition casing corrodes. The likelihood of incomplete detonations is not quantified; however, the portion of munitions that could fail to detonate (*i.e.,* duds) has been estimated at between about 3 and 5 percent (USACE, 2007; Rand Corporation, 2005). Due to the potential dud rate, number of live munitions included in the 2015 REA, and NEW in each munition, an un-estimable but small amount of explosive material (TNT and RDX, among others) could enter the EGTTR annually through unexploded munitions. However, most of this material would not be available to the marine environment immediately. Explosive material would diffuse into the water through screw threads, cracks, or pinholes in the munition casings. Therefore, movement of explosive material into the water column would likely be a slow process, potentially ranging from months to decades.

After leaving the munition casing, explosive material would enter the sediment or water column. Similar to the discussion of explosive by-products above, chemical materials in the water column would be dispersed by currents and would eventually become uniformly distributed throughout the northern Gulf of Mexico. Explosive materials in the water column would also be subject to biotic (biological) and abiotic (physical and chemical) transformation and degradation, including hydrolysis, ultraviolet radiation exposure, and biodegradation. The results of a recent investigation suggest that TNT is rapidly degraded in marine environments by biological and photochemical processes (Walker *et al.,* 2006). Marine ecosystems are generally nitrogen limited compared with freshwater systems, and marine microbes such as bacteria may therefore readily use TNT metabolites (*e.g.,* ammonia and ammonium). TNT that is not biodegraded may sorb (bind to by absorption or adsorption) onto particulates, break down into dissolved organic matter, or dissolve into the water column. TNT is also subject to photochemical degradation, known as photolysis, whereby the ultraviolet component of sunlight degrades the compound into products similar to those produced by biodegradation. Photolysis is more effective in waters of shallower depth and/or with greater clarity. Uptake and metabolism of TNT has also been noted in phytoplankton. It is assumed that similar processes could affect other explosives such as RDX.

The results of studies of UXO in marine environments generally suggest that there is little overall impact to water quality resulting from the leaching of explosive material. Various researchers have studied an area in Halifax Harbor, Nova Scotia, where UXO was deposited in 1945. Rodacy *et al.* (2000) reported that explosives signatures were detectable in 58 percent of water samples, but that marine growth was observed on most of the exposed ordnance. TNT metabolites, suspected to result from biological decomposition, were also detected. In an earlier study (Darrach *et al.* 1998), sediment collected near unexploded (but broken) ordnance did not indicate the presence of TNT, whereas samples near intact ordnance showed trace explosives in the range of low parts per billion or high parts per trillion. The authors concluded that, after 50 years, the contents of broken munitions had dissolved, reacted, biodegraded, or photodegraded and that intact munitions appear to be slowly releasing their contents through corrosion pinholes or screw threads.

Hoffsommer *et al.* (1972) analyzed seawater (as well as sediment and ocean floor fauna) at known munitions dumping sites off Washington State and South Carolina for the presence of TNT, RDX, tetryl, and ammonium perchlorate. None of these materials were found in any of the samples. Walker *et al.* (2006) sampled seawater and sediment at two offshore sites where underwater demolition was conducted using 10-pound charges of TNT and RDX. Residual TNT and RDX were below the detection limit in seawater, including samples collected in the plume within five minutes of detonation.

Additional materials produced during air-to-surface activities would include petroleum products (primarily fuel and oil in target boats), battery acid, and plastics. Increased use of remotely controlled target boats and mission support vessels would increase the potential for fuel, oil, and battery acid to be deposited in the water (primarily through destruction of target boats). When hydrocarbons enter the ocean, the lighter-weight components evaporate, degrade by sunlight, and undergo chemical degradation. Many constituents are also consumed by microbes. Higher-weight molecular compounds are more resistant to degradation and tend to persist after these processes have occurred. Microbial breakdown of PCBs has been documented in estuarine and marine sediments (Agency for Toxic Substances and Disease, 2000). In addition, currents would disperse any hydrocarbons produced during test and training activities. It is anticipated that potential impacts to water quality due to petroleum-based products would be insignificant. Similarly, battery acid, while possibly having a temporary and local effect on the water column, would be quickly dispersed and diluted by water currents.

Debris deposited on the seafloor would include spent munitions fragments and possibly pieces of targets (fiberglass, plywood, etc.). Debris would not appreciably affect the sandy seafloor. Debris moved by water currents could scour the bottom, but sediments would quickly refill any affected areas, and overall effects to benthic communities would be minor. Large pieces of debris would not be as prone to movement on the seafloor and could result in beneficial effects by providing habitat for encrusting organisms, fish, and other marine fauna. Target boats have foam-filled hulls, and most of the pieces are designed to float in order to facilitate collection for a damage assessment. Overall, the quantity of material deposited on the seafloor would be small compared with other sources of debris in the Gulf of Mexico. Hardbottom habitats and artificial reefs would be avoided when possible through location of target sites and training missions and would not be likely to be affected by debris. There is a potential for some debris to be carried by currents and interact with the substrate, but damage to natural or artificial reefs is not expected and the impacts would not be significant.

Previous Monitoring Results

Below is a summary of annual marine mammal monitoring reports required as part of LOAs and IHAs issued to Eglin AFB. AFSOC gunnery missions were scheduled over nine days in 2012, three days in 2013, 10 days in 2014, and eight days in 2015. There was no recorded

take of marine mammals during this time period. Thirteen days of maritime strike operations took place in 2013 and 2014 with no recorded takes. WSEP missions were held over four days in 2015 and five days in 2016 with no observable takes before, during, and after each mission. In summary, Eglin AFB reports that since 2012 no observable take of marine mammals has occurred incidental to numerous missions and mission activities in the EGTTR.

While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat and prey species would be temporary and reversible. The main impact associated with the proposed activity would be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice. Marine mammals are anticipated to temporarily vacate the area of live detonations. However, these events are usually of short duration, and animals are anticipated to return to the activity area during periods of non-activity. Thus, based on the preceding discussion, we do not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this LOA, which will inform NMFS' consideration of the negligible impact determination.

For this military readiness activity, the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Authorized takes would primarily be by Level B harassment, as use of explosive sources has the potential to result in disruption of behavioral patterns and TTS for individual marine mammals. There is also some potential for auditory injury and tissue damage (Level A harassment) to result. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage from exposure to pressure waves from explosive detonation.

The criteria and thresholds used to estimate potential pressure and energy impacts to marine mammals resulting from detonations were obtained from Finneran and Jenkins (2012). Criteria used to analyze impacts to marine mammals include mortality, harassment that causes or is likely to cause injury (Level A) and harassment that disrupts or is likely to disrupt natural behavior patterns (Level B). Each category is discussed below with additional details provided in Appendix A of the application.

Mortality

Mortality risk assessment may be considered in terms of direct injury, which includes primary blast injury and barotrauma. The potential for direct injury of marine mammals has been inferred from terrestrial mammal experiments and from post-mortem examination of marine mammals believed to have been exposed to underwater explosions (Finneran and Jenkins, 2012; Ketten *et al.,* 1993; Richmond *et al.,* 1973). Actual effects on marine mammals may differ from terrestrial animals due to anatomical and physiological differences, such as a reinforced trachea and flexible thoracic cavity, which may decrease the risk of injury (Ridgway and Dailey, 1972).

Primary blast injuries result from the initial compression of a body exposed to a blast wave, and is usually limited to gas-containing structures (*e.g.,* lung and gut) and the auditory system (U.S. Department of the Navy, 2001b). Barotrauma refers to injuries caused when large pressure changes occur across tissue interfaces, normally at the boundaries of air-filled tissues such as the lungs. Primary blast injury to the respiratory system may be fatal depending upon the severity of the trauma. Rupture of the lung may introduce air into the vascular system, producing air emboli that can restrict oxygen delivery to the brain or heart.

Whereas a single mortality threshold was previously used in acoustic impacts analysis, species-specific thresholds are currently required. Thresholds are based on the level of impact that would cause extensive lung injury to one percent of exposed animals (*i.e.,* an impact level from which one percent of exposed animals would not recover). (Finneran and Jenkins, 2012). The threshold represents the expected onset of mortality, where 99 percent of exposed animals would be expected to survive. Most survivors would have moderate blast injuries. The lethal exposure level of blast noise, associated with the positive impulse pressure of the blast, is expressed as Pa·s and is determined using the Goertner (1982) modified positive impulse equation. This equation incorporates source/animal depths and the mass of a newborn calf for the affected species. The threshold is conservative because animals of greater mass can withstand greater pressure waves, and newborn calves typically make up a very small percentage of any cetacean group.

For the actions described in this proposed LOA, two species are expected to occur within the EGTTR Study Area: The bottlenose dolphin and the Atlantic spotted dolphin. Finneran and Jenkins (2012) provide known or surrogate masses for newborn calves of several cetacean species. For the bottlenose dolphin, this value is 14 kilograms (kg) (31 pounds). Values are not provided for the Atlantic spotted dolphin and, therefore, a surrogate species, the striped dolphin (*Stenella coeruleoalba*), is used. The mass provided for a newborn striped dolphin calf is 7 kg (15 pounds). Impacts analysis for the unidentified dolphin group (assumed to consist of bottlenose and Atlantic striped dolphins) conservatively used the mass of the smaller spotted dolphin. The Goertner equation, as presented in Finneran and Jenkins (2012) is used in

the acoustic model to develop impacts analysis in this LOA request. The equation is provided in Table 16.

Injury (Level A Harassment)

Potential injuries that may occur to marine mammals include blast related injury: Gastrointestinal (GI) tract injury and slight lung injury, and irrecoverable auditory damage. These injury categories are all types of Level A harassment as defined in the MMPA.

Slight Lung Injury—This threshold is based on a level of lung injury from which all exposed animals are expected to survive (zero percent mortality) (Finneran and Jenkins, 2012). Similar to the mortality determination, the metric is positive impulse and the equation for determination is that of the Goertner injury model (1982), corrected for atmospheric and hydrostatic pressures and based on the cube root scaling of body mass (Richmond *et al.,* 1973; U.S. Department of the Navy, 2001b). The equation is provided in Table 16.

Gastrointestinal Tract Injuries—GI tract injuries are correlated with the peak pressure of an underwater detonation. GI tract injury thresholds are based on the results of experiments in the 1970s in which terrestrial mammals were exposed to small charges. The peak pressure of the shock wave was found to be the causal agent in recoverable contusions (bruises) in the GI tract (Richmond *et al.,* 1973, in Finneran and Jenkins, 2012). The experiments found that a peak SPL of 237 dB re 1 μPa predicts the onset of GI tract injuries, regardless of an animal's mass or size. Therefore, the unweighted peak SPL of 237 dB re 1 μPa is used in explosive impacts assessments as the threshold for slight GI tract injury for all marine mammals.

Auditory Damage (PTS)—Another type of injury, permanent threshold shift or PTS, is auditory damage that does not fully recover and results in a permanent decrease in hearing sensitivity. As there have been no studies to determine the onset of PTS in marine mammals, this threshold is estimated from available information associated with TTS. According to research by the Navy (Navy, 2017) PTS thresholds are defined differently for three groups of cetaceans based on their hearing sensitivity: Low frequency, mid-frequency, and high frequency. Bottlenose and Atlantic spotted dolphins that are the subject of the EGTTR acoustic impacts analysis both fall within the mid-frequency hearing category. The PTS thresholds use dual criteria, one based on cumulative SEL and one based on peak SPL of an underwater blast. For a given analysis, the more conservative of the two is applied to afford the most protection to marine mammals. The mid-frequency cetacean criteria for PTS are provided in Table 16.

Non-Injurious Impacts (Level B Harassment)

Two categories of Level B harassment are currently recognized: Temporary threshold shift (TTS) and behavioral impacts. Although TTS is a physiological impact, it is not considered injury because auditory structures are temporarily fatigued instead of being permanently damaged.

TTS—Non-injurious effects on marine mammals, such as TTS, are generally extrapolated from data on terrestrial mammals (Southall *et al.,* 2007). Similar to PTS, dual criteria are provided for TTS thresholds, and the more conservative is typically applied in impacts analysis. TTS criteria are based on data from impulse sound exposures when available. According to the most recent data (Navy, 2017) the TTS onset thresholds for mid-frequency cetaceans are based on TTS data from a beluga whale exposed to an underwater impulse produced from a seismic watergun. The TTS thresholds consist of the SEL of an underwater blast weighted to the hearing sensitivity of mid-frequency cetaceans and an unweighted peak SPL measure. The dual thresholds for TTS in mid-frequency cetaceans are provided in Table 16.

Behavioral Impacts

Behavioral impacts refer to disturbances that may occur at sound levels below those considered to cause TTS in marine mammals, particularly in cases of multiple detonations. During an activity with a series of explosions (not concurrent multiple explosions shown in a burst), an animal is expected to exhibit a startle reaction to the first detonation followed by a behavioral response after multiple detonations. At close ranges and high sound levels, avoidance of the area around the explosions is the assumed behavioral response in most cases. Other behavioral impacts may include decreased ability to feed, communicate, migrate, or reproduce, among others. Such effects, known as sub-TTS Level B harassment, are based on observations of behavioral reactions in captive dolphins and beluga whales exposed to pure tones, a different type of noise than that produced from an underwater detonation (Finneran and Schlundt, 2004; Schlundt *et al.,* 2000). For multiple, successive detonations (*i.e.,* detonations happening at the same location within a 24-hour period), the threshold for behavioral disturbance is set 5 dB below the SEL-based TTS threshold, unless there are species- or group-specific data indicating that a lower threshold should be used. This is based on observations of behavioral reactions in captive dolphins and belugas occurring at exposure levels approximately 5 dB below those causing TTS after exposure to pure tones (Finneran and Jenkins, 2012; Finneran and Schlundt, 2004; Schlundt *et al.,* 2000).

Table 16 outlines the explosive thresholds, based on the best available science, used by NMFS to predict the onset of disruption of natural behavior patterns, PTS, tissue damage, and mortality.

Table 16. Explosive Criteria and Thresholds Used for Impact Analyses.

