



# FEDERAL REGISTER

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Vol. 83

Friday,

No. 106

June 1, 2018

Pages 25327–25544

OFFICE OF THE FEDERAL REGISTER



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# Contents

## Federal Register

Vol. 83, No. 106

Friday, June 1, 2018

### Agriculture Department

*See* Federal Crop Insurance Corporation

*See* Food and Nutrition Service

*See* Forest Service

### Air Force Department

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25441

### Army Department

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25441–25442

### Centers for Disease Control and Prevention

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25458–25460

### Centers for Medicare & Medicaid Services

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25460–25461

#### Meetings:

Medicare and Medicaid Programs, and Other Program Initiatives, and Priorities; Advisory Panel on Outreach and Education, 25461–25463

### Children and Families Administration

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25463–25465

Reallotment of Fiscal Year 2017 Funds for the Low Income Home Energy Assistance Program, 25463–25464

### Civil Rights Commission

#### NOTICES

#### Meetings:

Alabama Advisory Committee, 25426–25427  
Louisiana Advisory Committee, 25427  
South Carolina Advisory Committee, 25428  
Wisconsin Advisory Committee, 25427–25428

### Coast Guard

#### RULES

#### Drawbridge Operations:

Harlem River, Bronx, NY, 25369  
Reynolds Channel and Long Creek, Nassau County, NY, 25369–25370  
Sinepuxent Bay Harry Kelley (Route 50) Bridge, Ocean City, MD, 25370

#### Safety Zones:

Offshore Barrier Test, Lake Huron, North Lakeport, MI, 25373–25375  
Rice's Landing Riverfest, Rice's Landing, PA, 25370–25371  
Upper Mississippi River, Mile Markers 179 to 180, St. Louis, MO, 25371–25373

#### Special Local Regulations:

Lake of the Ozarks, Bagwell, MO, 25366–25369

### Commerce Department

*See* Foreign-Trade Zones Board

*See* International Trade Administration

*See* National Oceanic and Atmospheric Administration

### Copyright Office, Library of Congress

#### RULES

Group Registration of Newspapers, 25375

### Defense Department

*See* Air Force Department

*See* Army Department

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25443–25446

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Authorized Negotiators, 25456–25457

Incentive Contracts, 25457

Novation/Change of Name Requirements, 25458

#### Charter Renewals:

Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College, 25442

Federal Advisory Committees, 25445–25446

Environmental Impact Statements; Availability, etc.:

Construction and Operation of a Homeland Defense

Radar in Hawaii, 25442–25443

#### Meetings:

Defense Advisory Committee on Women in the Services, 25444

### Education Department

#### NOTICES

Privacy Act; Matching Program, 25446–25448

### Energy Department

#### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25450–25451

Decision and Order Granting a Waiver to Huawei From the Department of Energy External Power Supply Test Procedure, 25448–25450

### Environmental Protection Agency

#### RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

Michigan; Regional Haze Progress Report, 25375–25378

South Carolina; Redesignation of the Greenville-

Spartanburg Unclassifiable Area, 25390–25392

Virginia; Emissions Statement Rule Certification for the 2008 Ozone National Ambient Air Quality Standard, 25378–25382

New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, Maximum Achievable Control Technology Standards:

Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster

County, NE; and City of Omaha, NE; Delegation of

Authority, 25382–25390

**PROPOSED RULES**

Air Quality State Implementation Plans; Approvals and Promulgations:  
Alabama; Redesignation of the Etowah County Unclassifiable Area, 25422–25424

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting, 25452–25453  
Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Reference Method, 25451  
Environmental Impact Statements; Availability, etc.:  
Weekly Receipts, 25451–25452  
Product Cancellation Order:  
Certain Pesticide Registrations and Amendments To Terminate Uses, 25453–25454

**Equal Employment Opportunity Commission****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25455–25456

**Federal Aviation Administration****RULES**

Airworthiness Directives:  
Airbus Helicopters, 25363–25365  
Special Conditions:  
Textron Aviation Inc. Model 700 Series Airplanes; Installed Rechargeable Lithium Batteries, 25361–25363

**PROPOSED RULES**

Airworthiness Directives:  
Airbus Airplanes, 25412–25415  
Airbus Helicopters Deutschland GmbH Helicopters (Previously Eurocopter Deutschland GmbH), 25415–25417  
ATR–GIE Avions de Transport Regional Airplanes, 25419–25422  
Austro Engine GmbH Engines, 25410–25412  
Bell Helicopter Textron Canada Helicopters, 25408–25410  
Dassault Aviation Airplanes, 25417–25419  
The Boeing Company Airplanes, 25405–25408

**Federal Crop Insurance Corporation****RULES**

General Administrative Regulations; Administrative Remedies for Non-Compliance, 25361

**Federal Maritime Commission****NOTICES**

Meetings; Sunshine Act, 25456

**Federal Reserve System****NOTICES**

Changes in Bank Control:  
Acquisitions of Shares of a Bank or Bank Holding Company, 25456

**Fish and Wildlife Service****RULES**

Endangered and Threatened Species:  
Removing *Trichostema austrorontanum* ssp. *compactum* (Hidden Lake Bluecurls) From the Federal List of Endangered and Threatened Plants, 25392–25404

**NOTICES**

Environmental Impact Statements; Availability, etc.:  
Addressing the Issuance of Incidental Take Permits for Four Wind Energy Projects in Hawaii, 25475–25479

**Food and Drug Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food, 25466–25468  
Guidance:  
Development of a Shared System Risk Evaluation and Mitigation Strategy, 25468–25469  
Waivers of the Single, Shared System Risk Evaluation and Mitigation Strategy Requirement, 25465–25466

**Food and Nutrition Service****RULES**

Simplified Cost Accounting and Other Actions To Reduce Paperwork in the Summer Food Service Program, 25349–25361

**NOTICES**

Requests for Information:  
Supplemental Nutrition Assistance Program Quality Control Integrity and Modernization, 25425–25426

**Foreign-Trade Zones Board****NOTICES**

Production Activities:  
Tesla, Inc.; Foreign-Trade Zone 126; Reno, NV, 25428–25429  
Subzone Status; Approvals:  
AGCO Corporation Jackson and Round Lake, MN, 25428

**Forest Service****NOTICES**

Environmental Impact Statements; Availability, etc.:  
Bog Creek Road Project, 25472–25475

**General Services Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Authorized Negotiators, 25456–25457  
Incentive Contracts, 25457  
Novation/Change of Name Requirements, 25458

**Health and Human Services Department**

*See* Centers for Disease Control and Prevention  
*See* Centers for Medicare & Medicaid Services  
*See* Children and Families Administration  
*See* Food and Drug Administration  
*See* Substance Abuse and Mental Health Services Administration

**PROPOSED RULES**

Compliance with Statutory Program Integrity Requirements, 25502–25533

**NOTICES**

Meetings:  
Pain Management Best Practices Inter-Agency Task Force, 25469–25470

**Homeland Security Department**

*See* Coast Guard  
*See* U.S. Customs and Border Protection

**Indian Affairs Bureau****NOTICES**

## Indian Gaming:

Tribal-State Class III Gaming Compact Taking Effect in the State of Connecticut, 25484

Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation Liquor Ordinance; Repeal and Replace, 25479–25483

**Interior Department**

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

**International Trade Administration****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Advance Notification of Sunset Review, 25436

Initiation of Five-Year (Sunset) Reviews, 25436–25438

Opportunity To Request Administrative Review, 25429–25431

## Meetings:

Advisory Committee on Supply Chain Competitiveness, 25438

Revisions and Clarifications to User Fees for Export and Investment Promotion Services and Events, 25431–25436

**International Trade Commission****NOTICES**

Investigations; Determinations, Modifications, and Rulings, etc.:

Sodium Hexametaphosphate From China, 25488–25490

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine, 25490–25493

Xanthan Gum From China, 25485–25488

**Justice Department****NOTICES**

Proposed Consent Decrees:

CERCLA, 25493

Clean Water Act, 25494–25495

**Labor Department**

See Occupational Safety and Health Administration

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities, 25495–25496

**Land Management Bureau****NOTICES**

Environmental Impact Statements; Availability, etc.:

Segregation for the Proposed Yellow Pine Solar Project, Clark County, NV, 25484–25485

**Library of Congress**

See Copyright Office, Library of Congress

**National Aeronautics and Space Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Authorized Negotiators, 25456–25457

Incentive Contracts, 25457

Novation/Change of Name Requirements, 25458

**National Oceanic and Atmospheric Administration****NOTICES**

## Meetings:

Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee, 25440–25441

Takes of Marine Mammals Incidental to Specified Activities:

Coast Boulevard Improvements Project, La Jolla, CA, 25438–25440

**Occupational Safety and Health Administration****PROPOSED RULES**

Occupational Exposure to Beryllium in General Industry; Limited Extension of Select Compliance Dates, 25536–25543

**Presidential Documents****PROCLAMATIONS**

## Special Observances:

Prayer for Peace, Memorial Day (Proc. 9756), 25327–25328

**EXECUTIVE ORDERS**

Federal Lands, Recreational Services on; Executive Order 13658 Exemption (EO 13838), 25341–25342

Government Agencies and Employees:

Civil Service Employees, Removal Procedures Consistent With Merit System Principles: Efforts To Promote Accountability and Efficiency (EO 13839), 25343–25347

Collective Bargaining, Federal Sector; Effort To Develop Efficient, Effective and Cost-Reducing Approaches (EO 13836), 25329–25334

Union Time, Taxpayer-Funded Use; Transparency, Accountability, and Efficiency Efforts (EO 13837), 25335–25340