Mortality*	Level A Harassment			Level B Harassment	
	Slight Lung Injury[1]	GI Tract Injury	PTS	TTS	Behavioral
$91.4M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	$39.1M^{1/3}\left(1+\frac{D}{10.1}\right)^{1/2}$	Unweighted SPL: 237 dB re 1 μPa	Weighted SEL: 185 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 170 dB re 1 $\mu Pa^2 \cdot s$	Weighted SEL: 165 dB re 1 $\mu Pa^2 \cdot s$

Marine Mammal Occurrence

Bottlenose and Atlantic spotted dolphin density estimates used in this document were obtained from Duke University Marine Geospatial Ecology Lab Reports (Roberts *et al.,* 2016) which integrated 23 years of aerial and shipboard surveys, linked them to environmental covariates obtained from remote sensing and ocean models, and built habitat-based density models using distance sampling methodology. For bottlenose dolphins, geographic modeling strata from MMPA stock boundaries and seasonal strata were not defined because of the lack of information about seasonality in the Gulf of Mexico, as well as substantial spatial and seasonal biases in survey efforts (Roberts *et al.,* 2015a). Therefore, bottlenose dolphin numbers were modeled in the Gulf of Mexico using a single year-round model. Similarly for Atlantic spotted dolphins, there is no evidence that this species migrates or exhibits seasonal patterns in the Gulf of Mexico, so a single, year-round model that incorporated all available survey data was used (Roberts *et al.,* 2015b). The model results are available at the OBIS–SEAMAP repository found online (*http://seamap.env.duke.edu/*).

Two marine mammal density estimates were calculated for this proposed LOA. One density estimate is considered a large-scale estimate and is used for missions that could occur anywhere in W–151A, shoreward of the 200-m isobath. The mission sets that utilize the entire W–151A area include AFSOC's Air-to-Surface Gunnery Training Operations and 413 FLTS's AC–130J Precision Strike Package Gunnery Testing (Scenarios D, E, F, G, and H). The other density estimate is considered a fine-scale estimate and is used for missions that are proposed specifically around the GRATV target area. The mission sets that utilize the nearshore GRATV target location are 86th FWS Maritime WSEP, 413 FLTS AC–130J and AC–130W Stand-Off Precision Guided Munitions Testing, 780th TS Precision Strike Weapons, 780 TS/OGMT future missions, and 96th OG future missions (Scenarios A, B, C, and I through T). Using two different density estimates based on the mission locations accounts for the differences between inshore and offshore distribution of bottlenose and Atlantic spotted dolphins, and provides more realistic take calculations.

Raster data provided online from the Duke University Marine Geospatial Ecology Lab Report was imported into ArcGIS and overlaid onto the W–151A area. Density values for each species were provided in 10 x 10 km boxes. The large-scale estimates for W–151A were obtained by averaging the density values of these 100 km² boxes within the W–151A boundaries and converted to number of animals per km². Fine-scale estimates were calculated by selecting nine 100 km² boxes centered around the GRATV target location and averaging the density values from those boxes. Large-scale and fine-scale density estimates are provided in Table 17.

TABLE 17—MARINE MAMMAL DENSITY ESTIMATES FOR EGTTR TESTING AND TRAINING ACTIVITIES

Species	Large-scale density estimate [a] (animals per km²)	Fine-scale density estimate [b] (animals per km²)
Bottlenose dolphin [c]	0.276	0.433
Atlantic spotted dolphin [d]	0.160	0.148

[a] Large-scale estimates incorporate the entire W–151A area.
[b] Fine-scale estimates incorporate the nine 10 km² boxes centered around the GRATV location.
[c] Densities derived from Roberts *et al.* 2015a.
[d] Densities derived from Roberts *et al.* 2015b.

Density estimates usually assume that animals are uniformly distributed within the prescribed area, even though this is likely rarely true. Marine mammals are often clumped in areas of greater importance, for example, in areas of high productivity, lower predation, safe calving, etc. Furthermore, assuming that marine mammals are distributed evenly within the water column does not accurately reflect behavior. Databases of behavioral and physiological parameters obtained through tagging and other technologies have demonstrated that marine animals use the water column in various ways. Some species conduct regular deep dives while others engage in much shallower dives, regardless of bottom depth. Assuming that all species are evenly distributed from surface to bottom can present a distorted view of marine mammal distribution in any region. Density is assumed to be two-dimensional, and exposure estimates are, therefore, simply calculated as the product of affected area, animal density, and number of events. The resulting exposure estimates are considered conservative, because all animals are presumed to be located at the same depth, where the maximum sound and pressure ranges would extend from detonations, and would, therefore, be exposed to the maximum amount of energy or pressure. In reality, it is highly likely that some portion of marine mammals present near the impact area at the time of detonation would be at various depths in the water column and not necessarily occur at the same depth corresponding to the maximum sound and pressure ranges.

A mission-day based analysis was utilized in order to model accumulated energy over a 24-hour timeframe where each mission-day scenario would be considered a separate event. As described previously, Eglin AFB developed multiple mission-day categories separated by mission groups and estimated the number of days each category would be executed annually. In total, there are 20 different mission-day scenarios included in the acoustic analysis Labeled A–T. Table 18 below summarizes the number of days each mission-day scenario, or event, would be conducted annually in the EGTTR.

TABLE 18—ANNUAL NUMBER OF DAYS PROPOSED FOR EACH MISSION CATEGORY DAY

Mission groups	Mission category day	Number of mission days/year
86 FWS Maritime WSEP	A	2
	B	4
	C	2
AFSOC Air-to-Surface Gunnery	D	25
	E	45
413 FLTS PSP Gunnery	F	3
	G	4
	H	4
413 FLTS SOPGM	I	2
	J	2
	K	2
	L	2
780 TS Precision Strike Weapon	M	1
	N	1
	O	1

TABLE 18—ANNUAL NUMBER OF DAYS PROPOSED FOR EACH MISSION CATEGORY DAY—Continued

Mission groups	Mission category day	Number of mission days/year
780 TS Other Tests	P	1
	Q	4
96 OG Future Missions	R	1
	S	2
	T	10

Take Calculation and Estimation

Eglin AFB completed acoustic modeling to determine the distances from their explosive ordnance corresponding to NMFS' explosive thresholds. These distances were then used with each species' density to determine exposure estimates. Below is a summary of the methodology for those modeling efforts. Appendix A in the application provides additional details.

The maximum estimated range, or radius, from the detonation point to the point at which the various thresholds extend for all munitions proposed to be released in a 24-hour time period was calculated based on explosive acoustic characteristics, sound propagation, and sound transmission loss in the EGTTR. Results are shown in Table 19. These calculations incorporated water depth, sediment type, wind speed, bathymetry, and temperature/salinity profiles. Transmission loss was calculated from the explosive source depth down to an array of water depth bins (0 to 160 m). Impact volumes were computed for each explosive source (based on the total number of munitions released on a representative mission day). The impact volume is a cylinder extending from surface to seafloor, centered at the sound source with a radius set equal to the maximum range, Rmx, across all depths and azimuths at which the particular metric is still above the threshold. The total energy for all weapons released as part of a representative mission day was calculated to assess impacts from the accumulated energy resulting from multiple weapon releases within a 24-hour period. The number of animals impacted is computed by multiplying the area of a circle with radius Rmax, by the original animal density given in animal per km^2.

TABLE 19—THRESHOLD RADII (IN KILOMETERS) FOR EGTTR AIR-TO-SURFACE TESTING AND TRAINING

Mission-day category	Mortality	Level A harassment				Level B harassment		
	Modified Goertner Model 1	Slight lung injury	GI Tract Injury	PTS		TTS		Behavioral
		Modified Goertner Model 2	237 dB SPL	185 dB SEL	230 dB Peak SPL	170 dB SEL	224 dB Peak SPL	165 dB SEL
Bottlenose Dolphin								
A	0.427	0.768	0.348	1.039	0.705	5.001	1.302	8.155
B	0.107	0.225	0.156	0.43	0.317	2.245	0.585	3.959
C	0.037	0.085	0.083	0.32	0.169	1.128	0.312	1.863
D	0.024	0.055	0.059	0.254	0.12	0.982	0.222	1.413
E	0.01	0.024	0.034	0.232	0.069	0.878	0.126	1.252
F	0.003	0.007	0.019	0.096	0.033	0.218	0.062	0.373
G	0.024	0.055	0.059	0.167	0.12	0.552	0.222	0.809
H	0.006	0.015	0.025	0.097	0.051	0.229	0.093	0.432
I	0.023	0.054	0.059	0.125	0.119	0.328	0.22	0.572
J	0.045	0.101	0.096	0.167	0.195	0.555	0.36	0.812
K	0.057	0.128	0.117	0.164	0.237	0.541	0.438	0.795
L	0.057	0.128	0.117	0.2	0.237	0.654	0.438	0.953
M	0.12	0.249	0.22	0.211	0.447	0.761	0.825	1.123
N	0.076	0.168	0.149	0.202	0.302	0.671	0.557	0.982
O	0.047	0.107	0.101	0.136	0.204	0.432	0.376	0.64
P	0.051	0.115	0.107	0.116	0.217	0.271	0.4	0.527
Q	0.007	0.016	0.026	0.073	0.053	0.149	0.098	0.207
R	0.427	0.768	0.348	0.811	0.705	4.316	1.302	6.883
S	0.142	0.286	0.156	0.692	0.317	3.941	0.585	5.132
T	0.024	0.055	0.059	0.224	0.12	0.837	0.222	1.209
Atlantic Spotted Dolphin								
A	0.504	0.886	0.348	1.039	0.705	5.001	1.302	8.155
B	0.133	0.266	0.156	0.43	0.317	2.245	0.585	3.959
C	0.047	0.104	0.083	0.32	0.169	1.128	0.312	1.863
D	0.03	0.067	0.059	0.254	0.12	0.982	0.222	1.413
E	0.013	0.03	0.034	0.232	0.069	0.878	0.126	1.252
F	0.004	0.009	0.019	0.096	0.033	0.218	0.062	0.373
G	0.03	0.067	0.059	0.167	0.12	0.552	0.222	0.809
H	0.008	0.018	0.025	0.097	0.051	0.229	0.093	0.432
I	0.03	0.067	0.059	0.125	0.119	0.328	0.22	0.572
J	0.057	0.124	0.096	0.167	0.195	0.555	0.36	0.812
K	0.072	0.157	0.117	0.164	0.237	0.541	0.428	0.795
L	0.072	0.157	0.117	0.2	0.237	0.654	0.438	0.953
M	0.15	0.29	0.22	0.211	0.447	0.761	0.825	1.123
N	0.096	0.201	0.149	0.202	0.302	0.671	0.557	0.982
O	0.06	0.131	0.101	0.136	0.204	0.432	0.376	0.64
P	0.065	0.141	0.107	0.116	0.217	0.271	0.4	0.527
Q	0.009	0.02	0.026	0.073	0.053	0.149	0.098	0.207
R	0.504	0.886	0.348	0.811	0.705	4.316	1.302	6.883
S	0.172	0.336	0.156	0.692	0.317	3.941	0.585	5.132
T	0.03	0.067	0.059	0.224	0.12	0.837	0.222	1.209

The ranges presented above were used to calculate the total area (circle) of the zones of influence for each criterion/threshold. To eliminate ''double-counting'' of animals, impact areas from higher impact categories (*e.g.,* mortality) were subtracted from areas associated with lower impact categories (*e.g.,* Level A harassment). The estimated number of marine mammals potentially exposed to the various impact thresholds was calculated with a two-dimensional approach, as the product of the adjusted impact area, animal density, and annual number of events for each mission-day category. The calculations generally resulted in decimal values, suggesting that, in most cases, a fraction of an animal was exposed. The results were therefore rounded at the annual mission-day level and then summed for each criterion to obtain total annual take estimates from all EGTTR mission activities. A ''take'' is considered to occur for SEL metrics if the received level is equal to or above the associated threshold within the appropriate frequency band of the sound received, adjusted for the appropriate weighting function value of that frequency band. Similarly, a ''take'' would occur for impulse and peak SPL metrics if the received level is equal to or above the associated threshold. For impact categories with multiple criteria (*e.g.,* slight lung injury, GI tract injury, and PTS for Level A harassment) and criteria with two thresholds (*e.g.,* 187 dB SEL and 230 peak SPL for PTS), the criterion and/or threshold that yielded the higher exposure estimate was used for detonation impact analyses shows the total numbers of marine mammals potentially affected by all EGTTR testing and training mission activities annually (See Table 20). These exposure estimates do not take into account the proposed mitigation and monitoring measures which are expected to decrease the potential for impacts.

Acoustic analysis results indicate the potential for injury and non-injurious harassment (including behavioral harassment) to marine mammals in the absence of mitigation measures. Mortality was calculated as one (1) for bottlenose dolphins and zero (0) for Atlantic spotted dolphin. However, because the modeling is conservative and it did not include implementation of the mitigation and monitoring measures, the likelihood of mortality is small and the potential for Level A harassment takes would be significantly reduced. As such, NMFS is not proposing to authorize any take due to mortality.

Animals from the Northern Gulf of Mexico stock of spotted dolphins and the Northern Gulf of Mexico Continental shelf stock of bottlenose dolphins are likely to be affected. There is also a chance that a limited number of bottlenose dolphins from the Gulf of Mexico Northern Coastal stock could be affected. Animals from this stock are known to occur in waters greater than 20 m in depth. Even though the 20 m isopleth delineates the stock's range, it is an artificial boundary used for management purposes and is not ecologically based. However, most of the bottlenose dolphins potentially affected would be part of the Northern Gulf of Mexico Continental shelf stock.

TABLE 20—TOTAL NUMBER OF MARINE MAMMALS POTENTIALLY AFFECTED ANNUALLY BY AIR-TO-SURFACE TESTING AND TRAINING MISSIONS IN THE EGTTR

Species	Level A harassment		Level B harassment	
	Slight lung injury	PTS (SEL)	TTS (SEL)	Behavioral
Bottlenose dolphin	2	7	220	315
Atlantic spotted dolphin	0	2	85	120
Total	2	9	305	435

Proposed Mitigation

In order to issue an LOA under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, ''and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking'' for certain subsistence uses (latter not applicable for this action).

The NDAA of 2004 amended the MMPA as it relates to military-readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability of being implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Mitigation for Marine Mammals and Their Habitat

Eglin AFB has proposed potential practicable and effective mitigation measures, which include a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the military-readiness activity. Proposed mitigation measures include the following:

Timing Restrictions—With the exception of gunnery operations, missions will take place no earlier than two hours after sunrise. This measure provides observers with adequate visibility necessary for two hour pre-mission monitoring. Missions must also be completed at least 30 minutes before

sunset which will allow adequate visibility for post-mission monitoring.

Trained Observers—All monitoring will be conducted by personnel who have completed Eglin's Marine Species Observer Training Course, which was developed in cooperation with NMFS. This training includes a summary of environmental laws, consequences of non-compliance, description of an observer's role, pictures and descriptions of protected species and protected species indicators, survey methods, monitoring requirements, and reporting procedures. The training will be provided to user groups either electronically or in person by an Eglin AFB representative. Any person acting as an observer for a particular mission must have completed the training within the year prior to the mission. Names of personnel who have completed the training will be submitted to Eglin AFB along with the date of completion. In cases where multiple survey platforms are required to cover large survey areas, a Lead Biologist will be designated to lead all monitoring efforts and coordinate sighting information with the Test Director or Safety Officer.

Pre- and Post-Mission Monitoring—For each live mission, at a minimum, pre- and post-mission monitoring will be required. Missions will occur no earlier than two hours after sunrise and no later than two hours prior to sunset to ensure adequate daylight for pre- and post-mission monitoring, with the exception of AFSOC and the 413 FLTS gunnery missions. In those cases, aircrews will utilize aircraft instrumentation and sensors to monitor the area.

Monitoring will be conducted from a given platform depending on the specific mission. The purposes of pre-mission monitoring are to (1) evaluate the mission site for environmental suitability and (2) verify that the ZOI is free of visually detectable marine mammals and potential marine mammal indicators. Air Force range clearing vessels and protected species survey vessels will be on-site at least two hours prior to the mission. Vessel-based surveys will begin approximately one and one-half hours prior to live weapon deployment. Surveys will continue for approximately one hour or until the entire ZOI has been adequately surveyed, whichever comes first. At approximately 30 minutes prior to live weapon deployment, marine species observers will be instructed to leave the mission site and remain outside the safety zone, which on average will be 15 miles from the detonation point.

The duration of pre-mission surveys will depend on the area required to be surveyed and survey platforms (vessels versus aircraft). All marine mammal sightings including the species (if possible), number, location, and behavior of the animals will be documented on report forms that will be submitted to Eglin AFB after each mission. Missions will be postponed, relocated, or cancelled based on the presence of protected species within the survey areas.

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting sightings of any dead or injured marine mammals. Post-detonation monitoring surveys will commence once the mission has ended or, if required, as soon as the mission area is declared safe. Vessels will move into the survey area from outside the safety zone and monitor for at least 30 minutes. The duration of post-mission surveys will vary based on survey platform. Similar to pre-mission surveys, all sightings would be properly documented on report forms and submitted to Eglin AFB. Any authorized marine mammals that are detected in the ZOI during post-mission surveys will be counted as Level B takes.

If any marine mammals are killed or injured as a result of the mission, Eglin AFB would be contacted immediately. Observers would document the species or description of the animal, location, and behavior and, if practicable, take pictures and maintain visual contact with the animal. Eglin AFB must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–427–8401), and the Southeast Regional Office (phone within 24 hours of the injury or death) and await further instructions or the arrival of a response team on-site, if feasible. Activities shall cease and not resume until NMFS is able to review the circumstances of the prohibited take.

Mission Delay under Poor Sea State Conditions—Weather conducive to marine mammal monitoring is required to effectively conduct the pre- and post-mission surveys. Wind speed and the resulting surface conditions are critical factors affecting observation effectiveness. Higher winds typically increase wave height and create ''whitecap'' conditions, both of which limit an observer's ability to locate marine species at or near the surface. Air-to-surface missions will be delayed or rescheduled if the sea state is greater than number 4 as listed in Table 21 at the time of the mission. Protected species observers or the Lead Biologist will make the final determination of whether or not conditions are conducive to sighting protected species.

TABLE 21—SEA STATE SCALE FOR EGTTR PRE-MISSION SURVEYS

Sea state No.	Sea conditions
0	Flat, calm, no waves or ripples.
1	Light air, winds 1–2 knots; wave height to 1 foot; ripples without crests.
2	Light breeze, winds 3–6 knots; wave height 1–2 feet; small wavelets, crests not breaking.
3	Gentle breeze, winds 7–10 knots; wave height 2–3.5 feet; large wavelets, scattered whitecaps.
4	Moderate breeze, winds 11–16 knots; wave height 3.5–6 feet; breaking crests, numerous whitecaps.

Visibility is also a critical factor for flight safety issues when aerial surveys are being conducted. Therefore, a minimum ceiling of 305 m (1,000 ft) and visibility of 5.6 km (3 nmi) is required to support monitoring efforts and flight safety concerns.

Determination of ZOI Survey Areas—The ZOI is defined as the area or volume of ocean in which marine mammals could be exposed to various pressure or acoustic energy levels caused by exploding ordnance. Each threshold range listed in Table 19 represents a radius of impact for a given threshold of each munition/detonation scenario. These ranges will be used for determining the size of the area required to be monitored during pre-mission surveys for each activity. For any mission involving live munitions (other than gunnery rounds) an area extending out to the PTS harassment range for the corresponding mission-day scenario will be completely cleared of marine mammals prior to release of the first live ordnance. Depending on the mission-day scenario, the corresponding radius could be between 73 m for a live fuse surface detonation associated with mission-day scenario Q, and 1,039 m associated with mission-day scenario A. This would help ensure that no marine mammals will be within any of the Level A harassment or mortality zones during a live detonation event, significantly reducing the potential for these types of impacts to occur.

Some missions will be delayed to allow survey platforms to evacuate the human safety zone after pre-missions surveys are completed. For these delayed missions, Eglin proposes to include a buffer around the survey area

that would extend to the TTS harassment zone for the corresponding mission-day scenario. This would double, and in some cases triple, the size of the survey area for the PTS zone. This buffer will mitigate for the potential that an animal outside the area during pre-mission surveys would enter the Level A harassment or mortality zones during a mission. However, missions that consist solely of gunnery testing and training operations will actually survey larger areas based on previously established safety profiles and the ability to conduct aerial surveys of large areas from mission aircraft. These ranges are shown in Table 22. Comparing the monitoring area below with behavioral harassment threshold radii for Atlantic spotted dolphins for mission-day categories D through H (between 0.4 km and 1.4 km (0.2 and 0.8 nmi)) shows that a much larger area will be covered by this monitoring procedure.

Mission Delay Associated with Animals in Zone of Influence— A mission delay of live ordnance mission activities will occur if a protected species, large schools of fish, or large flocks of birds feeding at the surface are observed within the Level B harassment ZOI. Mission activities cannot resume until one of the following conditions is met: (1) Marine mammal is confirmed to be outside of the ZOI on a heading away from the target area; (2) marine mammal is not seen again for 30 minutes and presumed to be outside the Level A ZOI; or (3) large groupings of fish or birds leading to required delay are confirmed outside the ZOI.

Mission Abort if Sperm or Baleen Whales observed during Pre-mission Monitoring—Marine mammal species found in the Gulf of Mexico, including the federally listed sperm whale and the Bryde's whale, which is proposed for ESA listing, occur with greater regularity in waters over and beyond the continental shelf break. To avoid impacts to the sperm whale, AFSOC has agreed to conduct all gunnery missions within (shoreward of) the 200-m isobath, which is considered to be the shelf break for purposes of this document. Furthermore, mission activities will be aborted/suspended for the remainder of the day if one or more sperm or baleen whales are detected during pre-mission monitoring activities as no takes of these species have been authorized. This measure will incidentally provide greater protection to several other species as well. Trained observers will also be instructed to be vigilant in ensuring Bryde's whales are not in the ZOI.

TABLE 22—MONITORING AREA RADII FOR GUNNERY MISSIONS

Aircraft	Gunnery round	Monitoring area	Monitoring altitude	Operational altitude
AC–130 gunship	25 mm, 30 mm, 40 mm, 105 mm (FU and TR).	5 nmi (9,260 m)	6,000 ft	15,000–20,000 ft.
CV–22 Osprey	.50 cal, 7.62 mm	3 nmi (5,556 m)	1,000 ft	1,000 ft.

cal = caliber; ft = feet; FU = full up; m = meters; mm = millimeter; nmi = nautical miles; TR = Training Round.

Mitigation Measures for Gunnery Actions—Eglin AFB has identified and required implementation of operational mitigation measures for gunnery missions, including development of the 105-mm TR, use of ramp-up procedures (explained below), re-initiation of species surveys if live fire activities are interrupted for more than 10 minutes, and eliminating missions conducted over waters beyond the continental shelf.

The largest type of ammunition used during gunnery missions is a 105-mm round, which contains 4.7 pounds of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm). As a mitigation technique, the Air Force developed a 105-mm TR that contains only 0.35 pounds of HE. The TR was developed to substantially reduce the risk of harassment during nighttime operations, when visual surveying for marine mammals is of limited effectiveness (however, monitoring by use of the AC–130's instrumentation is effective at night).

Ramp-up procedures refer to the process of beginning with the least impactive action and proceeding to more impactive actions. In the case of gunnery activities, ramp-up procedures entail beginning a mission with the lowest caliber munition and proceeding to the highest, which means the munitions would be fired in the order of 25 mm, 40 mm, and 105 mm. The rationale for the procedure is that this process may allow marine species to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance.

If use of gunship weapons is interrupted for more than 10 minutes, Eglin AFB would be required to reinitiate applicable protected species surveys in the ZOI to ensure that no marine mammal species entered into the ZOI during that time.

The AC–130 gunship weapons are used in two phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined ready for use, the aircraft deploys a flare onto the surface of the water as a target, and the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-mm, 40-mm, and 105-mm rounds).

A ramp-up procedure will be required for the initial calibration phase and, after this phase, the guns may be fired in any order. Eglin AFB believes this process will allow marine species the opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return during the live-fire mission. This protocol provides a more realistic training experience for aircrews. In combat situations, gunship crews would not necessarily fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns might be used as required by real-time situations. An additional benefit of this protocol is that mechanical or ammunition problems with an individual gun can be resolved while live fire continues with functioning weapons. This diminishes the possibility of pause in live fire lasting 10 minutes or more, which would necessitate reinitiation of protected species surveys.

Based on our evaluation of Eglin AFB's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, while also considering personnel safety, practicality of implementation, and the impact of effectiveness of the military readiness activity.

Proposed Monitoring and Reporting

In order to issue an incidental take authorization for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

The following monitoring options have been developed to support various types of air-to-surface mission activities that may be conducted in the EGTTR. Eglin AFB users covered by this proposed LOA must meet specific test or training objectives and safety requirements and have different assets available to execute the pre- and post-mission surveys. The monitoring options and mitigation measures described in the subsections below balance all mission-essential parameters with measures that will provide adequate protection to marine mammals. Monitors will search for both authorized and non-authorized marine mammal species. Monitors will be instructed to be extra vigilant in ensuring that species of concern, including the sperm whale (listed as endangered under the ESA) and Bryde's whale (proposed for listing under the ESA) are clear of the ZOI during testing and training activities.

Vessel-based Monitoring—Pre-mission surveys conducted from surface vessels will typically begin at sunrise. Trained observers will be aboard designated vessels to conduct protected species surveys before and after each mission. These vessels will be dedicated solely to monitoring for protected marine species and species indicators during the pre-mission surveys. For missions that require multiple vessels to conduct surveys based on the size of the survey area, a Lead Biologist will be designated to coordinate all survey efforts, compile sighting information from the other vessels, function as the point of contact between the survey vessels and Tower Control on Santa Rosa Island, and provide final recommendations to the Safety Officer/ Test Director on the suitability of the mission site based on environmental conditions and survey results.

Survey vessels will run pre-determined line transects, or survey routes, that will provide sufficient coverage of the survey area. Monitoring activities will be conducted from the highest point feasible on the vessels. There will be at least two dedicated observers on each vessel, and they will utilize optical equipment with sufficient magnification to allow observation of surfaced animals.

All sighting information from pre-mission surveys will be communicated to the Lead Biologist on a pre-determined radio channel to reduce overall radio chatter and potential confusion. After compiling all the sighting information from the other survey vessels, the Lead Biologist will inform Tower Control on Santa Rosa Island on whether the area is clear of protected species or not. If the range is not clear, the Lead Biologist will provide recommendations on whether the mission should be delayed or cancelled. For example, a mission delay would be recommended if a small number of protected species are in the ZOI but appear to be on a heading away from the mission area. The delay would continue until the Lead Biologist has confirmed that the animals are no longer in the ZOI and traveling away from the mission site. On the other hand, a mission cancellation could be recommended if one or more protected species in the ZOI are found and there is no indication that they would leave the area on their own within a reasonable timeframe. Tower Control on Santa Rosa Island will relay the Lead Biologist's recommendation to the Safety Officer. The Safety Officer and Test Director will collaborate regarding range conditions based on the information provided by the Lead Biologist and the status of range clearing vessels. The Safety Officer will have final authority on decisions regarding delays and cancellations of missions.

Air Force Support Vessels—Air Force support vessels will consist of a combination of Air Force and civil service/civilian personnel responsible for mission site/target setup and range clearing activities. Air Force personnel will be within the mission area (on boats and the GRATV) for each mission well in advance of weapon deployment, typically near sunrise. They will perform a variety of tasks including target preparation, equipment checks, etc., and will observe for marine mammals and indicators as feasible throughout test preparation. However, such observations are considered incidental and would only occur as time and schedule permits. Any sightings would be relayed to the Lead Biologist.

The Eglin Safety Officer, in cooperation with the Tower Control on Santa Rosa Island will coordinate and manage all range clearing efforts and be in direct communication with the survey vessel team, typically through the Lead Biologist. All support vessels will be in radio contact with one another and with Tower Control. The Safety Officer will monitor all radio communications, but Tower Control will relay messages between the vessels and the Safety Officer. The Safety Officer and Tower Control will also be in continual contact with the Test Director throughout the mission and will convey information regarding range clearing progress and protected species survey status. Final decisions regarding mission execution, including possible mission delay or cancellation based on protected species sightings or civilian boat traffic interference, will be the responsibility of the Safety Officer, with concurrence from the Test Director.

Aerial-based Monitoring—Aircraft typically provide an excellent viewing platform for detection of marine

mammals at or near the surface. Depending on the mission, the aerial survey team will either consist of Eglin AFB personnel or their designees aboard a non-mission aircraft or the mission aircrew who have completed the Marine Species Observer Training. A description of each follows.