**Securities and Exchange Commission****RULES**

Technical Amendments to Rules of Practice and Rules of Organization; Conduct and Ethics; and Information and Requests, 25365–25366

**NOTICES**

Meetings; Sunshine Act, 25496

**State Department****NOTICES**

Designations as Global Terrorists:

Al-Nusrah Front, 25496–25497

## Meetings:

International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings, 25496

**Substance Abuse and Mental Health Services Administration****NOTICES**

Certified Laboratories and Instrumented Initial Testing Facilities:

Urine Drug Testing for Federal Agencies, 25470–25471

**Trade Representative, Office of United States****NOTICES**

World Trade Organization Dispute Settlement Proceeding  
Regarding United States:  
Anti-Dumping Measures Applying Differential Pricing  
Methodology to Softwood Lumber From Canada,  
25498–25499  
Countervailing Measures on Softwood Lumber From  
Canada, 25497–25498

**Transportation Department**

See Federal Aviation Administration

**U.S. Customs and Border Protection****NOTICES**

Commercial Gaugers and Laboratories; Accreditations and  
Approvals:  
NMK Resources, Inc.; Thorofare, NJ, 25471–25472  
Environmental Impact Statements; Availability, etc.:  
Bog Creek Road Project, 25472–25475

**Veterans Affairs Department****NOTICES**

Meetings:  
Special Medical Advisory Group, 25499

---

**Separate Parts In This Issue****Part II**

Health and Human Services Department, 25502–25533

**Part III**

Labor Department, Occupational Safety and Health  
Administration, 25536–25543

---

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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**CFR PARTS AFFECTED IN THIS ISSUE**

---

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR****Proclamations:**

9756.....25327

**Executive Orders:**

13836.....25329

13837.....25335

13838.....25341

13839.....25343

**7 CFR**

210.....25349

225.....25349

400.....25361

**14 CFR**

25.....25361

39.....25363

**Proposed Rules:**

39 (7 documents) .....25405,

25408, 25410, 25412, 25415,

25417, 25419

**17 CFR**

200.....25365

201.....25365

**29 CFR****Proposed Rules:**

1910.....25536

**33 CFR**

100.....25366

117 (3 documents) .....25369,

25370

165 (3 documents) .....25370,

25371, 25373

**37 CFR**

202.....25375

**40 CFR**

52 (2 documents) .....25375,

25378

60.....25382

61.....25382

63.....25382

81.....25390

**Proposed Rules:**

81.....25422

**42 CFR****Proposed Rules:**

59.....25502

**50 CFR**

17.....25392

# Presidential Documents

Title 3—

Proclamation 9756 of May 25, 2018

The President

Prayer for Peace, Memorial Day, 2018

By the President of the United States of America

## A Proclamation

On Memorial Day, we pause in solemn gratitude to pay tribute to the brave patriots who laid down their lives defending peace and freedom while in military service to our great Nation. We set aside this day to honor their sacrifice and to remind all Americans of the tremendous price of our precious liberty.

Throughout the history of our Republic, courageous Americans have purchased our cherished freedom with their lives. Our 151 national cemeteries serve as the final resting place for millions of people, including veterans from every war and conflict, many of whom died while serving our country. We remain duty bound to honor those who made the ultimate sacrifice on our behalf and to remember them with thankfulness and unwavering pride. The fallen—our treasured loved ones, friends, neighbors, and fellow citizens—deserve nothing less from a grateful Nation.

We must safeguard the legacies of our service members so that our children and our grandchildren will understand the sacrifices of our Armed Forces. As a part of this effort, the Department of Veterans Affairs (VA) is working to keep the memories of our fallen heroes from ever fading away. The National Cemetery Administration's Veterans Legacy Program challenges our youth, from elementary school through college, to research and share the stories and sacrifice of their hometown veterans, who are forever honored at VA National, State, and tribal veterans cemeteries. To further ensure that our veterans' legacies are remembered and celebrated, this program is developing an online memorialization platform that will amplify the voices of families, survivors, and Gold Star parents and spouses as they honor our beloved veterans and fallen service members.

Today, and every day, we revere those who have died in noble service to our country. I call upon all Americans to remember the selfless service members who have been laid to rest in flag-draped coffins and their families who have suffered the greatest loss. The sacrifices of our hallowed dead demand our Nation's highest honor and deepest gratitude. On this day, let us also unite in prayer for lasting peace in our troubled world so that future generations will enjoy the blessings of liberty and independence.

In honor and recognition of all of our fallen heroes, the Congress, by a joint resolution approved May 11, 1950, as amended (36 U.S.C. 116), has requested the President issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

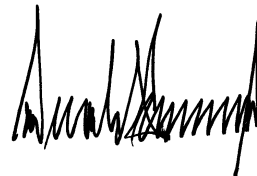
NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, do hereby proclaim Memorial Day, May 28, 2018, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time when people might unite in prayer.



I further ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day.

I also request the Governors of the United States and its Territories, and the appropriate officials of all units of government, to direct the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of May, in the year of our Lord two thousand eighteen, and of the Independence of the United States of America the two hundred and forty-second.



## Presidential Documents

### Executive Order 13836 of May 25, 2018

### Developing Efficient, Effective, and Cost-Reducing Approaches To Federal Sector Collective Bargaining

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to assist executive departments and agencies (agencies) in developing efficient, effective, and cost-reducing collective bargaining agreements (CBAs), as described in chapter 71 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. Policy.** (a) Section 7101(b) of title 5, United States Code, requires the Federal Service Labor-Management Relations Statute (the Statute) to be interpreted in a manner consistent with the requirement of an effective and efficient Government. Unfortunately, implementation of the Statute has fallen short of these goals. CBAs, and other agency agreements with collective bargaining representatives, often make it harder for agencies to reward high performers, hold low-performers accountable, or flexibly respond to operational needs. Many agencies and collective bargaining representatives spend years renegotiating CBAs, with taxpayers paying for both sides' negotiators. Agencies must also engage in prolonged negotiations before making even minor operational changes, like relocating office space.

(b) The Federal Government must do more to apply the Statute in a manner consistent with effective and efficient Government. To fulfill this obligation, agencies should secure CBAs that: promote an effective and efficient means of accomplishing agency missions; encourage the highest levels of employee performance and ethical conduct; ensure employees are accountable for their conduct and performance on the job; expand agency flexibility to address operational needs; reduce the cost of agency operations, including with respect to the use of taxpayer-funded union time; are consistent with applicable laws, rules, and regulations; do not cover matters that are not, by law, subject to bargaining; and preserve management rights under section 7106(a) of title 5, United States Code (management rights). Further, agencies that form part of an effective and efficient Government should not take more than a year to renegotiate CBAs.

**Sec. 2. Definitions.** For purposes of this order:

(a) The phrase "term CBA" means a CBA of a fixed or indefinite duration reached through substantive bargaining, as opposed to (i) agreements reached through impact and implementation bargaining pursuant to sections 7106(b)(2) and 7106(b)(3) of title 5, United States Code, or (ii) mid-term agreements, negotiated while the basic comprehensive labor contract is in effect, about subjects not included in such contract.

(b) The phrase "taxpayer-funded union time" means time granted to a Federal employee to perform non-agency business during duty hours pursuant to section 7131 of title 5, United States Code.

**Sec. 3. Interagency Labor Relations Working Group.** (a) There is hereby established an Interagency Labor Relations Working Group (Labor Relations Group).

(b) *Organization.* The Labor Relations Group shall consist of the Director of the Office of Personnel Management (OPM Director), representatives of participating agencies determined by their agency head in consultation with the OPM Director, and OPM staff assigned by the OPM Director. The OPM Director shall chair the Labor Relations Group and, subject to the availability

of appropriations and to the extent permitted by law, provide administrative support for the Labor Relations Group.

(c) *Agencies.* Agencies with at least 1,000 employees represented by a collective bargaining representative pursuant to chapter 71 of title 5, United States Code, shall participate in the Labor Relations Group. Agencies with a smaller number of employees represented by a collective bargaining representative may, at the election of their agency head and with the concurrence of the OPM Director, participate in the Labor Relations Group. Agencies participating in the Labor Relations Group shall provide assistance helpful in carrying out the responsibilities outlined in subsection (d) of this section. Such assistance shall include designating an agency employee to serve as a point of contact with OPM responsible for providing the Labor Relations Group with sample language for proposals and counter-proposals on significant matters proposed for inclusion in term CBAs, as well as for analyzing and discussing with OPM and the Labor Relations Group the effects of significant CBA provisions on agency effectiveness and efficiency. Participating agencies should provide other assistance as necessary to support the Labor Relations Group in its mission.

(d) *Responsibilities and Functions.* The Labor Relations Group shall assist the OPM Director on matters involving labor-management relations in the executive branch. To the extent permitted by law, its responsibilities shall include the following:

(i) Gathering information to support agency negotiating efforts, including the submissions required under section 8 of this order, and creating an inventory of language on significant subjects of bargaining that have relevance to more than one agency and that have been proposed for inclusion in at least one term CBA;

(ii) Developing model ground rules for negotiations that, if implemented, would minimize delay, set reasonable limits for good-faith negotiations, call for Federal Mediation and Conciliation Service (FMCS) to mediate disputed issues not resolved within a reasonable time, and, as appropriate, promptly bring remaining unresolved issues to the Federal Service Impasses Panel (the Panel) for resolution;

(iii) Analyzing provisions of term CBAs on subjects of bargaining that have relevance to more than one agency, particularly those that may infringe on, or otherwise affect, reserved management rights. Such analysis should include an assessment of term CBA provisions that cover comparable subjects, without infringing, or otherwise affecting, reserved management rights. The analysis should also assess the consequences of such CBA provisions on Federal effectiveness, efficiency, cost of operations, and employee accountability and performance. The analysis should take particular note of how certain provisions may impede the policies set forth in section 1 of this order or the orderly implementation of laws, rules, or regulations. The Labor Relations Group may examine general trends and commonalities across term CBAs, and their effects on bargaining-unit operations, but need not separately analyze every provision of each CBA in every Federal bargaining unit;

(iv) Sharing information and analysis, as appropriate and permitted by law, including significant proposals and counter-proposals offered in bargaining, in order to reduce duplication of efforts and encourage common approaches across agencies, as appropriate;

(v) Establishing ongoing communications among agencies engaging with the same labor organizations in order to facilitate common solutions to common bargaining initiatives; and

(vi) Assisting the OPM Director in developing, where appropriate, Government-wide approaches to bargaining issues that advance the policies set forth in section 1 of this order.

(e) Within 18 months of the first meeting of the Labor Relations Group, the OPM Director, as the Chair of the group, shall submit to the President,

through the Office of Management and Budget (OMB), a report proposing recommendations for meeting the goals set forth in section 1 of this order and for improving the organization, structure, and functioning of labor relations programs across agencies.

**Sec. 4. *Collective Bargaining Objectives.*** (a) The head of each agency that engages in collective bargaining under chapter 71 of title 5, United States Code, shall direct appropriate officials within each agency to prepare a report on all operative term CBAs at least 1 year before their expiration or renewal date. The report shall recommend new or revised CBA language the agency could seek to include in a renegotiated agreement that would better support the objectives of section 1 of this order. The officials preparing the report shall consider the analysis and advice of the Labor Relations Group in making recommendations for revisions. To the extent permitted by law, these reports shall be deemed guidance and advice for agency management related to collective bargaining under section 7114(b)(4)(C) of title 5, United States Code, and thus not subject to disclosure to the exclusive representative or its authorized representative.

(b) Consistent with the requirements and provisions of chapter 71 of title 5, United States Code, and other applicable laws and regulations, an agency, when negotiating with a collective bargaining representative, shall:

- (i) establish collective bargaining objectives that advance the policies of section 1 of this order, with such objectives informed, as appropriate, by the reports required by subsection (a) of this section;
- (ii) consider the analysis and advice of the Labor Relations Group in establishing these collective bargaining objectives and when evaluating collective bargaining representative proposals;
- (iii) make every effort to secure a CBA that meets these objectives; and
- (iv) ensure management and supervisor participation in the negotiating team representing the agency.

**Sec. 5. *Collective Bargaining Procedures.*** (a) To achieve the purposes of this order, agencies shall begin collective bargaining negotiations by making their best effort to negotiate ground rules that minimize delay, set reasonable time limits for good-faith negotiations, call for FMCS mediation of disputed issues not resolved within those time limits, and, as appropriate, promptly bring remaining unresolved issues to the Panel for resolution. For collective bargaining negotiations, a negotiating period of 6 weeks or less to achieve ground rules, and a negotiating period of between 4 and 6 months for a term CBA under those ground rules, should ordinarily be considered reasonable and to satisfy the “effective and efficient” goal set forth in section 1 of this order. Agencies shall commit the time and resources necessary to satisfy these temporal objectives and to fulfill their obligation to bargain in good faith. Any negotiations to establish ground rules that do not conclude after a reasonable period should, to the extent permitted by law, be expeditiously advanced to mediation and, as necessary, to the Panel.

(b) During any collective bargaining negotiations under chapter 71 of title 5, United States Code, and consistent with section 7114(b) of that chapter, the agency shall negotiate in good faith to reach agreement on a term CBA, memorandum of understanding (MOU), or any other type of binding agreement that promotes the policies outlined in section 1 of this order. If such negotiations last longer than the period established by the CBA ground rules -- or, absent a pre-set deadline, a reasonable time -- the agency shall consider whether requesting assistance from the FMCS and, as appropriate, the Panel, would better promote effective and efficient Government than would continuing negotiations. Such consideration should evaluate the likelihood that continuing negotiations without FMCS assistance or referral to the Panel would produce an agreement consistent with the goals of section 1 of this order, as well as the cost to the public of continuing to pay for both agency and collective bargaining representative negotiating teams. Upon the conclusion of the sixth month of any negotiation, the agency head shall receive notice from appropriate agency staff and shall

receive monthly notifications thereafter regarding the status of negotiations until they are complete. The agency head shall notify the President through OPM of any negotiations that have lasted longer than 9 months, in which the assistance of the FMCS either has not been requested or, if requested, has not resulted in agreement or advancement to the Panel.

(c) If the commencement or any other stage of bargaining is delayed or impeded because of a collective bargaining representative's failure to comply with the duty to negotiate in good faith pursuant to section 7114(b) of title 5, United States Code, the agency shall, consistent with applicable law consider whether to:

(i) file an unfair labor practice (ULP) complaint under section 7118 of title 5, United States Code, after considering evidence of bad-faith negotiating, including refusal to meet to bargain, refusal to meet as frequently as necessary, refusal to submit proposals or counterproposals, undue delays in bargaining, undue delays in submission of proposals or counterproposals, inadequate preparation for bargaining, and other conduct that constitutes bad-faith negotiating; or

(ii) propose a new contract, memorandum, or other change in agency policy and implement that proposal if the collective bargaining representative does not offer counterproposals in a timely manner.

(d) An agency's filing of a ULP complaint against a collective bargaining representative shall not further delay negotiations. Agencies shall negotiate in good faith or request assistance from the FMCS and, as appropriate, the Panel, while a ULP complaint is pending.

(e) In developing proposed ground rules, and during any negotiations, agency negotiators shall request the exchange of written proposals, so as to facilitate resolution of negotiability issues and assess the likely effect of specific proposals on agency operations and management rights. To the extent that an agency's CBAs, ground rules, or other agreements contain requirements for a bargaining approach other than the exchange of written proposals addressing specific issues, the agency should, at the soonest opportunity, take steps to eliminate them. If such requirements are based on now-revoked Executive Orders, including Executive Order 12871 of October 1, 1993 (Labor-Management Partnerships) and Executive Order 13522 of December 9, 2009 (Creating Labor-Management Forums to Improve Delivery of Government Services), agencies shall take action, consistent with applicable law, to rescind these requirements.

(f) Pursuant to section 7114(c)(2) of title 5, United States Code, the agency head shall review all binding agreements with collective bargaining representatives to ensure that all their provisions are consistent with all applicable laws, rules, and regulations. When conducting this review, the agency head shall ascertain whether the agreement contains any provisions concerning subjects that are non-negotiable, including provisions that violate Government-wide requirements set forth in any applicable Executive Order or any other applicable Presidential directive. If an agreement contains any such provisions, the agency head shall disapprove such provisions, consistent with applicable law. The agency head shall take all practicable steps to render the determinations required by this subsection within 30 days of the date the agreement is executed, in accordance with section 7114(c) of title 5, United States Code, so as not to permit any part of an agreement to become effective that is contrary to applicable law, rule, or regulation.

**Sec. 6. *Permissive Bargaining.*** The heads of agencies subject to the provisions of chapter 71 of title 5, United States Code, may not negotiate over the substance of the subjects set forth in section 7106(b)(1) of title 5, United States Code, and shall instruct subordinate officials that they may not negotiate over those same subjects.

**Sec. 7. *Efficient Bargaining over Procedures and Appropriate Arrangements.***

(a) Before beginning negotiations during a term CBA over matters addressed by sections 7106(b)(2) or 7106(b)(3) of title 5, United States Code, agencies shall evaluate whether or not such matters are already covered by the

term CBA and therefore are not subject to the duty to bargain. If such matters are already covered by a term CBA, the agency shall not bargain over such matters.

(b) Consistent with section 1 of this order, agencies that engage in bargaining over procedures pursuant to section 7106(b)(2) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute procedures associated with the exercise of management rights, which do not include measures that excessively interfere with the exercise of such rights. Likewise, consistent with section 1 of this order, agencies that engage in bargaining over appropriate arrangements pursuant to section 7106(b)(3) of title 5, United States Code, shall, consistent with their obligation to negotiate in good faith, bargain over only those items that constitute appropriate arrangements for employees adversely affected by the exercise of management rights. In such negotiations, agencies shall ensure that a resulting appropriate arrangement does not excessively interfere with the exercise of management rights.

**Sec. 8. *Public Accessibility.*** (a) Each agency subject to chapter 71 of title 5, United States Code, that engages in any negotiation with a collective bargaining representative, as defined therein, shall submit to the OPM Director each term CBA currently in effect and its expiration date. Such agency shall also submit any new term CBA and its expiration date to the OPM Director within 30 days of its effective date, and submit new arbitral awards to the OPM Director within 10 business days of receipt. The OPM Director shall make each term CBA publicly accessible on the Internet as soon as practicable.

(b) Within 90 days of the date of this order, the OPM Director shall prescribe a reporting format for submissions required by subsection (a) of this section. Within 30 days of the OPM Director's having prescribed the reporting format, agencies shall use this reporting format and make the submissions required under subsection (a) of this section.

**Sec. 9. *General Provisions.*** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

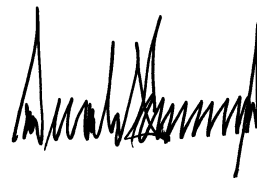
(ii) the functions of the OMB Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) Nothing in this order shall abrogate any CBA in effect on the date of this order.