For non-mission aircraft, the pilot will be instructed in protected marine species survey techniques and will be familiar with marine species expected to occur in the area. One person in the aircraft will act as data recorder and is responsible for relaying the location, species (if possible), direction of movement, and number of animals sighted to the Lead Biologist. The aerial team will also identify protected species indicators such as large schools of fish and large, active groups of birds. Pilots will fly the aircraft in such a manner that the entire ZOI (and a buffer, if required) is monitored. Marine mammal sightings from the aerial survey team will be compiled by the Lead Biologist and communicated to the Test Director or Safety Officer. Similar to survey vessel requirements, all non-mission personnel will be required to exit the human safety zone before the mission can commence. As a result, the ZOI may not be monitored up to immediate deployment of live weapons. Due to this fact, the aerial team may be required to survey an additional buffer zone unless other monitoring assets, such as live video monitoring, can be employed.

Some mission aircraft have the capability to conduct aerial surveys immediately prior to releasing munitions. In those instances, aircrews that have completed the marine species observer training will make several passes over the target area to ensure the area is clear of all protected species. For mission aircraft in this category, aircrews will operate at reasonable and safe altitudes (dependent on the aircraft) appropriate to either visually scan the sea surface or utilize available instrumentation and sensors to detect protected species. Typical missions in this category are air-to-surface gunnery operations from AC–130 and CV–22 gunships. In some cases, other aerial platforms may be available to supplement monitoring activities for pre-mission surveys and during the missions.

Video-based Monitoring—Video-based monitoring may be accomplished via live high-definition video feed transmitted to CCF. Video monitoring typically facilitates data collection for the mission but can also allow remote viewing of the area for determination of environmental conditions and the presence of marine species up to the release time of live munitions. There are multiple sources of video that can be streamed to multiple monitors within CCF. When authorized for specific missions (*e.g.,* Maritime WSEP), a trained marine species observer from Eglin AFB will monitor all live video feed transmitted to CFF and will report any marine mammal sightings to the Safety Officer, who will also be at CCF. Employing this measure typically resolves any lapse between the time survey vessels or aircraft leave the safety zone after completing pre-mission surveys but before the mission actually begins.

The primary platform for video monitoring would be through the GRATV. Four video cameras are typically positioned on the GRATV (anchored on-site) to allow for real-time monitoring and data collection during the mission. The cameras will also be used to monitor for the presence of protected species. All cameras have a zoom capability of up to at least a 300-mm equivalent. At this setting, when targets are at a distance of 2 nmi from the GRATV, the field of view would be 195 ft by 146 ft. Video observers can detect an item with a minimum size of 1 square foot up to 4,000 m away. The GRATV will typically be located about 183 m (600 ft) from the target area; this range is well within the zooming capability of the video cameras.

Supplemental video monitoring can also be accomplished through the employment of additional aerial assets, when available. Eglin's aerostat balloon provides aerial imagery of weapon impacts and instrumentation relay. When utilized, it is tethered to a boat anchored near the GRATV but outside weapon impact areas. The balloon can be deployed to an altitude up to 2,000 ft above sea level. It is equipped with a high-definition camera system that is remotely controlled to pivot and focus on a specific target or location within the mission site. The video feed from the camera system is transmitted to CCF. Eglin may also employ other assets such as intelligence, surveillance, and reconnaissance aircraft to provide real-time imagery or relay targeting pod videos from mission aircraft. Unmanned aerial vehicles may also be employed to provide aerial video surveillance. While each of these platforms may not be available for all missions, they typically can be used in combination with each other and with the GRATV cameras to supplement marine mammal monitoring efforts.

Even with a variety of platforms potentially available to supply video feeds to CCF, the entire ZOI may not be visible for the entire duration of the mission. However, the targets and immediately surrounding areas will typically be in the field of view of the GRATV cameras and the observer will be able to identify any protected species that may enter the target area before weapon releases. In addition, the observer will be able to determine if any animals were injured immediately following the detonations. Should a protected marine species be detected on the live video, the weapon release can be stopped almost immediately because the video camera observer is in direct contact with Test Director and Safety Officer at CCF.

Acoustic Monitoring—Eglin will conduct a NMFS-approved passive acoustic monitoring (PAM) study as an initial step towards understanding acoustic impacts from underwater detonations. During a live mission event, the Eglin AFB proposes to collect data that measures energy and pressure levels from varying distances away from weapon impact points. The data would likely be recorded by hydrophones attached to buoys that are deployed just before the mission. After mission activities, the buoys would be collected, then the data would be downloaded and analyzed. The results would be compared to the various ranges to effects for Level A and Level B Harassment that were calculated with the acoustic model.

Eglin AFB and NMFS discussed the possibility of employing PAM as a required mitigation measure during EGTTR activities. However, human safety concerns and the inability to make mission go/no-go decisions in a timely manner are the most immediate obstacles for Eglin AFB implementing real-time PAM during live weapon missions in the EGTTR.

Eglin's current boat and aerial pre- and post-mission visual surveys have been successful in preventing impacts to marine mammals because no unauthorized takes have occurred as a result of these procedures under previous incidental take authorizations. Until Eglin AFB is confident that this first step toward a rudimentary PAM study is successfully implemented, the Air Force cannot commit to PAM as a mitigation measure, which would add multiple layers of complexities required to detect and localize marine mammals during a live mission event. Furthermore, Eglin would need to gain better understanding of PAM capabilities so mission-appropriate procedures could be developed for making go/no-go decisions in a timely manner. Given the level of success with current mitigation procedures and the high level of unknowns associated with

implementing PAM as part of mitigation procedures for Air Force activities, Eglin AFB and NMFS agreed that using PAM as a real-time mitigation measure is not practicable at this time.

AC–130 and CV–22 Gunship Procedures—After arriving at the mission site and prior to initiating firing events, gunships will conduct at least two complete orbits around the survey area at a minimum safe airspeed around the mission site at the appropriate monitoring altitude. Provided that marine mammals (and other protected species or indicators) are not detected, the aircraft will then begin the ascent to operational altitude, continuing to orbit the target area as it climbs. The initial orbits occur over a timeframe of approximately 10 to 15 minutes. Monitoring for marine mammals, vessels, and other objects will continue throughout the mission. If a towed target is used, mission personnel will ensure that the target remains in the center portion of the survey area to ensure gunnery impacts do not extend past the ZOI.

During the low-altitude orbits and climb, the aircrew will visually scan the sea surface within the aircraft's orbit circle for the presence of marine mammals. The surface scan will primarily be conducted by the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. During nighttime missions, crews will use night vision goggles during observation. In addition to visual surveys, aircraft optical and electronic sensors will also be used for site clearance. AC–130 gunships are equipped with low-light TV cameras and infrared detection sets (IDSs). The TV cameras operate in a range of visible and near-visible light. Infrared systems are capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies or from reflected and scattered thermal energy. In contrast to typical night-vision devices, visible light is not necessary for object detection. Infrared systems are equally effective during day or night use. The IDS is capable of detecting very small thermal differences. CV–22 aircraft have similar visual scanners and operable sensors; however, they operate at a much lower altitudes than the AC–130 gunships, and no HE rounds will be fired from these aircraft.

If any marine mammals are detected during pre-mission surveys or during the mission, activities will be immediately halted until the ZOI area is clear of all marine mammals, or the mission will be relocated to another target area. If the mission is relocated, the pre-mission survey procedures will be repeated. In addition, if multiple firing missions are conducted within the same flight, clearance procedures will precede each mission.

Gunship crews will conduct a post-mission survey beginning at the operational altitude and proceeding through a spiraling descent to the designated monitoring altitude. It is anticipated that the descent will occur over a three- to five-minute time period. During this time, aircrews will use similar equipment and instrumentation to scan the water surface for animals that may have been impacted during the gunnery mission. During daytime missions, visual scans will be used as well.

Coordination with Eglin Natural Resources Office—Prior to conducting live missions, proponents will coordinate with Eglin Natural Resources to be briefed on their mitigation and monitoring requirements. Throughout coordination efforts, mission assets available for monitoring will be identified and an implementation plan will be developed. Based on the assets, survey routes will be designed to incorporate the size of the monitoring area and determine whether a buffer will be required. Training and reporting requirements will also be communicated to the proponents

The following table lists known proponents and the monitoring platforms that may be employed for marine mammal monitoring before, during, and after live air-to-surface missions. As stated above, coordination with proponents before live missions will ensure these options are still available, as well as any changes to assets or mission capabilities for new proponents that would fall under this authorization. Eglin Natural Resources will ensure all practical measures will be implemented to the maximum extent possible to comply with the mitigation and monitoring requirements while meeting mission objectives

TABLE 23—MONITORING OPTIONS AVAILABLE FOR LIVE AIR-TO-SURFACE MISSION PROPONENTS OPERATING IN THE EGTTR

Mission [1]	Monitoring Platform		
	Vessel	Aerial	Video
86 FWS Maritime Weapons System Evaluation Program (WSEP)	•	....	•
Air Force Special Operations Command (AFSOC) Training			
Air-to-Surface Gunnery	....	•	
Small Diameter Bomb/Griffin Missile Training	....	•	
CV–22 Training	....	•	
413th Flight Test Squadron (FLTS)			
AC–130J Precision Strike Package Testing	....	•	
AC–130J Stand-Off Precision Guided Munitions Testing	....	•	
780th Test Squadron			
Precision Strike Weapon	•	•	
Longbow Littoral Testing	•		

86 FWS = 86th Fighter Weapons Squadron.

Monitoring and Reporting Measures

In addition to monitoring for marine species before and after missions, the following monitoring and reporting measures will be required.

- Within a year before the planned missions, all protected species observers will receive the Marine Species Observer Training Course developed by Eglin in cooperation with NMFS.
- Eglin AFB will track use of the EGTTR and protected species observation results through the use of protected species observer report forms.
- A summary annual report of marine mammal observations and mission activities will be submitted to the NMFS Southeast Regional Office and the NMFS Office of Protected Resources 90 days after completion of mission activities each year or 60 days prior to the issuance of any subsequent LOA for projects at the EGTTR, whichever comes first. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This annual report must include the following information:
  - Date and time of each mission.
  - A complete description of the pre-mission and post-mission activities related to mitigating and monitoring the effects of mission activities on marine mammal populations.
  - Results of the visual monitoring, including numbers by species/stock of any marine mammals noted injured or killed as a result of the missions, and number of marine mammals (by species if possible) that may have been harassed due to presence within the activity zone.
  - If any dead or injured marine mammals are observed or detected prior to mission activities, or injured or killed during mission activities, a report must be made to the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299, the Chief of the Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and the Florida Marine Mammal Stranding Hotline at 888–404–3922 within the next business day.
  - Any unauthorized impacts on marine mammals must be immediately reported to the National Marine Fisheries Service's Southeast Regional Administrator, at 727–842–5312, and the Chief of the Permits and Conservation Division, Office of Protected Resources, at 301–427–8401.

Adaptive Management

NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Eglin AFB regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures for these regulations.

Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include: (1) Results from Eglin AFB's acoustic monitoring study; (2) results from monitoring during previous year(s); (3) results from other marine mammal and/or sound research or studies; and (4) any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment. If, however, NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals in the Gulf of Mexico, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analyses applies to bottlenose dolphins and Atlantic spotted dolphins, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

For reasons stated previously in this document and based on the following factors, Eglin AFB's specified activities are not likely to cause long-term behavioral disturbance, serious injury, or death. Because the exposure model was conservative and calculated a single bottlenose dolphin death, along with the required mitigation and monitoring measures not incorporated into the model, NMFS does not anticipate or propose to authorize any take by mortality. The takes from Level B harassment would be due to disturbance of normal behavioral patterns and TTS. The potential takes from Level A harassment would be due to PTS and slight lung injury (not gastrointestinal tract injury).

NMFS has determined that direct strike by ordnance is highly unlikely. Although strike from a munition at the surface of the water while the animals are at the surface is possible, the potential risk of a direct hit to an animal within the target area would be low. The Air Force (2002 PEA) estimated that a maximum of 0.2 marine mammals could potentially be struck by projectiles, falling debris, and inert munitions each year.

Disruption of normal behavioral patterns constituting Level B harassment would be limited to reactions such as startle responses, movements away from the area, and short-term changes to behavioral state. These impacts are expected to be temporary and of limited duration due to the likely avoidance of the action area by marine mammals, short period of individual explosions themselves (versus continual sound source operation), and relatively short duration of the EGTTR operations (*i.e.* ranging from a few minutes to no more than four hours per day depending on the mission category).

Level B harassment in the form of TTS was modeled to occur in both

species for which take is authorized. If TTS occurs, it is expected to be at low levels and of short duration. As explained previously, TTS is temporary with no long term effects to species. The modeled take numbers are expected to be overestimates since NMFS expects that successful implementation of the required aerial-based, vessel-based and video-based mitigation measures could avoid TTS. Furthermore, monitoring results from previous Authorizations has demonstrated that it is uncommon to sight marine mammals within the ZOI, especially for prolonged durations. Results from monitoring programs associated with Eglin AFB's 2015 and 2016 Maritime WSEP activities have shown the absence of marine mammals within the ZOI during and after maritime operations.

NMFS expects that successful implementation of the required aerial-based, vessel-based and video-based mitigation measures would reduce take by Level A harassment in some instances. Marine mammals would likely begin to move away from the immediate target area once bombing begins, decreasing exposure to the full amount of acoustic energy. There have also been no marine mammal observations in the ZOI according to monitoring reports from previous years. Therefore, we anticipate that, because of the mitigation measures, low observation rate of marine mammals in the target area, and the likely limited duration of exposures, any PTS incurred would be in the form of only a small degree of PTS, rather than total deafness.

Other than for mortality, the take numbers proposed by NMFS do not consider mitigation or avoidance. Therefore, NMFS expects that Level A harassment is unlikely to occur at the numbers proposed for Authorization. However, since it is difficult to quantify the degree to which the mitigation and avoidance will reduce the number of animals that might incur Level A harassment (*i.e.* PTS, slight lung injury), NMFS proposes to authorize take by Level A harassment at the numbers derived from the exposure model. Moreover, the mitigation and monitoring measures proposed for the Authorization (described earlier in this document) are expected to further minimize the potential for both Level A and Level B harassment.