(d) The failure to produce a report for the agency head prior to the termination or renewal of a CBA under section 4(a) of this order shall not prevent an agency from opening a CBA for renegotiation.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*May 25, 2018.*

## Presidential Documents

Executive Order 13837 of May 25, 2018

### Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and section 7301 of title 5, United States Code, and to ensure the effective functioning of the executive branch, it is hereby ordered as follows:

**Section 1. Purpose.** An effective and efficient government keeps careful track of how it spends the taxpayers' money and eliminates unnecessary, inefficient, or unreasonable expenditures. To advance this policy, executive branch employees should spend their duty hours performing the work of the Federal Government and serving the public.

Federal law allows Federal employees to represent labor organizations and perform other non-agency business while being paid by American taxpayers (taxpayer-funded union time). The Congress, however, has also instructed the executive branch to interpret the law in a manner consistent with the requirements of an effective and efficient government.

To that end, agencies should ensure that taxpayer-funded union time is used efficiently and authorized in amounts that are reasonable, necessary, and in the public interest. Federal employees should spend the clear majority of their duty hours working for the public. No agency should pay for Federal labor organizations' expenses, except where required by law. Agencies should eliminate unrestricted grants of taxpayer-funded union time and instead require employees to obtain specific authorization before using such time. Agencies should also monitor use of taxpayer-funded union time, ensure it is used only for authorized purposes, and make information regarding its use readily available to the public.

**Sec. 2. Definitions.** For purposes of this order, the following definitions shall apply:

(a) Except for purposes of section 4 of this order, "agency" has the meaning given the term in section 7103(a)(3) of title 5, United States Code, but includes only executive agencies. For purposes of section 4 of this order, "agency" has the meaning given to "Executive agency" in section 105 of title 5, United States Code, but excludes the Government Accountability Office.

(b) "Agency business" shall mean work performed by Federal employees, including detailees or assignees, on behalf of an agency, but does not include work performed on taxpayer-funded union time.

(c) "Bargaining unit" shall mean a group of employees represented by an exclusive representative in an appropriate unit for collective bargaining under subchapter II of chapter 71 of title 5, United States Code.

(d) "Discounted use of government property" means charging less to use government property than the value of the use of such property, as determined by the General Services Administration, where applicable, or otherwise by the generally prevailing commercial cost of using such property.

(e) "Employee" has the meaning given the term in section 7103(a)(2) of title 5, United States Code, except for purposes of section 4 of this order, in which case it means an individual employed in an "Executive



agency,” according to the meaning given that term in section 105 of title 5, United States Code, but excluding the Government Accountability Office.

(f) “Grievance” has the meaning given the term in section 7103(a)(9) of title 5, United States Code.

(g) “Labor organization” has the meaning given the term in section 7103(a)(4) of title 5, United States Code.

(h) “Paid time” shall mean time for which an employee is paid by the Federal Government, including both duty time, in which the employee performs agency business, and taxpayer-funded union time. It does not include time spent on paid or unpaid leave, or an employee’s off-duty hours.

(i) “Taxpayer-funded union time” shall mean official time granted to an employee pursuant to section 7131 of title 5, United States Code.

(j) “Union time rate” shall mean the total number of duty hours in the fiscal year that employees in a bargaining unit used for taxpayer-funded union time, divided by the number of employees in such bargaining unit.

**Sec. 3. *Standards for Reasonable and Efficient Taxpayer-Funded Union Time Usage.***

(a) No agency shall agree to authorize any amount of taxpayer-funded union time under section 7131(d) of title 5, United States Code, unless such time is reasonable, necessary, and in the public interest. Agreements authorizing taxpayer-funded union time under section 7131(d) of title 5, United States Code, that would cause the union time rate in a bargaining unit to exceed 1 hour should, taking into account the size of the bargaining unit, and the amount of taxpayer-funded union time anticipated to be granted under sections 7131(a) and 7131(c) of title 5, United States Code, ordinarily not be considered reasonable, necessary, and in the public interest, or to satisfy the “effective and efficient” goal set forth in section 1 of this order and section 7101(b) of title 5, United States Code. Agencies shall commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less, and to fulfill their obligation to bargain in good faith.

(b) (i) If an agency agrees to authorize amounts of taxpayer-funded union time under section 7131(d) of title 5, United States Code, that would cause the union time rate in a bargaining unit to exceed 1 hour (or proposes to the Federal Service Impasses Panel or an arbitrator engaging in interest arbitration an amount that would cause the union time rate in a bargaining unit to exceed 1 hour), the agency head shall report this agreement or proposal to the President through the Director of the Office of Personnel Management (OPM Director) within 15 days of such an agreement or proposal. Such report shall explain why such expenditures are reasonable, necessary, and in the public interest, describe the benefit (if any) the public will receive from the activities conducted by employees on such taxpayer-funded union time, and identify the total cost of such time to the agency. This reporting duty cannot be delegated.

(ii) Each agency head shall require relevant subordinate agency officials to inform the agency head 5 business days in advance of presenting or accepting a proposal that would result in a union time rate of greater than 1 hour for any bargaining unit, if the subordinate agency officials anticipate they will present or agree to such a provision.

(iii) The requirements of this subsection shall not apply to a union time rate established pursuant to an order of the Federal Service Impasses Panel or an arbitrator engaging in interest arbitration, provided that the agency had proposed that the Impasses Panel or arbitrator establish a union time rate of 1 hour or less.

(c) Nothing in this section shall be construed to prohibit any agency from authorizing taxpayer-funded union time as required under sections 7131(a) and 7131(c) of title 5, United States Code, or to direct an agency to negotiate to include in a collective bargaining agreement a term that precludes an agency from granting taxpayer-funded union time pursuant to those provisions.

**Sec. 4. *Employee Conduct with Regard to Agency Time and Resources.***

(a) To ensure that Federal resources are used effectively and efficiently and in a manner consistent with both the public interest and section 8 of this order, all employees shall adhere to the following requirements:

(i) Employees may not engage in lobbying activities during paid time, except in their official capacities as an employee.

(ii) (1) Except as provided in subparagraph (2) of this subsection, employees shall spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by their agency), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively.

(2) Employees who have spent one-quarter of their paid time in any fiscal year on non-agency business may continue to use taxpayer-funded union time in that fiscal year for purposes covered by sections 7131(a) or 7131(c) of title 5, United States Code.

(3) Any time in excess of one-quarter of an employee's paid time used to perform non-agency business in a fiscal year shall count toward the limitation set forth in subparagraph (1) of this subsection in subsequent fiscal years.

(iii) No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.

(iv) Employees may not be permitted reimbursement for expenses incurred performing non-agency business, unless required by law or regulation.

(v) (1) Employees may not use taxpayer-funded union time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of title 5, United States Code, except where such use is otherwise authorized by law or regulation.

(2) The prohibition in subparagraph (1) of this subsection does not apply to:

(A) an employee using taxpayer-funded union time to prepare for, confer with an exclusive representative regarding, or present a grievance brought on the employee's own behalf; or to appear as a witness in any grievance proceeding; or

(B) an employee using taxpayer-funded union time to challenge an adverse personnel action taken against the employee in retaliation for engaging in federally protected whistleblower activity, including for engaging in activity protected under section 2302(b)(8) of title 5, United States Code, under section 78u-6(h)(1) of title 15, United States Code, under section 3730(h) of title 31, United States Code, or under any other similar whistleblower law.

(b) Employees may not use taxpayer-funded union time without advance written authorization from their agency, except where obtaining prior approval is deemed impracticable under regulations or guidance adopted pursuant to subsection (c) of this section.

(c) (i) The requirements of this section shall become effective 45 days from the date of this order. The Office of Personnel Management (OPM) shall be responsible for administering the requirements of this section. Within 45 days of the date of this order, the OPM Director shall examine whether existing regulations are consistent with the rules set forth in this section. If the regulations are not, the OPM Director shall propose for notice and public comment, as soon as practicable, appropriate regulations to clarify

and assist agencies in implementing these rules, consistent with applicable law.

(ii) The head of each agency is responsible for ensuring compliance by employees within such agency with the requirements of this section, to the extent consistent with applicable law and existing collective bargaining agreements. Each agency head shall examine whether existing regulations, policies, and practices are consistent with the rules set forth in this section. If they are not, the agency head shall take all appropriate steps consistent with applicable law to bring them into compliance with this section as soon as practicable.

(e) Nothing in this order shall be construed to prohibit agencies from permitting employees to take unpaid leave to perform representational activities under chapter 71 of title 5, United States Code, including for purposes covered by section 7121(b)(1)(C) of title 5, United States Code.

**Sec. 5. Preventing Unlawful or Unauthorized Expenditures.** (a) Any employee who uses taxpayer-funded union time without advance written agency authorization required by section 4(b) of this order, or for purposes not specifically authorized by the agency, shall be considered absent without leave and subject to appropriate disciplinary action. Repeated misuse of taxpayer-funded union time may constitute serious misconduct that impairs the efficiency of the Federal service. In such instances, agencies shall take appropriate disciplinary action to address such misconduct.

(b) As soon as practicable, but not later than 180 days from the date of this order, to the extent permitted by law, each agency shall develop and implement a procedure governing the authorization of taxpayer-funded union time under section 4(b) of this order. Such procedure shall, at a minimum, require a requesting employee to specify the number of taxpayer-funded union time hours to be used and the specific purposes for which such time will be used, providing sufficient detail to identify the tasks the employee will undertake. That procedure shall also allow the authorizing official to assess whether it is reasonable and necessary to grant such amount of time to accomplish such tasks. For continuing or ongoing requests, each agency shall require requests for authorization renewals to be submitted not less than once per pay period. Each agency shall further require separate advance authorization for any use of taxpayer-funded union time in excess of previously authorized hours or for purposes for which such time was not previously authorized.

(c) As soon as practicable, but not later than 180 days from the date of this order, each agency shall develop and implement a system to monitor the use of taxpayer-funded union time to ensure that it is used only for authorized purposes, and that it is not used contrary to law or regulation. In developing these systems, each agency shall give special attention to ensuring taxpayer-funded union time is not used for:

- (i) internal union business in violation of section 7131(b) of title 5, United States Code;
- (ii) lobbying activities in violation of section 1913 of title 18, United States Code, or in violation of section 4(a)(i) of this order; or
- (iii) political activities in violation of subchapter III of chapter 73 of title 5, United States Code.

**Sec. 6. Agency Reporting Requirements.** (a) To the extent permitted by law, each agency shall submit an annual report to OPM on the following:

- (i) The purposes for which the agency has authorized the use of taxpayer-funded union time, and the amounts of time used for each such purpose;
- (ii) The job title and total compensation of each employee who has used taxpayer-funded union time in the fiscal year, as well as the total number of hours each employee spent on these activities and the proportion of each employee's total paid hours that number represents;

(iii) If the agency has allowed labor organizations or individuals on taxpayer-funded union time the free or discounted use of government property, the total value of such free or discounted use;

(iv) Any expenses the agency paid for activities conducted on taxpayer-funded union time; and

(v) The amount of any reimbursement paid by the labor organizations for the use of government property.

(b) Agencies shall notify the OPM Labor Relations Group established pursuant to the Executive Order entitled “Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining” of May 25, 2018, if a bargaining unit’s union time rate exceeds 1 hour.

(c) If an agency’s aggregate union time rate (i.e., the average of the union time rates in each agency bargaining unit, weighted by the number of employees in each unit) has increased overall from the last fiscal year, the agency shall explain this increase in the report required under subsection (a) of this section.

(d) The OPM Director shall set a date by which agency submissions under this section are due.

**Sec. 7. Public Disclosure and Transparency.** (a) Within 180 days of the date of this order, the OPM Director shall publish a standardized form that each agency shall use in preparing the reports required by section 6 of this order.

(b) OPM shall analyze the agency submissions under section 6 of this order and produce an annual report detailing:

(i) for each agency and for agencies in the aggregate, the number of employees using taxpayer-funded union time, the number of employees using taxpayer-funded union time separately listed by intervals of the proportion of paid time spent on such activities, the number of hours spent on taxpayer-funded union time, the cost of taxpayer-funded union time (measured by the compensation of the employees involved), the aggregate union time rate, the number of bargaining unit employees, and the percentage change in each of these values from the previous fiscal year;

(ii) for each agency and in the aggregate, the value of the free or discounted use of any government property the agency has provided to labor organizations, and any expenses, such as travel or per diems, the agency paid for activities conducted on taxpayer-funded union time, as well as the amount of any reimbursement paid for such use of government property, and the percentage change in each of these values from the previous fiscal year;

(iii) the purposes for which taxpayer-funded union time was granted; and

(iv) the information required by section 6(a)(ii) of this order for employees using taxpayer-funded union time, sufficiently aggregated that such disclosure would not unduly risk disclosing information protected by law, including personally identifiable information.

(c) The OPM Director shall publish the annual report required by this section by June 30 of each year. The first report shall cover fiscal year 2019 and shall be published by June 30, 2020.

(d) The OPM Director shall, after consulting with the Chief Human Capital Officers designated under chapter 14 of title 5, United States Code, promulgate any additional guidance that may be necessary or appropriate to assist the heads of agencies in complying with the requirements of this order.

**Sec. 8. Implementation and Renegotiation of Collective Bargaining Agreements.** (a) Each agency shall implement the requirements of this order within 45 days of the date of this order, except for subsection 4(b) of this order, which shall be effective for employees at an agency when such agency implements the procedure required by section 5(b) of this order, to the

extent permitted by law and consistent with their obligations under collective bargaining agreements in force on the date of this order. The head of each agency shall designate an official within the agency tasked with ensuring implementation of this order, and shall report the identity of such official to OPM within 30 days of the date of this order.

(b) Each agency shall consult with employee labor representatives about the implementation of this order. On the earliest date permitted by law, and to effectuate the terms of this order, any agency that is party to a collective bargaining agreement that has at least one provision that is inconsistent with any part of this order shall give any contractually required notice of its intent to alter the terms of such agreement and either reopen negotiations and negotiate to obtain provisions consistent with this order, or subsequently terminate such provision and implement the requirements of this order, as applicable under law.

**Sec. 9. General Provisions.** (a) Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order.

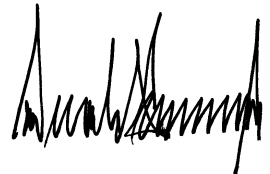
(b) Nothing in this order shall be construed to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under chapter 71 of title 5, United States Code, or encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment.

(c) Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof.

(d) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(f) If any provision of this order, including any of its applications, is held to be invalid, the remainder of this order and all of its other applications shall not be affected thereby.



THE WHITE HOUSE,  
May 25, 2018.

## Presidential Documents

### Executive Order 13838 of May 25, 2018

### Exemption From Executive Order 13658 for Recreational Services on Federal Lands

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to ensure that the Federal Government can economically and efficiently provide the services that allow visitors of all means to enjoy the natural beauty of Federal parks and other Federal lands, it is hereby ordered as follows:

**Section 1. Policy.** Executive Order 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors), established a minimum wage to be paid by parties who contract with the Federal Government and applies to outfitters and guides operating on Federal lands. These individuals often conduct multiday recreational tours through Federal lands, and may be required to work substantial overtime hours. The implementation of Executive Order 13658 threatens to raise significantly the cost of guided hikes and tours on Federal lands, preventing many visitors from enjoying the great beauty of America's outdoors. Seasonal recreational workers have irregular work schedules, a high incidence of overtime pay, and an unusually high turnover rate, among other distinguishing characteristics. As a consequence, a minimum wage increase would generally entail large negative effects on hours worked by recreational service workers. Thus, applying Executive Order 13658 to these service contracts does not promote economy and efficiency in making these services available to those who seek to enjoy our Federal lands. That rationale, however, does not apply with the same force to lodging and food services associated with seasonal recreational services, which generally involve more regular work schedules and normal amounts of overtime work. Executive Order 13658 therefore should continue to apply to lodging and food services associated with seasonal recreational services.

**Sec. 2. Exemption from Executive Order 13658.** Section 7(f) of Executive Order 13658 is amended by inserting at its end the following language: "This order shall not apply to contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, but this exemption shall not apply to lodging and food services associated with seasonal recreational services. Seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps."

**Sec. 3. Agency Implementation.** Executive departments and agencies (agencies) shall promptly take appropriate action to implement this exemption and to ensure that all applicable regulations and agency guidance are consistent with this order. Agencies shall modify existing authorizations and solicitations for contracts or contract-like instruments affected by section 2 of this order by removing clauses requiring compliance with Executive Order 13658 (including the contract clause set forth at title 29, part 10, appendix A, Code of Federal Regulations) as soon as practicable and consistent with applicable law. Agencies shall remove such clauses without impairing the recreational activities or uses authorized by those permits and contracts.

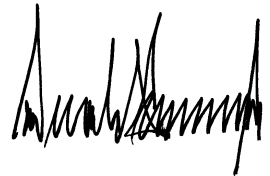
**Sec. 4. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
*May 25, 2018.*

## Presidential Documents

Executive Order 13839 of May 25, 2018

### Promoting Accountability and Streamlining Removal Procedures Consistent With Merit System Principles

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 1104(a)(1), 3301, and 7301 of title 5, United States Code, and section 301 of title 3, United States Code, and to ensure the effective functioning of the executive branch, it is hereby ordered as follows:

**Section 1. *Purpose.*** Merit system principles call for holding Federal employees accountable for performance and conduct. They state that employees should maintain high standards of integrity, conduct, and concern for the public interest, and that the Federal workforce should be used efficiently and effectively. They further state that employees should be retained based on the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. Unfortunately, implementation of America's civil service laws has fallen far short of these ideals. The Federal Employee Viewpoint Survey has consistently found that less than one-third of Federal employees believe that the Government deals with poor performers effectively. Failure to address unacceptable performance and misconduct undermines morale, burdens good performers with subpar colleagues, and inhibits the ability of executive agencies (as defined in section 105 of title 5, United States Code, but excluding the Government Accountability Office) (agencies) to accomplish their missions. This order advances the ability of supervisors in agencies to promote civil servant accountability consistent with merit system principles while simultaneously recognizing employees' procedural rights and protections.

**Sec. 2. *Principles for Accountability in the Federal Workforce.*** (a) Removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors. Agencies should limit opportunity periods to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, to the amount of time that provides sufficient opportunity to demonstrate acceptable performance.

(b) Supervisors and deciding officials should not be required to use progressive discipline. The penalty for an instance of misconduct should be tailored to the facts and circumstances.

(c) Each employee's work performance and disciplinary history is unique, and disciplinary action should be calibrated to the specific facts and circumstances of each individual employee's situation. Conduct that justifies discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time -- particularly where the employees are in different work units or chains of supervision -- and agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct. Nonetheless, employees should be treated equitably, so agencies should consider appropriate comparators as they evaluate potential disciplinary actions.

(d) Suspension should not be a substitute for removal in circumstances in which removal would be appropriate. Agencies should not require suspension of an employee before proposing to remove that employee, except as may be appropriate under applicable facts.



(e) When taking disciplinary action, agencies should have discretion to take into account an employee's disciplinary record and past work record, including all past misconduct -- not only similar past misconduct. Agencies should provide an employee with appropriate notice when taking a disciplinary action.