Impacts to habitat are not anticipated. Noise and pressure waves resulting from live weapon detonations are not likely to result in long-term physical alterations of the water column or ocean floor. These effects are not expected to substantially affect prey availability, are of limited duration, and are intermittent. Impacts to marine fish were analyzed in the *Eglin Gulf Test and Training Range Environmental Assessment* (Department of the Air Force, 2015). In the EA, it was determined that fish populations were unlikely to be affected and prey availability for marine mammals would not be impaired. Other factors related to EGTTR activities that could potentially affect marine mammal habitat include the introduction of metals, explosives and explosion by-products, other chemical materials, and debris into the water column and substrate due to the use of munitions and target vessels. However, the effects of each were analyzed in the EA and were determined to not be significant.

While animals may be impacted in the immediate vicinity of the target area, because of the short duration of the actual individual explosions themselves (versus continual sound source operation) combined with the relatively short duration of daily operations (*i.e.* ranging from a few minutes to no more than four hours per day depending on the mission category), NMFS has preliminarily determined that there will not be a substantial impact on marine mammals or their habitat in Gulf of Mexico ecosystems in the EGTTR. We do not expect that the proposed activity would impact rates of recruitment or survival of marine mammals since we do not expect mortality (which would remove individuals from the population) or serious injury to occur. In addition, the proposed activity would only occur in a small part of their overall range, so the impact of any potential temporary displacement would be negligible and animals would be expected to return to the area after the cessations of activities. Although the proposed activity could result in Level A (PTS and slight lung injury) and Level B (behavioral disturbance and TTS of lesser degree and shorter duration) harassment of marine mammals, the level of harassment is not anticipated to impact rates of recruitment or survival of marine mammals because the number of exposed animals is expected to be low due to the relatively short-term and site-specific nature of the activity. Furthermore, we do not anticipate that the effects would be detrimental to rates of recruitment and survival because we do not expect serious extended behavioral responses that would result in energetic effects at the level to impact fitness.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized and only 11 instances of Level A harassment are authorized. Remaining impacts would be within the non-injurious TTS or behavioral effects zones (Level B harassment consisting of generally temporary modifications in behavior);
- Effectiveness of mitigation and monitoring requirements which are designed and expected to avoid exposures that may cause serious injury and minimize the likelihood of PTS, TTS, or more severe behavioral responses;
- Adverse impacts to habitat are not expected; and
- Results from previous monitoring reports did not record any marine mammal takes associated with military readiness activities occurring in the EGTTR.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of LOAs, NMFS consults internally, in this case with Southeast Regional Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed marine mammal species is proposed for authorization or expected to result from

the proposed activities. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Classification

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The RFA requires a Federal agency to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. 605 (b), that the action will not have a significant economic impact on a substantial number of small entities. A description of this proposed rule and its purpose are found earlier in the preamble for this action and is not repeated here. Eglin AFB is the sole entity that will be affected by this rulemaking and is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Any requirements imposed by LOAs issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to Eglin AFB.

NMFS does not expect the issuance of these regulations or the associated LOAs to result in any impacts to small entities pursuant to the RFA. Because this action, if adopted, would directly affect Eglin AFB and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is necessary, and none has been prepared.

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Marine mammals, Penalties, Reporting and Recordkeeping requirements.

Dated: December 18, 2017.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 218 is proposed to be amended as follows:

PART 218—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart G consisting of §§ 218.60 through 218.69 to read as follows:

Subpart G—Taking of Marine Mammals Incidental to Testing and Training Activities Conducted at the Eglin Gulf Test and Training Range in the Gulf of Mexico

Sec.
218.60 Specified activity and specified geographical region.
218.61 Effective dates.
218.62 Permissible methods of taking.
218.63 Prohibitions.
218.64 Mitigation.
218.65 Requirements for monitoring and reporting.
218.66 Letters of Authorization.
218.67 Renewals and Modifications of Letters of Authorization.
218.68 [Reserved]
218.69 [Reserved]

Subpart G—Taking of Marine Mammals Incidental to Testing and Training Activities Conducted at the Eglin Gulf Test and Training Range in the Gulf of Mexico.

§ 218.60 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to Eglin Air Force Base (Eglin AFB) and those persons it authorizes to conduct activities on its behalf, for the taking of marine mammals as outlined in paragraph (b) of this section and incidental to testing and training missions in the Eglin Gulf Test and Training Range (EGTTR).

(b) The taking of marine mammals by Eglin AFB pursuant to a Letter of Authorization (LOA) is authorized only if it occurs at the EGTTR in the Gulf of Mexico.

§ 218.61 Effective dates.

Regulations in this subpart are effective February 4, 2018 through February 3, 2023.

§ 218.62 Permissible methods of taking.

Under a Letter of Authorization (LOA) issued pursuant to § 216.106 of this chapter and § 218.66, the Holder of the LOA (herein after Eglin AFB) may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment associated with EGTTR activities within the area described in § 218.60, provided the activities are in compliance with all terms, conditions, and requirements of these regulations in this subpart and the appropriate LOA.

§ 218.63 Prohibitions.

Notwithstanding takings contemplated in § 218.60 and authorized by an LOA issued under § 216.106 of this chapter and § 218.66, no person in connection with the activities described in § 218.60 of this chapter may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under § 216.106 of this chapter and § 218.66.

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

§ 218.64 Mitigation requirements.

When conducting activities identified in § 218.60, the mitigation measures contained in the LOA issued under § 216.106 of this chapter and § 218.66 must be implemented. These mitigation measures shall include but are not limited to the following general conditions:

(a) If daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life, EGTTR operations must be delayed until adequate sea conditions exist for monitoring to be undertaken.

(b) Restrictions on time of activities.

(1) Missions involving the use of live bombs, missiles and rockets will only occur during daylight hours.

(2) Missions during daylight hours will occur no earlier than two hours after sunrise and no later than two hours prior to sunset.

(c) Required delay of live ordnance mission activities will occur if a protected species, large schools of fish or large flocks of birds feeding at the surface are observed within the ZOI.

Mission activities cannot resume until one of the following conditions is met:

(1) Protected species marine mammal(s) is confirmed to be outside of the ZOI on a heading away from the target area; or

(2) Protected species marine mammal(s) is not seen again for 30 minutes and presumed to be outside the Level A harassment ZOI.

(3) Large groupings of fish or birds leading to required delay are confirmed outside of the ZOI.

(d) Gunnery operations shall require employment of the following mitigation measures.

(1) Use of 105-mm training rounds (TR) during nighttime missions.

(2) Ramp-up procedures requiring the use of the lowest caliber munition and proceeding to the highest, which means the munitions would be fired in the order of 25 mm, 40 mm, and 105 mm.

(3) Any pause in live fire activities greater than 10 minutes shall require reinitiation of protected species surveys.

(4) Missions shall be conducted within the 200-m isobaths to provide greater protection to several species.

(e) If one or more sperm or baleen whales are detected during pre-mission monitoring activities, mission activities will be aborted/suspended for the remainder of the day.

(f) Additional mitigation measures as contained in an LOA.

§ 218.65 Requirements for monitoring and reporting.

(a) Holders of LOAs issued pursuant to § 218.66 for activities described in § 218.60(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor the impacts of the activity on marine mammals. If the authorized activity identified in § 218.60(a) is thought to have resulted in the mortality or injury of any marine mammals or take of marine mammals not identified in § 218.60(b), then the Holder of the LOA must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301)427–8401, and the Southeast Regional Office (phone within 24 hours of the injury or death).

(b) Monitoring will be conducted by personnel who have completed Eglin's Marine Species Observer Training Course, which was developed in cooperation with the National Marine Fisheries Service.

(c) The Holder of the LOA will use mission reporting forms to track their use of the EGTTR for testing and training missions and to track marine mammal observations.

(d) Depending on the mission category, visual aerial-based, vessel-based, or video-based marine mammal surveys shall be conducted before and after live ordnance mission activities each day.

(e) Vessel-based surveys will begin approximately one and one-half hours prior to live weapon deployment and shall be completed 30 minutes prior to the start of mission.

(f) Surveys will continue for approximately one hour or until the entire ZOI has been adequately surveyed, whichever comes first.

(g) Post-mission monitoring surveys shall commence once the mission has ended or as soon as the mission area is declared safe.

(h) Vessel-based post-mission surveys shall be conducted for 30 minutes after completion of live ordnance missions.

(i) Any authorized marine mammals that are detected in the ZOI during post-mission surveys shall be counted as Level B takes.

(j) A minimum of two dedicated observers shall be stationed on each vessel.

(k) Observers shall utilize optical equipment with sufficient magnification to allow observation of surfaced animals.

(l) The size of the survey area for each mission shall be determined according to the radius of impact for the given threshold of each munition/detonation scenario. These ranges shall be monitored during pre-mission surveys for each activity.

(m) Some missions shall be delayed to allow survey platforms to evacuate the human safety zone after pre-missions surveys are completed.

(n) Any aerial-based pre-mission surveys shall be conducted by observers aboard non-mission aircraft or mission aircraft who have completed the Marine Species Observer Training.

(o) Gunship standard procedures initiated prior to initiation of live-firing events shall require at least two complete orbits around the survey mission site at the appropriate airspeed and monitoring altitude and include the following:

(1) Monitoring for marine mammals shall continue throughout the mission by mission crew.

(2) Where applicable aircraft optical and electronic sensors shall be used for marine mammal observation.

(3) If any marine mammals are detected during pre-mission surveys or during the mission, activities will be immediately halted until the ZOI area is clear of all marine mammals, or the mission will be relocated to another target area. If the mission is relocated, the pre-mission survey procedures will be repeated.

(4) If multiple firing missions are conducted within the same flight, standard clearance procedures will precede each mission.

(5) Gunship crews will conduct a post-mission survey beginning at the operational altitude and proceeding through a spiraling descent to the designated monitoring altitude.

(p) Video-based monitoring from the GRATV shall be conducted where appropriate via live high-definition video feed.

(1) Supplemental video monitoring shall be conducted through the employment of additional aerial assets including aerostats and drones when available.

(2) [Reserved]

(q) Acoustic Monitoring:

(1) Eglin AFB will conduct a passive acoustic monitoring (PAM) study as an initial step towards understanding acoustic impacts from underwater detonations, once funding is approved.

(2) The results of the PAM study will be submitted to NMFS OPR as a draft monitoring report within 90 days of completion of the study, will be incorporated into any subsequent LOA request or, if no request is made, no later than 90 days after expiration of the LOA.

(r) The Holder of the LOA is required to:

(1) Submit a draft report to NMFS OPR on all monitoring conducted under the LOA within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent LOA for projects at the EGTTR, whichever comes first. A final report shall be prepared and submitted within 30 days following resolution of comments on the draft report from NMFS. This report must contain, at a minimum, the following information:

(i) Date and time of each EGTTR mission;

(ii) A complete description of the pre-mission and post-mission activities related to mitigating and monitoring the effects of EGTTR missions on marine mammal populations; and

(iii) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the EGTTR mission and number of marine mammals (by species if possible) that may have been harassed due to presence within the zone of influence.

(2) The draft report will be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for

this activity under the LOA if NMFS has not provided comments and recommendations within 90 days of receipt of the draft report.

(s) Reporting injured or dead marine mammals:

(1) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the LOA, such as an injury for species not authorized (Level A harassment), serious injury, or mortality, Eglin AFB shall immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Eglin AFB to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Eglin AFB may not resume their activities in the EGTTR until notified by NMFS.

(3) In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Eglin AFB shall immediately report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS.

(i) The report must include the same information identified in paragraph (p)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Eglin AFB to determine whether additional mitigation measures or modifications to the activities are appropriate.

(ii) In the event that Eglin AFB discovers an injured or dead marine mammal, and the lead observer determines that the injury or death is not associated with or related to the activities authorized in the LOA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), Eglin AFB shall report the incident to the Office of Protected Resources, NMFS, and the Southeast Regional Office, NMFS, within 24 hours of the discovery. Eglin AFB shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Additional Conditions.

(i) The Holder of the LOA must inform the Director, Office of Protected Resources, NMFS, (301–427–8401) or designee prior to the initiation of any changes to the monitoring plan for a specified mission activity.

(ii) A copy of the LOA must be in the possession of the safety officer on duty each day that EGTTR missions are conducted.

(5) The LOA may be modified, suspended or withdrawn if the holder fails to abide by the conditions prescribed herein, or if NMFS determines the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

§ 218.66 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, Eglin AFB must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, Eglin AFB must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, Eglin AFB must apply for and obtain a modification of the LOA as described in § 218.67.

(e) The LOA will set forth:

(1) Permissible methods of incidental taking;

(2) Number of marine mammals, by species and age class, authorized to be taken;

(3) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species of marine mammals authorized for taking, on its habitat, and on the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting.

(f) Issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA will be published in the **Federal Register** within 30 days of a determination.

§ 218.67 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 218.66 for the activity identified in § 218.60(a) will be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal request by the applicant that includes changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of authorized takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 218.66 for the activity identified in § 218.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with Eglin AFB regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(2) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA are:

(i) Results from Eglin AFB's annual monitoring reports;

(ii) Results from other marine mammal and sound research or studies; or

(iii) Any information that reveals marine mammals may have been taken in a manner, extent or number not

authorized by these regulations or subsequent LOAs.

(3) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(4) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified LOAs issued pursuant to § 216.106 of this chapter and 218.60 of this chapter, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within 30 days of the action.

§ 218.68 [Reserved]

§ 218.69 [Reserved]

[FR Doc. 2017–27580 Filed 12–26–17; 8:45 am]

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FEDERAL REGISTER

Vol. 82 Wednesday,
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Part III

The President

Proclamation 9687—To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes
Executive Order 13819—Adjustments of Certain Rates of Pay

Federal Register
Vol. 82, No. 247
Wednesday, December 27, 2017

Presidential Documents

Title 3—

The President

Proclamation 9687 of December 22, 2017

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 9223 of December 23, 2014, President Obama determined that the Republic of The Gambia (''The Gambia'') was not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2466a(a)), as added by section 111(a) of the African Growth and Opportunity Act (the ''AGOA''). Thus, pursuant to section 506A(a)(3) of the Trade Act (19 U.S.C. 2466a(a)(3)), President Obama terminated the designation of The Gambia as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act.

2. In Proclamation 9145 of June 26, 2014, President Obama determined that the Kingdom of Swaziland was not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act. Thus, pursuant to section 506A(a)(3) of the Trade Act, President Obama terminated the designation of the Kingdom of Swaziland as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act.

3. Section 506A(a)(1) of the Trade Act authorizes the President to designate a country listed in section 107 of the AGOA (19 U.S.C. 3706) as a beneficiary sub-Saharan African country if the President determines that the country meets the eligibility requirements set forth in section 104 of the AGOA (19 U.S.C. 3703), as well as the eligibility criteria set forth in section 502 of the Trade Act (19 U.S.C. 2462).

4. Pursuant to section 506A(a)(1) of the Trade Act, based on actions that The Gambia and the Kingdom of Swaziland have taken, I have determined that The Gambia and the Kingdom of Swaziland meet the eligibility requirements set forth in section 104 of the AGOA and section 502 of the Trade Act, and I have decided to designate The Gambia and the Kingdom of Swaziland as beneficiary sub-Saharan African countries.

5. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the ''USIFTA''), which the Congress approved in section 3 of the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

6. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA.

7. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning

certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

8. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, President Bush determined, pursuant to section 4(b) of the USIFTA Act, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

9. Each year from 2008 through 2016, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

10. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; Proclamation 8618 of December 21, 2010; Proclamation 8770 of December 29, 2011; Proclamation 8921 of December 20, 2012; Proclamation 9072 of December 23, 2013; Proclamation 9223 of December 23, 2014; Proclamation 9383 of December 21, 2015; and Proclamation 9555 of December 15, 2016 modified the Harmonized Tariff Schedule of the United States (the ''HTS'') to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

11. On December 5, 2017, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2018, and to allow for further negotiations on an agreement to replace the 2004 Agreement.

12. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2018, for specified quantities of certain agricultural products of Israel, as provided in Annex I of this proclamation.

13. Section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the United States International Trade Commission (the ''Commission'') under section 1205 of the 1988 Act (19 U.S.C. 3005) if he determines that the modifications are in conformity with United States obligations under the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'') and do not run counter to the national economic interest of the United States. The Commission has recommended modifications to the HTS pursuant to section 1205 of the 1988 Act to conform the HTS to amendments made to the Convention.

14. Proclamation 7987 of February 28, 2006, implemented the Dominican Republic-Central America-United States Free Trade Agreement (the ''CAFTA–DR'') with respect to the United States and, pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA–DR Act'') (19 U.S.C. 4031), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA–DR.

15. The United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (the ''CAFTA–DR countries'') are parties to the Convention. Because changes to the Convention are reflected in slight differences of form between the national tariff schedules of the United States and the other CAFTA–DR countries, Annexes 4.1, 3.25, and 3.29 of the CAFTA–DR must be changed to ensure that the tariff and certain

other treatment accorded under the CAFTA–DR to originating goods will continue to be provided under the tariff categories that were proclaimed in Proclamation 7987. The United States and the other CAFTA–DR countries have agreed to make these changes.

16. Section 201 of the CAFTA–DR Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA–DR.

17. I have determined that the modifications to the HTS proclaimed pursuant to section 201 of the CAFTA–DR Act and section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) are necessary or appropriate to ensure the continuation of tariff and certain other treatment accorded originating goods under tariff categories modified in Proclamation 9549 and to carry out the duty reductions proclaimed in Proclamation 7987.

18. In Proclamation 8618 of December 21, 2010, pursuant to section 111(b) of the Uruguay Round Agreements Act (the ''URAA'') (19 U.S.C. 3521(b)), President Obama proclaimed the modification of Schedule XX–United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), to reflect the implementation by the United States of the multilateral agreement on certain pharmaceuticals and chemical intermediates negotiated under the auspices of the World Trade Organization. In addition, President Obama proclaimed modifications to the pharmaceuticals appendix to the HTS to reflect the duty eliminations provided for in that agreement. I have determined, pursuant to section 604 of the Trade Act, that it is necessary to modify the annex of Proclamation 8618, as provided in Annex II of this proclamation, to correct one inadvertent omission so that the intended tariff treatment is provided.

19. In Proclamation 6763 of December 23, 1994, pursuant to section 111(a) of the URAA (19 U.S.C. 3521(a)), President Clinton proclaimed the modification of duties to carry out Schedule XX–United States of America, annexed to the Marrakesh Protocol to the GATT 1994. These modifications were set out in the annex of the proclamation, including the addition of General Note 13 and of the Pharmaceutical Appendix to the HTS. In Proclamation 8097 of December 29, 2006, pursuant to section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)), President Bush proclaimed modifications to the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions. These modifications to the HTS were set out in Annex I of Publication 3898 of the Commission, which was incorporated by reference into the proclamation. In Proclamation 9466 of June 30, 2016, pursuant to section 111(b) of the URAA (19 U.S.C. 3521(b)), President Obama proclaimed modifications to the tariff categories and rates of duty set forth in the HTS to implement the World Trade Organization Declaration on the Expansion of Trade in Information Technology Products (''Declaration''). These modifications were set out in Annexes I and II of Proclamation 9466. I have determined, pursuant to section 604 of the Trade Act (19 U.S.C. 2483), that it is necessary to modify Annex I of Proclamation 9466, as provided in Annex II of this proclamation, to correct one inadvertent omission so that the intended tariff treatment is provided and to make certain additional conforming changes to Annex I of Proclamation 9466.

20. In Proclamation 9549 of December 1, 2016, pursuant to section 1206(a) of the 1988 Act, President Obama proclaimed modifications to the HTS to conform it with the Convention in order to promote the uniform application of the Convention. These modifications to the HTS were set out in Annex I of Publication 4653 of the Commission, which was incorporated by reference into the proclamation. I have determined that it is necessary

to make certain additional changes to the HTS to conform it with the Convention.

21. Sections 502(d)(1) and 503(c)(1) of the Trade Act (19 U.S.C. 2462(d)(1) and 2463(c)(1)), provide that the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under the Generalized System of Preferences (the ''GSP'') with respect to any country and any article upon consideration of the factors set forth in sections 501 and 502(c) of the Trade Act (19 U.S.C. 2461 and 2462(c)).

22. Pursuant to sections 502(d)(1) and 503(c)(1) of the Trade Act and having considered the factors set forth in sections 501 and 502(c) of such Act, including, in particular, section 502(c)(5) (19 U.S.C. 2462(c)(5)) on the extent to which a designated beneficiary developing country is providing adequate and effective protection of intellectual property rights, I have determined that it is appropriate to suspend the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Ukraine, as provided in Annex III of this proclamation.

23. Section 502 of the Trade Act (19 U.S.C. 2462), authorizes the President to designate countries as beneficiary developing countries for purposes of the GSP. Section 502(f)(1)(A) of the Trade Act (19 U.S.C. 2462(f)(1)(A)) requires the President to notify the Congress before designating any country as a beneficiary developing country.

24. In Proclamation 8788 of March 26, 2012, after having considered the factors set forth in section 502(b)(2)(E) of the Trade Act (19 U.S.C. 2462(b)(2)(E)), President Obama suspended Argentina's designation as a GSP beneficiary developing country because it had not acted in good faith in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association that is 50 percent or more beneficially owned by United States citizens.

25. Pursuant to section 502(a)(1) of the Trade Act, and taking into account the factors set forth in section 502(b) (19 U.S.C. 2462(b)), in particular section 502(b)(2)(E), I have determined that the suspension pursuant to Proclamation 8788 of Argentina's designation as a GSP beneficiary developing country should end.

26. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

27. Section 1206(c) of the 1988 Act (19 U.S.C. 3006(c)) provides that any modifications proclaimed by the President under section 1206(a) of the 1988 Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register.*

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 506A(a)(1) of the Trade Act (19 U.S.C. 2466a(a)(1)); section 4(b) of the USIFTA Act (19 U.S.C. 2112 note); section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)); section 201 of the CAFTA–DR Act (19 U.S.C. 4031); section 604 of the Trade Act (19 U.S.C. 2483); and sections 502(a)(1), 502(d)(1), and 503(c)(1) of the Trade Act (19 U.S.C. 2462(a)(1), 2462(d)(1), and 2463(c)(1)) do proclaim that:

(1) The Gambia and the Kingdom of Swaziland are designated as beneficiary sub-Saharan African countries.

(2) In order to reflect this designation in the HTS, general note 16(a) and U.S. note 1 to subchapter XIX of chapter 98 to the HTS are each modified by inserting ''The Gambia'' and ''Swaziland,'' in alphabetical sequence, in the list of beneficiary sub-Saharan African countries. Further, note 2(d) to subchapter XIX of chapter 98 is modified by inserting ''The

Gambia'' and ''Swaziland,'' in alphabetical sequence, in the list of lesser developed beneficiary sub-Saharan African countries.

(3) In order to implement U.S. tariff commitments under the 2004 US-Israel Agreement through December 31, 2018, the HTS is modified as provided in Annex I of this proclamation.

(4) The modifications to the HTS set forth in Annex I of this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2018.

(5) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex I of this proclamation, shall continue in effect through December 31, 2018.

(6) In order to provide generally for the modifications in the rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the CAFTA–DR, to provide preferential tariff treatment for certain other goods under the CAFTA–DR, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex II of this proclamation.

(7) The modifications to the HTS made by paragraph (6) of this proclamation shall enter into effect on the date, as announced by the United States Trade Representative in the *Federal Register*, that the applicable conditions set forth in the CAFTA–DR have been fulfilled, and shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after that date.

(8) In order to provide the intended tariff treatment with respect to the modifications to the pharmaceuticals appendix to the HTS, effective with respect to goods entered, or withdrawn from warehouse or consumption, on or after January 1, 2018, and with respect to goods for which entry is unliquidated or otherwise not final as of that date, subheading 2843.29.01 is modified by inserting the symbol, ''K'', in alphabetical sequence, into the parenthetical expression in the Rates of Duty 1–Special subcolumn.

(9) In order to provide the intended tariff treatment with respect to the addition of the pharmaceuticals appendix to the HTS, effective with respect to goods entered, or withdrawn from warehouse or consumption, on or after January 1, 2018, and with respect to goods for which entry is unliquidated or otherwise not final as of that date, subheading 3907.99.50 is modified by inserting the symbol, ''K'', in alphabetical sequence, into the parenthetical expression in the Rates of Duty 1–Special subcolumn.

(10) In order to reflect certain additional conforming changes to Annex I of Proclamation 9466, the subheading 9030.33.34 of the HTS is modified by inserting the symbol, ''C'', in alphabetical sequence, into the parenthetical expression in the Column 1–Special Rates of Duty subcolumn.

(11) The modifications to the HTS made by paragraph (10) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after July 1, 2016.

(12) In order to reflect certain additional conforming changes to the HTS, additional U.S. note 1 to chapter 21 of the HTS is modified by deleting ''2202.90.30, 2202.90.35, 2202.90.36 and 2202.90.37'' and inserting ''2202.99.30, 2202.99.35, 2202.99.36 and 2202.99.37'' in lieu thereof.

(13) The modifications to the HTS made by paragraph (12) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on the thirtieth day after the date of publication of this proclamation in the *Federal Register.*

(14) In order to provide that Ukraine should no longer be treated as a beneficiary developing country with respect to certain eligible articles

for purposes of the GSP, the HTS is modified as provided in Annex III of this proclamation.

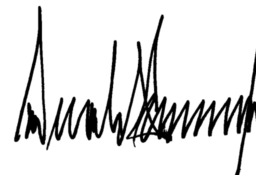
(15) In order to reflect the suspension of certain benefits under the GSP with respect to Ukraine, the modifications made in Annex III shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 120 days after the date of publication of this proclamation in the *Federal Register.*

(16) In order to reflect in the HTS the termination of the suspension of Argentina's designation as a GSP beneficiary developing country, the HTS is modified as provided in Annex IV of this proclamation.

(17) The modifications to the HTS made by paragraph (16) of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018.

(18) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of December, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



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ANNEX I

TEMPORARY EXTENSION OF CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, and through the close of December 31, 2018, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2017," and by inserting in lieu thereof "December 31, 2018".

2. U.S. note 3 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2018" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2018" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2018" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2018" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2018" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "707,000".

ANNEX II

MODIFICATIONS TO THE RULES OF ORIGIN FOR THE UNITED STATES - CENTRAL AMERICAN-DOMINICAN REPUBLIC FREE TRADE AGREEMENT, AS REFLECTED IN THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of a party to the Agreement specified in general note 29(a) to the tariff schedule that are entered, or withdrawn from warehouse for consumption, on or after the date announced by the United States Trade Representative and published in the Federal Register, general note 29(n) to the Harmonized Tariff Schedule of the United States is modified as provided herein:

1. New Tariff Classification Rule (TCR) 2A to chapter 22 is inserted in numerical sequence:

"2A A change to subheading 2202.91 from any other chapter."

2. TCRs 3 through 5, inclusive, to chapter 22 are modified by deleting "2202.90" in each instance and inserting in lieu thereof "2202.99".

3. TCR 6 to chapter 22 is deleted and the following new TCR is inserted in lieu thereof:

6. (A) A change to a beverage containing milk of subheading 2202.99, from any other chapter, except from Chapter 4 or from a dairy preparation containing over 10 percent by weight of milk solids of subheading 1901.90; or

(B) A change to any other good of subheading 2202.99 from any other chapter."

4. TCR 13 to chapter 28 is deleted and the following new TCRs are inserted in lieu thereof:

"13. A change to subheading 2811.12 from any other subheading.

13A. A change to subheading 2811.19 from any other subheading, except from subheading 2811.12 or 2811.22."

5. TCR 78 to chapter 28 is modified by deleting "headings 2847 through 2848" and inserting in lieu thereof "heading 2847".

6. TCR 12 to chapter 29 is modified by deleting "2903.90" and inserting in lieu thereof "2904.99".

7. TCR 43 to chapter 29 is modified by deleting "2914.70" and inserting in lieu thereof "2914.79".

8. TCR 1 to chapter 30 is deleted and the following new TCRs are inserted in lieu thereof:

"1. A change to subheading 3001.20 through 3001.90 from any other subheading.

1A. A change to subheading 3002.11 through 3002.19 from any other subheading outside that group.

1B. A change to subheading 3002.20 through 3003.39 from any other subheading.

1C. A change to subheading 3003.41 through 3003.49 from any other subheading outside that group.

1D. A change to subheading 3003.60 through 3003.90 from any other subheading."

9. TCR 4 to chapter to 31 is deleted and the following new TCR is inserted in lieu thereof:

"4. A change to subheading 3103.11 through 3103.19 from any other subheading outside that group."