(f) To the extent practicable, agencies should issue decisions on proposed removals taken under chapter 75 of title 5, United States Code, within 15 business days of the end of the employee reply period following a notice of proposed removal.

(g) To the extent practicable, agencies should limit the written notice of adverse action to the 30 days prescribed in section 7513(b)(1) of title 5, United States Code.

(h) The removal procedures set forth in chapter 75 of title 5, United States Code (Chapter 75 procedures), should be used in appropriate cases to address instances of unacceptable performance.

(i) A probationary period should be used as the final step in the hiring process of a new employee. Supervisors should use that period to assess how well an employee can perform the duties of a job. A probationary period can be a highly effective tool to evaluate a candidate's potential to be an asset to an agency before the candidate's appointment becomes final.

(j) Following issuance of regulations under section 7 of this order, agencies should prioritize performance over length of service when determining which employees will be retained following a reduction in force.

**Sec. 3. *Standard for Negotiating Grievance Procedures.*** Whenever reasonable in view of the particular circumstances, agency heads shall endeavor to exclude from the application of any grievance procedures negotiated under section 7121 of title 5, United States Code, any dispute concerning decisions to remove any employee from Federal service for misconduct or unacceptable performance. Each agency shall commit the time and resources necessary to achieve this goal and to fulfill its obligation to bargain in good faith. If an agreement cannot be reached, the agency shall, to the extent permitted by law, promptly request the assistance of the Federal Mediation and Conciliation Service and, as necessary, the Federal Service Impasses Panel in the resolution of the disagreement. Within 30 days after the adoption of any collective bargaining agreement that fails to achieve this goal, the agency head shall provide an explanation to the President, through the Director of the Office of Personnel Management (OPM Director).

**Sec. 4. *Managing the Federal Workforce.*** To promote good morale in the Federal workforce, employee accountability, and high performance, and to ensure the effective and efficient accomplishment of agency missions and the efficiency of the Federal service, to the extent consistent with law, no agency shall:

(a) subject to grievance procedures or binding arbitration disputes concerning:

(i) the assignment of ratings of record; or

(ii) the award of any form of incentive pay, including cash awards; quality step increases; or recruitment, retention, or relocation payments;

(b) make any agreement, including a collective bargaining agreement:

(i) that limits the agency's discretion to employ Chapter 75 procedures to address unacceptable performance of an employee;

(ii) that requires the use of procedures under chapter 43 of title 5, United States Code (including any performance assistance period or similar informal period to demonstrate improved performance prior to the initiation of an opportunity period under section 4302(c)(6) of title 5, United States Code), before removing an employee for unacceptable performance; or

(iii) that limits the agency's discretion to remove an employee from Federal service without first engaging in progressive discipline; or

(c) generally afford an employee more than a 30-day period to demonstrate acceptable performance under section 4302(c)(6) of title 5, United States Code, except when the agency determines in its sole and exclusive discretion that a longer period is necessary to provide sufficient time to evaluate an employee's performance.

**Sec. 5. *Ensuring Integrity of Personnel Files.*** Agencies shall not agree to erase, remove, alter, or withhold from another agency any information about a civilian employee's performance or conduct in that employee's official personnel records, including an employee's Official Personnel Folder and Employee Performance File, as part of, or as a condition to, resolving a formal or informal complaint by the employee or settling an administrative challenge to an adverse personnel action.

**Sec. 6. *Data Collection of Adverse Actions.*** (a) For fiscal year 2018, and for each fiscal year thereafter, each agency shall provide a report to the OPM Director containing the following information:

(i) the number of civilian employees in a probationary period or otherwise employed for a specific term who were removed by the agency;

(ii) the number of civilian employees reprimanded in writing by the agency;

(iii) the number of civilian employees afforded an opportunity period by the agency under section 4302(c)(6) of title 5, United States Code, breaking out the number of such employees receiving an opportunity period longer than 30 days;

(iv) the number of adverse personnel actions taken against civilian employees by the agency, broken down by type of adverse personnel action, including reduction in grade or pay (or equivalent), suspension, and removal;

(v) the number of decisions on proposed removals by the agency taken under chapter 75 of title 5, United States Code, not issued within 15 business days of the end of the employee reply period;

(vi) the number of adverse personnel actions by the agency for which employees received written notice in excess of the 30 days prescribed in section 7513(b)(1) of title 5, United States Code;

(vii) the number and key terms of settlements reached by the agency with civilian employees in cases arising out of adverse personnel actions; and

(viii) the resolutions of litigation about adverse personnel actions involving civilian employees reached by the agency.

(b) Compilation and submission of the data required by subsection (a) of this section shall be conducted in accordance with all applicable laws, including those governing privacy and data security.

(c) To enhance public accountability of agencies for their management of the Federal workforce, the OPM Director shall, consistent with applicable law, publish the information received under subsection (a) of this section, at the minimum level of aggregation necessary to protect personal privacy. The OPM Director may withhold particular information if publication would unduly risk disclosing information protected by law, including personally identifiable information.

(d) Within 60 days of the date of this order, the OPM Director shall issue guidance regarding the implementation of this section, including with respect to any exemptions necessary for compliance with applicable law and the reporting format for submissions required by subsection (a) of this section.

**Sec. 7. *Implementation.*** (a) Within 45 days of the date of this order, the OPM Director shall examine whether existing regulations effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order. To the extent necessary or appropriate, the OPM Director shall, as soon as practicable, propose for notice and public

comment appropriate regulations to effectuate the principles set forth in section 2 of this order and the requirements of sections 3, 4, 5, and 6 of this order.

(b) The head of each agency shall take steps to conform internal agency discipline and unacceptable performance policies to the principles and requirements of this order. To the extent consistent with law, each agency head shall:

(i) within 45 days of this order, revise its discipline and unacceptable performance policies to conform to the principles and requirements of this order, in areas where new final Office of Personnel Management (OPM) regulations are not required, and shall further revise such policies as necessary to conform to any new final OPM regulations, within 45 days of the issuance of such regulations; and

(ii) renegotiate, as applicable, any collective bargaining agreement provisions that are inconsistent with any part of this order or any final OPM regulations promulgated pursuant to this order. Each agency shall give any contractually required notice of its intent to alter the terms of such agreement and reopen negotiations. Each agency shall, to the extent consistent with law, subsequently conform such terms to the requirements of this order, and to any final OPM regulations issued pursuant to this order, on the earliest practicable date permitted by law.

(c) Within 15 months of the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director shall submit to the President a report, through the Director of the Office of Management and Budget, evaluating the effect of those rules, including their effect on the ability of Federal supervisors to hold employees accountable for their performance.

(d) Within a reasonable amount of time following the adoption of any final rules issued pursuant to subsection (a) of this section, the OPM Director and the Chief Human Capital Officers Council shall undertake a Government-wide initiative to educate Federal supervisors about holding employees accountable for unacceptable performance or misconduct under those rules.

**Sec. 8. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

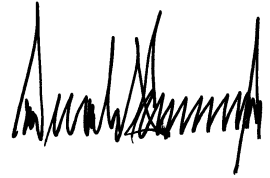
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) Agencies shall consult with employee labor representatives about the implementation of this order. Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(e) If any provision of this order, including any of its applications, is held to be invalid, the remainder of this order and all of its other applications shall not be affected thereby.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the upper right quadrant of the page.

THE WHITE HOUSE,  
*May 25, 2018.*

# Rules and Regulations

Federal Register

Vol. 83, No. 106

Friday, June 1, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210 and 225

[FNS–2013–0026]

RIN 0584–AD84

#### Simplified Cost Accounting and Other Actions To Reduce Paperwork in the Summer Food Service Program

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Summer Food Service Program (SFSP) regulations to incorporate statutory changes mandated by Section 738 of the Consolidated Appropriations Act, 2008, which extends simplified cost accounting and reporting procedures to SFSP sponsors in all States, and eliminates the cost comparison requirements for determining payments to sponsors. In addition, this rule makes several discretionary changes to improve administrative efficiency and reduce paperwork in the management of the SFSP. Finally, this rule amends the National School Lunch Program regulations to create consistency among the Child Nutrition Programs with regard to notice procedures. The intended effect of this rule is to simplify and streamline Program administration while ensuring Program integrity.

#### DATES:

*Effective Date:* This rule is effective July 31, 2018.

*Implementation Date:* State agencies and Summer Food Service Program sponsors must implement the provisions of this rule no later than January 1, 2019.

**FOR FURTHER INFORMATION CONTACT:** Andrea Farmer, (703) 305–2470.

#### SUPPLEMENTARY INFORMATION:

### I. Background

The Summer Food Service Program (SFSP) is authorized under Section 13 of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1761. The primary purpose of the Program is to provide free, nutritious meals to children in low-income areas during periods when schools are not in session. FNS has made strides to ensure that those in need have food to eat and to streamline Program operations. SFSP serves not only the neediest children, but also functions as an opportunity for local leaders and business owners to serve their community. Summer Meal Programs can be operated in a variety of settings and should focus on the needs of diverse communities. Because of this, the types of participating Program sponsors vary widely—from Federal agencies, to local governments, school districts, and small nonprofit community organizations.

This final rule codifies the nondiscretionary simplified cost accounting and reporting procedures established in the Consolidated Appropriations Act, 2008 (Pub. L. 110–161). These simplified cost accounting procedures were originally authorized in the Consolidated Appropriations Act of 2001 and were piloted in fourteen states from 2001–2004. Section 18(f) of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265) made the simplified cost accounting procedures permanent for eligible States. Six new States in addition to the original fourteen States were determined eligible. The Consolidated Appropriations Act, 2008 extended the simplified procedures to all sponsors in all States.