10. TCR 9 to chapter to 38 is deleted and the following new TCRs are inserted in lieu thereof:

"9. A change to subheading 3808.52 through 3808.59 from any other subheading outside that group provided that 50 percent by weight of the active ingredient or ingredients is originating.

9A. A change to subheading 3808.61 through 3808.99 from any other subheading provided that 50 percent by weight of the active ingredient or ingredients is originating."

11. TCR 25 to chapter 38 is modified by deleting "3824.90" and inserting in lieu thereof "3824.99".

12. Chapter rule 1 to chapter 61 is modified by deleting "6005.31" and inserting in lieu thereof "6005.35".

13. Chapter rule 1 to chapter 62 is modified by deleting "6005.31" and inserting in lieu thereof "6005.35".

14. TCR 103 to chapter 84 is modified by deleting "8473.10" and inserting in lieu thereof "8473.21".

15. TCR 56 to chapter 85 is modified by deleting "8528.41" and inserting in lieu thereof "8528.42".

16. TCR 58 to chapter 85 is modified by deleting "8528.51" and inserting in lieu thereof "8528.52".

17. TCR 59A to chapter 85 is modified by deleting "8528.61" and inserting in lieu thereof "8528.62".

18. TCR 72 to chapter 85 is modified by deleting "8539.49" and inserting in lieu thereof "8539.50".

19. TCR 13 to chapter 90 is modified by deleting "9006.30" in each instance and inserting in lieu thereof "9006.40".

20. The following new TCR to chapter 96 is inserted in numerical sequence:

"26 A change to heading 9620 from any other heading."

ANNEX III

MODIFICATIONS ON THE ELIGIBILITY OF CERTAIN ARTICLES THE PRODUCT OF UKRAINE FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

Section A. Effective with respect to certain articles the product of Ukraine entered, or withdrawn from warehouse for consumption, on or after the date that is 120 days after the date of publication of this proclamation in the Federal Register, general note 4(d) to the Harmonized Tariff Schedule of the United States is modified by:

(1) adding, in numerical sequence, the following subheading numbers and countries set out opposite such subheading numbers:

0710.80.70	Ukraine	2009.50.00	Ukraine
0712.39.10	Ukraine	2009.89.60	Ukraine
0713.10.40	Ukraine	2103.20.20	Ukraine
0902.10.10	Ukraine	2103.90.80	Ukraine
0910.91.00	Ukraine	2103.90.90	Ukraine
0910.99.60	Ukraine	2104.20.50	Ukraine
1104.12.00	Ukraine	2106.90.98	Ukraine
1104.29.90	Ukraine	2201.10.00	Ukraine
1604.13.90	Ukraine	2202.10.00	Ukraine
1604.17.10	Ukraine	2202.91.00	Ukraine
1604.18.10	Ukraine	2202.99.90	Ukraine
1604.18.90	Ukraine	2204.10.00	Ukraine
1604.19.22	Ukraine	2204.21.80	Ukraine
1604.19.82	Ukraine	2206.00.90	Ukraine
1604.20.05	Ukraine	2209.00.00	Ukraine
1704.90.35	Ukraine	3307.20.00	Ukraine
1806.32.90	Ukraine	3307.30.10	Ukraine
1806.90.90	Ukraine	3307.30.50	Ukraine
1904.10.00	Ukraine	3506.10.50	Ukraine
1905.90.90	Ukraine	3924.90.56	Ukraine
2001.10.00	Ukraine	3925.30.10	Ukraine
2001.90.38	Ukraine	3926.20.30	Ukraine
2005.20.00	Ukraine	3926.20.90	Ukraine
2005.99.97	Ukraine	3926.90.21	Ukraine
2007.99.05	Ukraine	3926.90.30	Ukraine
2007.99.10	Ukraine	3926.90.45	Ukraine
2007.99.20	Ukraine	3926.90.99	Ukraine
2007.99.25	Ukraine	4015.19.10	Ukraine
2007.99.45	Ukraine	4016.91.00	Ukraine
2007.99.75	Ukraine	4201.00.30	Ukraine
2008.19.90	Ukraine	4202.92.50	Ukraine

4202.99.10	Ukraine
4203.10.20	Ukraine
4203.21.80	Ukraine
4419.11.00	Ukraine
4419.12.00	Ukraine
4419.19.90	Ukraine
4419.90.90	Ukraine
4420.10.00	Ukraine
4420.90.80	Ukraine
6116.10.08	Ukraine
6204.39.60	Ukraine
6204.49.10	Ukraine
6216.00.35	Ukraine
6307.90.98	Ukraine
6406.90.10	Ukraine
6406.90.30	Ukraine
6506.99.60	Ukraine
6912.00.48	Ukraine
6913.90.50	Ukraine
7113.20.50	Ukraine
7117.19.15	Ukraine
7323.93.00	Ukraine
7615.10.50	Ukraine
8210.00.00	Ukraine
8413.30.90	Ukraine
8414.51.90	Ukraine
8414.59.65	Ukraine
8419.89.95	Ukraine
8421.23.00	Ukraine
8456.11.90	Ukraine
8456.12.90	Ukraine
8464.90.01	Ukraine
8465.94.00	Ukraine
8468.10.00	Ukraine
8479.89.94	Ukraine
8480.49.00	Ukraine
8480.71.80	Ukraine
8480.79.90	Ukraine
8501.32.20	Ukraine
8501.40.40	Ukraine
8501.51.40	Ukraine
8501.51.60	Ukraine
8504.31.40	Ukraine
8504.40.95	Ukraine
8504.50.80	Ukraine
8509.40.00	Ukraine
8516.71.00	Ukraine
8516.79.00	Ukraine
8518.29.80	Ukraine
8518.50.00	Ukraine
8531.80.15	Ukraine
8531.80.90	Ukraine
8539.50.00	Ukraine
8543.70.42	Ukraine
8543.70.45	Ukraine
8543.70.71	Ukraine
8543.70.89	Ukraine
8543.70.91	Ukraine
8543.70.95	Ukraine
8543.70.97	Ukraine
8543.70.99	Ukraine
8703.10.50	Ukraine
8711.40.60	Ukraine
8711.50.00	Ukraine
8903.10.00	Ukraine
9005.80.40	Ukraine
9005.80.60	Ukraine
9013.10.30	Ukraine
9013.80.90	Ukraine
9027.10.20	Ukraine
9030.39.01	Ukraine
9030.89.01	Ukraine
9031.20.00	Ukraine
9031.80.80	Ukraine
9032.89.60	Ukraine
9205.10.00	Ukraine
9207.90.00	Ukraine
9304.00.20	Ukraine
9404.90.20	Ukraine
9405.20.80	Ukraine
9506.11.40	Ukraine
9506.12.80	Ukraine
9506.91.00	Ukraine
9506.99.60	Ukraine
9620.00.50	Ukraine

(2) adding, in alphabetical order, the country or countries set out opposite the following subheadings:

2202.99.36	Ukraine	7113.19.29	Ukraine
4011.10.10	Ukraine	7113.19.50	Ukraine
4011.10.50	Ukraine	7615.10.30	Ukraine
7113.11.50	Ukraine	8413.30.10	Ukraine

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 120 days after the date of publication of this proclamation in the Federal Register, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

0710.80.70	2009.89.60	4203.21.80
0712.39.10	2103.20.20	4419.11.00
0713.10.40	2103.90.80	4419.12.00
0902.10.10	2103.90.90	4419.19.90
0910.91.00	2104.20.50	4419.90.90
0910.99.60	2106.90.98	4420.10.00
1104.12.00	2201.10.00	4420.90.80
1104.29.90	2202.10.00	6116.10.08
1604.13.90	2202.91.00	6204.39.60
1604.17.10	2202.99.90	6204.49.10
1604.18.10	2204.10.00	6216.00.35
1604.18.90	2204.21.80	6307.90.98
1604.19.22	2206.00.90	6406.90.10
1604.19.82	2209.00.00	6406.90.30
1604.20.05	3307.20.00	6506.99.60
1704.90.35	3307.30.10	6912.00.48
1806.32.90	3307.30.50	6913.90.50
1806.90.90	3506.10.50	7113.20.50
1904.10.00	3924.90.56	7117.19.15
1905.90.90	3925.30.10	7323.93.00
2001.10.00	3926.20.30	7615.10.50
2001.90.38	3926.20.90	8210.00.00
2005.20.00	3926.90.21	8413.30.90
2005.99.97	3926.90.30	8414.51.90
2007.99.05	3926.90.45	8414.59.65
2007.99.10	3926.90.99	8419.89.95
2007.99.20	4015.19.10	8421.23.00
2007.99.25	4016.91.00	8456.11.90
2007.99.45	4201.00.30	8456.12.90
2007.99.75	4202.92.50	8464.90.01
2008.19.90	4202.99.10	8465.94.00
2009.50.00	4203.10.20	8468.10.00

8479.89.94
8480.49.00
8480.71.80
8480.79.90
8501.32.20
8501.40.40
8501.51.40
8501.51.60
8504.31.40
8504.40.95
8504.50.80
8509.40.00
8516.71.00
8516.79.00
8518.29.80
8518.50.00
8531.80.15
8531.80.90
8539.50.00
8543.70.42
8543.70.45
8543.70.71
8543.70.89
8543.70.91
8543.70.95
8543.70.97
8543.70.99
8703.10.50
8711.40.60
8711.50.00
8903.10.00
9005.80.40
9005.80.60
9013.10.30
9013.80.90
9027.10.20
9030.39.01
9030.89.01
9031.20.00
9031.80.80
9032.89.60
9205.10.00
9207.90.00
9304.00.20
9404.90.20
9405.20.80
9506.11.40
9506.12.80
9506.91.00
9506.99.60
9620.00.50

ANNEX IV

MODIFICATIONS ON THE ELIGIBILITY OF CERTAIN ARTICLES THE PRODUCT OF ARGENTINA FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

Section A. Effective with respect to articles the product of Argentina entered, or withdrawn from warehouse for consumption, on January 1, 2018, general note 4(a) to the HTS is modified by adding, in alphabetical order, "Argentina" to the list entitled "Independent Countries".

Section B. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, general note 4(d) to the HTS is modified by:

(1) adding, in numerical sequence, the following subheading numbers and countries set out opposite such subheading numbers:

0404.90.10	Argentina	3307.49.00	Argentina
0703.20.00	Argentina	3504.00.50	Argentina
2805.40.00	Argentina	3506.99.00	Argentina
2813.90.50	Argentina	3701.10.00	Argentina
2832.30.10	Argentina	3702.10.00	Argentina
2839.90.50	Argentina	3706.10.30	Argentina
2841.30.00	Argentina	3707.90.32	Argentina
2841.50.91	Argentina	3901.90.90	Argentina
2843.30.00	Argentina	3902.10.00	Argentina
2849.10.00	Argentina	3902.20.50	Argentina
2850.00.50	Argentina	3902.90.00	Argentina
2905.12.00	Argentina	3903.90.50	Argentina
2905.13.00	Argentina	3904.40.00	Argentina
2905.22.50	Argentina	3906.10.00	Argentina
2906.19.30	Argentina	3906.90.50	Argentina
2914.12.00	Argentina	3907.30.00	Argentina
2914.13.00	Argentina	3907.70.00	Argentina
2915.70.01	Argentina	3907.99.20	Argentina
2917.14.50	Argentina	3907.99.50	Argentina
2918.21.50	Argentina	3909.10.00	Argentina
2918.22.50	Argentina	3909.50.50	Argentina
2929.10.15	Argentina	3913.90.20	Argentina
2932.99.90	Argentina	3921.90.50	Argentina
2933.49.30	Argentina	3923.90.00	Argentina
2933.99.55	Argentina	4201.00.60	Argentina
3209.90.00	Argentina	4303.10.00	Argentina
3301.19.10	Argentina	7007.11.00	Argentina
3307.20.00	Argentina	7114.11.60	Argentina

7315.90.00	Argentina	8536.90.60	Argentina
7409.11.50	Argentina	8536.90.85	Argentina
7409.21.00	Argentina	8538.90.81	Argentina
7901.11.00	Argentina	8708.50.65	Argentina
8207.20.00	Argentina	8708.50.91	Argentina
8409.91.99	Argentina	8708.70.60	Argentina
8477.51.00	Argentina	8708.91.75	Argentina
8480.30.00	Argentina	8708.92.75	Argentina
8481.30.20	Argentina	8708.99.81	Argentina
8481.80.30	Argentina	8716.90.50	Argentina
8481.80.90	Argentina	9003.90.00	Argentina
8481.90.30	Argentina	9113.10.00	Argentina
8503.00.65	Argentina	9113.20.60	Argentina
8523.29.50	Argentina		

(2) adding, in alphabetical order, the country or countries set out opposite the following subheadings:

1701.13.10	Argentina	6910.90.00	Argentina
1701.14.10	Argentina	7202.21.50	Argentina
2918.22.10	Argentina	7202.30.00	Argentina
3301.90.10	Argentina	7901.12.50	Argentina
3907.61.00	Argentina	8409.91.50	Argentina
3907.69.00	Argentina	8409.99.91	Argentina
4011.10.10	Argentina		

<u>Section C</u>. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 2018, the HTS is modified as provided in this section. For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

0404.90.10
0703.20.00
2805.40.00
2813.90.50
2832.30.10
2839.90.50
2841.30.00
2841.50.91
2843.30.00
2849.10.00
2850.00.50
2905.12.00
2905.13.00
2905.22.50
2906.19.30
2914.12.00
2914.13.00
2915.70.01
2917.14.50
2918.21.50
2918.22.50
2929.10.15
2932.99.90
2933.49.30
2933.99.55
3209.90.00
3301.19.10
3307.20.00
3307.49.00
3504.00.50
3506.99.00
3701.10.00
3702.10.00
3706.10.30
3707.90.32
3901.90.90
3902.10.00
3902.20.50
3902.90.00
3903.90.50
3904.40.00
3906.10.00
3906.90.50
3907.30.00
3907.70.00
3907.99.20
3907.99.50

3909.10.00
3909.50.50
3913.90.20
3921.90.50
3923.90.00
4201.00.60
4303.10.00
7007.11.00
7114.11.60
7315.90.00
7409.11.50
7409.21.00
7901.11.00
8207.20.00
8409.91.99
8477.51.00
8480.30.00
8481.30.20
8481.80.30
8481.80.90
8481.90.30
8503.00.65
8536.90.60
8536.90.85
8538.90.81
8708.50.65
8708.50.91
8708.70.60
8708.91.75
8708.92.75
8708.99.81
8716.90.50
9003.90.00
9113.10.00
9113.20.60

[FR Doc. 2017–28144
Filed 12–26–17; 11:15 a.m.]
Billing code 7020–02–C

Presidential Documents

Executive Order 13819 of December 22, 2017

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under section 601 of the National Defense Authorization Act for Fiscal Year 2018 (Public Law 115–91), as signed by the President on December 12, 2017, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.*

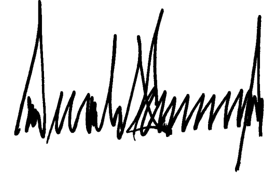
(a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register.*

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2018. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2018.