This final rule also makes discretionary changes to the SFSP regulations to improve management of the Program and reduce paperwork requirements for program operators. The purpose of the simplified procedures is to facilitate and encourage participation by eligible sponsors, in turn providing access to those in need in the summer months and other times during the year when they do not have access to school meals.

The regulatory changes to the reimbursement procedures will align Program regulations with current policy FNS issued in 2008 to implement statutory changes, SFSP 01–2008, *Nationwide Expansion of Summer Food*

*Service Program Simplified Cost Accounting Procedures*, January 2, 2008. This policy guidance implemented the elimination of the cost comparison to determine reimbursements, the establishment of a reimbursement rate of “meals times rate” without comparison to actual or budgeted costs, and the requirement that sponsors maintain records of their costs for State agency review, rather than report their costs to the State agency.

The intent of this rulemaking is to simplify the SFSP for State agencies, sponsors, and site operators while providing a quality meal service to children and maintaining integrity of the Program. The proposed rule was published in the **Federal Register** (78 FR 41857) on July 12, 2013, seeking to codify changes to cost accounting practices as well as make changes to improve the efficiency and effectiveness of the Program and reduce administrative paperwork. The majority of provisions in the proposed rule codify the existing policies and guidance already being implemented in the SFSP nationwide:

- Extend simplified cost accounting and reporting procedures to SFSP sponsors in all States and eliminate the cost comparison requirements for determining payments to sponsors.
- Require sponsors to utilize unused reimbursement to improve the Program, or pay allowable costs of other Child Nutrition Programs operated by the sponsor.
- Provide State agencies the flexibility to exempt school food authority sponsors from submitting a separate budget when applying to operate SFSP, provided that operation of SFSP was included in their annual budget for operation of the National School Lunch Program.
- Require sponsors to maintain documentation confirming the operation of a nonprofit food service.
- Establish the responsibilities of State agencies when reviewing a sponsor’s operation under simplified procedures, including suggestions for monitoring of the nonprofit food service.
- Encourage State agencies to provide technical assistance to sponsors to utilize unused reimbursements to improve the meal service, improve Program management, or pay allowable costs of other Child Nutrition Programs

operated by the sponsor if significant unused reimbursements are found during a sponsor review.

- Allow more alternatives for sponsors to combine claims for reimbursement.
- Allow sponsors to renew contracts for up to four years, to reduce paperwork and increase the sponsors' negotiating power to get higher quality meals at a better price.
- Clarify the administrative oversight role of sponsors at meal service sites.
- Provide consistent notification and simplified acquisition threshold requirements across Child Nutrition Programs.

## II. Public Comments and FNS Response

FNS appreciates the insightful comments provided by stakeholders and the public. Twenty-two comments were received from a cross section of SFSP administrators, SFSP operators, and advocates. Commenters included representatives of State Departments of Education, food banks, and nonprofit organizations supporting anti-hunger efforts, summer learning, and afterschool programs. Seven State administering agencies, four SFSP sponsors, and 11 advocacy organizations submitted comments on the proposed rule. It should be noted that 22 comments represent a very small portion of the vast number of SFSP stakeholders. To view all of the public comments on the proposed rule, go to [www.regulations.gov](http://www.regulations.gov) and search for public submissions under docket number FNS-2013-0026.

Of the 22 comments received, 19 voiced general support for the implementation of the simplified cost accounting amendments, the clarification of the sponsor's responsibility for oversight at meal sites, and the amendment of the threshold for small purchases, and offered thoughtful suggestions for improvements to strengthen the rule and provide more clarity on certain sections.

Some commenters specifically voiced concern regarding the proposed changes to the collection of excess funds, approval of applications, review of nutrition quality, and monitoring of sponsor budgets and nonprofit food service. These commenters expressed concern that the proposed changes could compel State agencies to reinstate administrative practices that had been required for cost accounting, prior to the 2008 law and publication of subsequent implementing guidance. Additionally, a few commenters expressed concern that several of the provisions regarding State agency monitoring would create undue burden on the administering State

agencies and sponsors and might discourage participation. Several commenters also requested clarity and guidance on a number of the provisions, particularly State agency monitoring of sponsors and operation of a nonprofit food service.

The following is a summary of the public comments by provision. In some instances, several provisions are grouped together under the same topic area because the provisions and comments received are related:

### *a. Simplified Cost Accounting and Reporting*

7 CFR 225.9(c), 7 CFR 225.9(d)(7), 7 CFR 225.9(d)(8)

**Proposed Rule:** The proposed rule would codify the practice of using a combined operating and administrative reimbursement of "meals times rates" for all sponsors, and eliminate cost comparison requirements at 7 CFR 225.9(d)(7) and (8). The proposed rule would also streamline the process for calculating advances under 7 CFR 225.9(c) by no longer differentiating between operating and administrative advances. As required by legislative action, FNS updated its policy guidance to provide for implementation of a combined reimbursement nationwide.

Regulations at 7 CFR 225.9(c) provide a framework for advancing payments to sponsors, while 7 CFR 225.9(d)(7) and (8) require State agencies to reimburse participating sponsors on a per-meal basis for meals meeting Program requirements. Prior to the implementation of the pilot and the subsequent extension of the simplified cost accounting procedures to all States and sponsors, sponsors received reimbursement separately for both operating costs and administrative costs.

**Comments:** There was unanimous support from all commenters who commented on these specific provisions. Several of the commenters offered recommendations to create more flexibility within this provision by allowing State agencies to determine the percentage of the advance that is given to sponsors. Other commenters suggested additional training for school food authorities (SFA).

**FNS Response:** The changes to 7 CFR 225.9(d)(7) and (8) to eliminate cost comparison requirements, as proposed, are finalized in this rule. In response to commenters' request for more flexibility for State agencies to determine the percentage of advance payments, we must clarify that FNS does not have the statutory authority to amend those requirements. The requirements to provide service institutions with

advance payments as well as the determined percentages of advance payments are codified at Section 13(e)(1) and (2) of the NSLA and do not provide the discretion FNS would need to amend the requirements for advance payments. However, the regulations at 7 CFR 225.9(c)(3) (this rulemaking amends citation to 7 CFR 225.9(c)(2)) do provide some flexibility to the State agency to "make the best possible estimate based on the sponsor's request and any other available data" when determining the amount of the advanced payment. State agencies should work with sponsors, especially those sponsors that are operating the Program for the first time, as they develop their request for advance payments.

In current regulations, State agencies already have the discretion to require more training for SFAs. Therefore, FNS maintains that the proposed language provides State agencies with the flexibility to require additional training. However, in order to provide clarity, FNS intends to issue additional guidance on administration of advances as deemed necessary.

Accordingly, the changes to 7 CFR 225.9(d)(7) and (8) and (c) as proposed are finalized in this rule. They eliminate the cost comparison requirements, combine operating and administrative reimbursements into a single "meals times rates" reimbursement, and combine operating and administrative advances. In addition, references to operating and administrative costs were removed throughout 7 CFR 225.9.

### *b. Budget Submissions*

7 CFR 225.6(b)(7)

**Proposed Rule:** The proposed rule would amend 7 CFR 225.6(b)(7) to allow State agencies to exempt SFA sponsors that participated in the SFSP in the previous year and had no documented serious problems managing the SFSP or National School Lunch Program (NSLP) from the annual budget submission requirement.

Prior to publication of the proposed rule, FNS issued policy guidance (SFSP 01-2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, January 2, 2008 and SFSP 03-2008, *Simplified Procedures in the Summer Food Service Program*, February 14, 2008) that provided State agencies with the flexibility to exempt certain sponsors from the requirement to submit budgets annually with their applications for participation as specified in 7 CFR 225.6(c)(2)(ii)(B) and (c)(3)(ii)(B) and to receive start-up or

advance payments as specified in 7 CFR 225.9(a) and (c)(2)(i).

The proposed changes would have brought the regulations in line with exemptions currently available nationwide.

*Comments:* Of the five unique comments received on this provision, two supported, one opposed, and two provided recommendations for clarifying and streamlining the process to reduce administrative burden on sponsors. One commenter recommended allowing State agencies to exempt SFA sponsors, who participated successfully in any Child Nutrition Program (including NSLP, School Breakfast Program (SBP), and Seamless Summer Option (SSO)) in the prior year, from the annual budget submission requirement. The commenter that opposed this provision expressed that “successful” was too vague a term and requested additional criteria for identifying a successful operation. The opposing commenter also identified the budget submission as a necessity in order to determine the nonprofit food service status of sponsors.

*FNS Response:* The proposed changes to the budget submission process were intended to align regulations with implemented national flexibility to allow States to exempt certain sponsors from the requirement. This flexibility dates back to the original simplified cost accounting pilot first started in 2001. However, these provisions are not consistent with statutory changes made in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296). Amendments to Section 13(b)(3) of the NSLA revised budget submission requirements to specify that “when applying for participation in the program, and not less frequently than annually thereafter, each service institution shall submit a complete budget for administrative costs related to the program, which shall be subject to approval by the State.” Based on the legislative amendments to Section 13 of the NSLA, all sponsors, without exception, applying to participate must submit a complete budget for administrative costs related to the Program.

FNS has received consistent feedback from stakeholders that budget submissions are a useful tool for maintaining Program integrity. The budget review process provides the opportunity to identify unallowable costs and helps ensure that funds are used only for allowable costs. Maintaining a requirement for State agencies to annually review budgets allows SFA sponsors to receive

important feedback on the allowability of planned expenditures.