Sec. 8. *Prior Order Superseded.* Executive Order 13756 of December 27, 2016, is superseded as of the effective dates specified in section 7 of this order.



THE WHITE HOUSE,
December 22, 2017.

Billing code 3295–F8–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

	1	2	3	4	5	6	7	8	9	10
GS-1	$18,785	$19,414	$20,039	$20,660	$21,285	$21,650	$22,267	$22,891	$22,915	$23,502
GS-2	21,121	21,624	22,323	22,915	23,175	23,857	24,539	25,221	25,903	26,585
GS-3	23,045	23,813	24,581	25,349	26,117	26,885	27,653	28,421	29,189	29,957
GS-4	25,871	26,733	27,595	28,457	29,319	30,181	31,043	31,905	32,767	33,629
GS-5	28,945	29,910	30,875	31,840	32,805	33,770	34,735	35,700	36,665	37,630
GS-6	32,264	33,339	34,414	35,489	36,564	37,639	38,714	39,789	40,864	41,939
GS-7	35,854	37,049	38,244	39,439	40,634	41,829	43,024	44,219	45,414	46,609
GS-8	39,707	41,031	42,355	43,679	45,003	46,327	47,651	48,975	50,299	51,623
GS-9	43,857	45,319	46,781	48,243	49,705	51,167	52,629	54,091	55,553	57,015
GS-10	48,297	49,907	51,517	53,127	54,737	56,347	57,957	59,567	61,177	62,787
GS-11	53,062	54,831	56,600	58,369	60,138	61,907	63,676	65,445	67,214	68,983
GS-12	63,600	65,720	67,840	69,960	72,080	74,200	76,320	78,440	80,560	82,680
GS-13	75,628	78,149	80,670	83,191	85,712	88,233	90,754	93,275	95,796	98,317
GS-14	89,370	92,349	95,328	98,307	101,286	104,265	107,244	110,223	113,202	116,181
GS-15	105,123	108,627	112,131	115,635	119,139	122,643	126,147	129,651	133,155	136,659

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$105,123	$85,181	$69,022	$55,929	$45,319	$40,514	$36,218	$32,378	$28,945
2	108,277	87,736	71,093	57,607	46,679	41,729	37,305	33,349	29,813
3	111,525	90,369	73,225	59,335	48,079	42,981	38,424	34,350	30,708
4	114,871	93,080	75,422	61,115	49,521	44,271	39,576	35,380	31,629
5	118,317	95,872	77,685	62,949	51,007	45,599	40,764	36,442	32,578
6	121,866	98,748	80,015	64,837	52,537	46,967	41,987	37,535	33,555
7	125,522	101,711	82,416	66,782	54,113	48,376	43,246	38,661	34,562
8	129,288	104,762	84,888	68,786	55,737	49,827	44,544	39,821	35,599
9	133,167	107,905	87,435	70,849	57,409	51,322	45,880	41,015	36,667
10	136,659	111,142	90,058	72,975	59,131	52,862	47,256	42,246	37,767
11	136,659	114,476	92,760	75,164	60,905	54,447	48,674	43,513	38,900
12	136,659	117,910	95,543	77,419	62,732	56,081	50,134	44,819	40,067
13	136,659	121,448	98,409	79,741	64,614	57,763	51,638	46,163	41,269
14	136,659	125,091	101,361	82,134	66,552	59,496	53,187	47,548	42,507

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Schedule for the Office of the Under Secretary for Health
(38 U.S.C. 7306)*
(Only applies to incumbents who are not physicians or dentists)

Assistant Under Secretaries for Health $165,956**

	Minimum	Maximum
Service Directors	$123,290	$153,119
Director, National Center for Preventive Health	105,123	153,119

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$103,395	$151,653
Dentist Grade	103,395	151,653

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$105,123	$136,659
Senior Grade	89,370	116,181
Intermediate Grade	75,628	98,317
Full Grade	63,600	82,680
Associate Grade	53,062	68,983

Physician Assistant and Expanded-Function Dental Auxiliary Schedule****

Director Grade	$105,123	$136,659
Assistant Director Grade	89,370	116,181
Chief Grade	75,628	98,317
Senior Grade	63,600	82,680
Intermediate Grade	53,062	68,983
Full Grade	43,857	57,015
Associate Grade	37,740	49,062
Junior Grade	32,264	41,939

* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $153,800.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$126,148	$189,600
Agencies without a Certified SES Performance Appraisal System	$126,148	$174,500

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Level I	$210,700
Level II	189,600
Level III	174,500
Level IV	164,200
Level V	153,800

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Vice President	$243,500
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Chief Justice of the United States	$267,000
Associate Justices of the Supreme Court	255,300
Circuit Judges	220,600
District Judges	208,000
Judges of the Court of International Trade	208,000

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2018)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$10,398.60	$10,739.40	$10,965.60	$11,028.60	$11,310.90	$11,781.90	$11,891.40	$12,339.00	$12,467.40	$12,852.90	$13,410.90
O-7	8,640.60	9,041.70	9,227.70	9,375.30	9,642.60	9,906.90	10,212.30	10,516.80	10,822.20	11,781.90	12,591.90
O-6**	6,552.30	7,198.50	7,671.00	7,671.00	7,700.40	8,030.40	8,073.90	8,073.90	8,532.60	9,343.80	9,819.90
O-5	5,462.40	6,153.60	6,579.00	6,659.40	6,925.50	7,084.20	7,434.00	7,690.80	8,022.30	8,529.60	8,770.50
O-4	4,713.00	5,455.50	5,820.00	5,900.70	6,238.50	6,601.20	7,052.70	7,403.70	7,647.60	7,788.00	7,869.30
O-3***	4,143.90	4,697.10	5,069.70	5,527.80	5,793.00	6,083.40	6,271.20	6,580.20	6,741.60	6,741.60	6,741.60
O-2***	3,580.50	4,077.90	4,696.20	4,854.90	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10
O-1***	3,107.70	3,234.90	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$5,527.80	$5,793.00	$6,083.40	$6,271.20	$6,580.20	$6,840.90	$6,990.90	$7,194.60
O-2E	-	-	-	4,854.90	4,955.10	5,112.60	5,379.00	5,584.80	5,738.10	5,738.10	5,738.10
O-1E	-	-	-	3,910.20	4,175.40	4,329.90	4,487.70	4,642.80	4,854.90	4,854.90	4,854.90
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$4,282.50	$4,606.50	$4,738.50	$4,868.70	$5,092.80	$5,314.50	$5,539.20	$5,876.40	$6,172.50	$6,454.20	$6,684.90
W-3	3,910.80	4,073.70	4,240.80	4,296.00	4,470.60	4,815.30	5,174.10	5,343.30	5,538.90	5,739.90	6,102.30
W-2	3,460.50	3,787.80	3,888.60	3,957.60	4,182.30	4,530.90	4,703.70	4,873.80	5,082.00	5,244.60	5,391.90
W-1	3,037.50	3,364.50	3,452.40	3,638.10	3,857.70	4,181.70	4,332.60	4,543.80	4,751.70	4,915.50	5,065.80

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2018, which is $15,800.10 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2018, which is $12,816.60 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2018)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*	$15,800.10*
O-9	14,696.40	14,908.80	15,214.50	15,747.60	15,747.60	15,800.10*	15,800.10*	15,800.10*	15,800.10*	15,800.10*	15,800.10*
O-8	13,925.10	14,268.30	14,268.30	14,268.30	14,268.30	14,625.60	14,625.60	14,991.00	14,991.00	14,991.00	14,991.00
O-7	12,591.90	12,591.90	12,591.90	12,656.40	12,656.40	12,909.60	12,909.60	12,909.60	12,909.60	12,909.60	12,909.60
O-6**	10,295.70	10,566.60	10,841.10	11,372.40	11,372.40	11,599.80	11,599.80	11,599.80	11,599.80	11,599.80	11,599.80
O-5	9,009.30	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20	9,280.20
O-4	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30	7,869.30
O-3***	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60	6,741.60
O-2***	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10	4,955.10
O-1***	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20	3,910.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60	$7,194.60
O-2E	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10	5,738.10
O-1E	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90	4,854.90
WARRANT OFFICERS											
W-5	$7,614.60	$8,000.70	$8,288.40	$8,606.70	$8,606.70	$9,037.80	$9,037.80	$9,489.00	$9,489.00	$9,964.20	$9,964.20
W-4	6,909.60	7,239.90	7,511.10	7,820.70	7,820.70	7,976.70	7,976.70	7,976.70	7,976.70	7,976.70	7,976.70
W-3	6,346.80	6,492.90	6,648.30	6,860.10	6,860.10	6,860.10	6,860.10	6,860.10	6,860.10	6,860.10	6,860.10
W-2	5,568.30	5,684.10	5,775.90	5,775.90	5,775.90	5,775.90	5,775.90	5,775.90	5,775.90	5,775.90	5,775.90
W-1	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80	5,248.80

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2018, which is $15,800.10 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2018, which is $12,816.60 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2018)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$5,173.80	$5,290.80	$5,439.00	$5,612.40	$5,788.20
E-8	-	-	-	-	-	$4,235.40	4,422.60	4,538.70	4,677.30	4,828.20	5,099.70
E-7	$2,944.20	$3,213.30	$3,336.60	$3,499.20	$3,626.70	3,845.10	3,968.40	4,186.80	4,368.90	4,493.10	4,625.10
E-6	2,546.40	2,802.30	2,925.90	3,046.20	3,171.60	3,453.60	3,563.70	3,776.70	3,841.50	3,888.90	3,944.10
E-5	2,332.80	2,490.00	2,610.30	2,733.30	2,925.30	3,125.70	3,290.70	3,310.50	3,310.50	3,310.50	3,310.50
E-4	2,139.00	2,248.50	2,370.30	2,490.60	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50
E-3	1,931.10	2,052.30	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80
E-2	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30
E-1**	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30
E-1***	1,514.70	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $8,361.00 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2018)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
ENLISTED MEMBERS											
E-9*	$6,068.70	$6,306.60	$6,556.20	$6,939.00	$6,939.00	$7,285.50	$7,285.50	$7,650.00	$7,650.00	$8,033.10	$8,033.10
E-8	5,237.40	5,471.70	5,601.90	5,921.70	5,921.70	6,040.50	6,040.50	6,040.50	6,040.50	6,040.50	6,040.50
E-7	4,676.10	4,848.30	4,940.40	5,291.40	5,291.40	5,291.40	5,291.40	5,291.40	5,291.40	5,291.40	5,291.40
E-6	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10	3,944.10
E-5	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50	3,310.50
E-4	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50	2,596.50
E-3	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80	2,176.80
E-2	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30	1,836.30
E-1**	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30	1,638.30
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $8,361.00 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,087.80.

Note: As a result of the enactment of sections 602–604 of Public Law 105–85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

Locality Pay Area*	Rate
Alaska	28.02%
Albany-Schenectady, NY	16.50%
Albuquerque-Santa Fe-Las Vegas, NM	15.76%
Atlanta—Athens-Clarke County—Sandy Springs, GA-AL	21.16%
Austin-Round Rock, TX	16.71%
Boston-Worcester-Providence, MA-RI-NH-CT-ME	27.48%
Buffalo-Cheektowaga, NY	19.18%
Charlotte-Concord, NC-SC	16.21%
Chicago-Naperville, IL-IN-WI	27.47%
Cincinnati-Wilmington-Maysville, OH-KY-IN	19.87%
Cleveland-Akron-Canton, OH	20.08%
Colorado Springs, CO	16.59%
Columbus-Marion-Zanesville, OH	18.97%
Dallas-Fort Worth, TX-OK	23.40%
Davenport-Moline, IA-IL	16.08%
Dayton-Springfield-Sidney, OH	18.11%
Denver-Aurora, CO	25.47%
Detroit-Warren-Ann Arbor, MI	26.25%
Harrisburg-Lebanon, PA	16.15%
Hartford-West Hartford, CT-MA	28.21%
Hawaii	18.43%
Houston-The Woodlands, TX	31.74%
Huntsville-Decatur-Albertville, AL	18.49%
Indianapolis-Carmel-Muncie, IN	16.23%
Kansas City-Overland Park-Kansas City, MO-KS	16.10%
Laredo, TX	17.40%
Las Vegas-Henderson, NV-AZ	16.49%
Los Angeles-Long Beach, CA	30.57%
Miami-Fort Lauderdale-Port St. Lucie, FL	22.64%
Milwaukee-Racine-Waukesha, WI	20.14%
Minneapolis-St. Paul, MN-WI	23.37%
New York-Newark, NY-NJ-CT-PA	32.13%
Palm Bay-Melbourne-Titusville, FL	15.93%
Philadelphia-Reading-Camden, PA-NJ-DE-MD	24.59%
Phoenix-Mesa-Scottsdale, AZ	19.09%
Pittsburgh-New Castle-Weirton, PA-OH-WV	18.35%
Portland-Vancouver-Salem, OR-WA	22.53%
Raleigh-Durham-Chapel Hill, NC	19.52%
Richmond, VA	18.79%
Sacramento-Roseville, CA-NV	24.86%
San Diego-Carlsbad, CA	27.88%
San Jose-San Francisco-Oakland, CA	39.28%
Seattle-Tacoma, WA	25.11%
St. Louis-St. Charles-Farmington, MO-IL	16.47%
Tucson-Nogales, AZ	16.17%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA	28.22%
Rest of U.S.	15.37%

Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2018)

AL-3/A	$109,600
AL-3/B	117,900
AL-3/C	126,400
AL-3/D	134,900
AL-3/E	143,500
AL-3/F	151,700
AL-2	160,100
AL-1	164,200

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