However, FNS recognizes that submitting a separate budget for SFSP would be duplicative for SFAs that have already submitted budget information as part of their operation of another Child Nutrition Program. In an effort to reduce administrative and paperwork burden, State agencies may exempt SFAs applying to operate the SFSP from submitting a separate budget to the State agency, provided that operation of the SFSP is included in the annual budget submitted for the NSLP.

Accordingly, the proposed changes to budget submission requirements are not included in the final rule and the requirement at 7 CFR 225.6(b)(7) that sponsors must submit budgets when they apply for participation in the SFSP is maintained. In addition, the final rule adds at 7 CFR 225.6(b)(7) State agency discretion to exempt SFAs from submitting a separate budget provided that operation of the SFSP is included in the annual budget submitted for the NSLP.

*c. Maintaining a Nonprofit Food Service*  
7 CFR 225.12(a), 7 CFR 225.15(a), 7 CFR 225.15(c)

The proposed rule touched on several sections of the regulations relating to maintenance of a nonprofit food service, including sections on claims against sponsors and management responsibilities of sponsors.

*Proposed Rule:* The proposed rule would amend 7 CFR 225.15(a)(4) to require sponsors to maintain documentation confirming the operation of a nonprofit food service. The proposed rule would also clarify 7 CFR 225.12(a) and 225.15(c)(1), which restrict the use of SFSP reimbursements on allowable costs only and require that sponsors’ records include all costs associated with the meal service and document that all costs are allowable.

Regulations found at 7 CFR 225.6(e)(1) require sponsors to maintain a nonprofit food service. Regulations at 7 CFR 225.12(a) and 225.15(a) and (c) outline the requirements for maintaining a nonprofit food service in the SFSP. Sponsors that operate multiple Child Nutrition Programs on a year-round basis are not required to maintain a separate nonprofit food service account for the SFSP. The Consolidated Appropriations Act of 2008, which expanded the simplified cost accounting procedures, also amended statutory requirements for maintaining a nonprofit food service. FNS provided guidance on what is required to document the maintenance

of a nonprofit food service under the legislative changes via policy memorandum (SFSP 01–2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, January 2, 2008).

*Comments:* FNS received eight unique comments on the topic of maintaining a nonprofit food service. Three of the eight comments opposed the provision, two proposed recommendations for clarity, and one expressed concern that this provision could eventually result in USDA requiring end-of-year operating statements. Commenters expressed concern that FNS was establishing a requirement that sponsors report costs to the State agency on a routine or annual basis. Similarly, commenters recommended clarifying the language to ensure that sponsors do not have to report their costs to the State agency on an annual basis. Commenters also recommended codifying the language used in the January 2008 guidance, which said that sponsors “must be able to document” their nonprofit food service.

*FNS Response:* The intent of this provision is consistent with the January 2008 guidance, which requires that sponsors be able to document that they have maintained a nonprofit food service. It is not the intent of this provision to require sponsors to submit cost records to the State agency on a routine or annual basis. As noted in that guidance, sponsors may meet this requirement by retaining records of all revenues received and expenses paid from the nonprofit food service account. This requirement does not include submitting records to the State agency on a routine or annual basis. However, FNS expects that sponsors will maintain documentation to support their operation of a nonprofit food service to ensure the integrity of the Program. This documentation permits the sponsor, reviewers, and auditors to evaluate and verify during a review that the SFSP was operated on a nonprofit basis. State agencies are responsible for informing sponsors that expenses paid from the nonprofit food service account must be allowable costs that are necessary, reasonable, and properly documented. Accordingly, FNS will amend 7 CFR 225.12(a) and 225.15(a)(4) and (c)(1) to retain the language to maintain documentation of a nonprofit service account in the final rule as it was proposed.

*d. Collection of Excess Funds*

7 CFR 225.9

**Proposed Rule:** As proposed, this provision would add a paragraph to 7 CFR 225.9 to require sponsors to use “excess funds” (reimbursements exceeding allowable costs) to improve the meal service or management of the program. The provision also would allow sponsors to use remaining funds at the end of the Program year to be used to pay allowable costs of other Child Nutrition Programs.

The provision went further to require excess funds to be collected from sponsors that do not operate at least one other Child Nutrition Program and do not plan to participate in the SFSP in the following year. At the time the proposed rule was published, the only requirements for collection of excess funds in SFSP regulations were found at 7 CFR 225.9(c)(7) and referred to collection of funds in excess of advanced payments.

**Comments:** Of the six unique comments received, two opposed the provision, two offered recommendations, one expressed concern, and one supported the changes. Those who opposed the provision stated that it would increase administrative burden on the States and sponsors. In addition, commenters believed that collecting excess funds would make it difficult for sponsors to improve Program operations and would discourage participation. Ten commenters noted that the proposed changes were not supported by the Consolidated Appropriations Act of 2008 (Pub. L. 110–161), which extended the simplified cost accounting procedures to all sponsors and therefore entitles all sponsors to the maximum reimbursement, as long as the sponsor is meeting the program requirements, including serving meals that meet the Federal nutrition standards.

**FNS Response:** FNS appreciates the comments received on the effectiveness of collecting excess funds and challenges associated with the implementation of this provision. Upon further review, FNS has determined that the proposed rule and guidance issued following the publication of the proposed rule did not accurately represent the intent of the provision. The regulatory language in the proposed rule, which would have required the State agency to collect “excess funds” (meaning both reimbursements in excess of costs and advance payments in excess of reimbursement) at the end of each summer of Program operations, was overly broad and could create undue burden on both the State agency

and sponsors. Additionally, by preventing sponsors from retaining funds at the end of Program operations, sponsors would be unable to take necessary steps between operating times to improve meal service during operation. FNS also recognizes the need for clarity when discussing excess funds and seeks to alleviate the confusion caused by the proposed rule and subsequent guidance.

Under the simplified cost accounting procedures, FNS issued guidance on how to manage excess funds in the SFSP. However, FNS did not clearly define the term “excess funds.” There is an important distinction between *excess funds* and *unused reimbursement* that needs to be explained.

FNS defines excess funds, for Program purposes, as the difference between any advance funding and reimbursement funding, when advance funds received by a sponsor are greater than the reimbursement amount earned by a sponsor. This distinction is statutorily established in Section 13(e)(1) of the NSLA, 42 U.S.C. 1761(e)(1), which states that “Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution. . . .” Further, in Section 13(e)(2), the NSLA provides that, “[p]rogram payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.” This requirement is also codified in current regulations at 7 CFR 225.9(c)(7).

While there is, similarly, a statutory directive in Section 13(e)(2) of the NSLA requiring the collection of excess funds, as described above, there is no such statutory directive, or intent, to collect unused reimbursements.

So, an example of *excess funds* would be if a sponsor requested \$1,000 in advance funding and only claimed \$900 in meal reimbursement; the sponsor would have \$100 in excess funds that cannot be used in other Child Nutrition Programs. The State agency has the statutory and regulatory authority to recover the \$100 in excess funds at the end of Program operations for which the advance was paid.

In contrast, FNS defines *unused reimbursements* differently than excess funds. Unused reimbursements are the difference between the amount claimed for reimbursement and actual costs,

should reimbursement exceed costs. For example, if a sponsor received \$1,000 in meal claim reimbursement but only spent \$900 on actual costs to operate the Program, the sponsor would have \$100 in unused reimbursement.

FNS expects States and sponsors to adequately manage resources, so that a well-run, quality summer meal service does not result in a significant amount of unused reimbursement. It is incumbent on sponsors and State agencies to monitor program operations throughout the summer and for sponsors to make adjustments to ensure that quality meals are being served. However, should a sponsor have unspent reimbursement, this remaining amount must be kept in a nonprofit food service account, as required of all Child Nutrition Programs. These funds must benefit the operation of another Child Nutrition Program operated by the sponsor or SFSP operations operated by the sponsor the following Program year. If a sponsor does not return to participate in SFSP and does not operate any other Child Nutrition Programs, the sponsor is not required to return the unused reimbursement. As noted by commenters, this is in keeping with the intent of the statute which entitles all sponsors to the maximum reimbursement, as long as the sponsor is meeting the program requirements.

Additionally, in order to address the issue of treating sponsors remaining in the Program differently than sponsors not intending to participate in the following year, FNS would like to highlight the regulatory requirements at 7 CFR 225.6(e)(1)(i) that sponsors must enter into a permanent agreement with the State agency, in which they must agree to operate a nonprofit food service during the period specified. Therefore, those sponsors remaining in the Program must continue to operate a nonprofit food service in order to be in compliance with regulations and not be in violation of the Sponsor-State agreement. This means that should a sponsor have unused reimbursement, it must be used to improve the Program or for allowable costs in other Child Nutrition Programs operated by the sponsor. In contrast, a sponsor that chooses not participate in the Program no longer has an agreement with the State agency and is not required to operate a nonprofit food service.

Since 2008, consistent with statutory direction in Section 13 of the NSLA, FNS has made the distinction between excess funds and unused reimbursement in order to protect the integrity of program operations by ensuring that sponsors are only permitted to retain funds that are



payment for meals served to children through the SFSP. It is important to remember that under simplified cost accounting procedures, unused reimbursements are not returned to the State agency unless unallowable meals were claimed for reimbursement. State agencies are always permitted to conduct closeout audits or reviews to determine if all meals claimed were valid and that Program funds were spent on allowable costs only.

FNS encourages this oversight activity, particularly when the State agency has concerns about how the sponsor operated the Program.

If unallowable costs are identified during a closeout review or audit, the State agency should follow appropriate audit resolution procedures, although no funds would be recovered. If a sponsor will not operate SFSP in the future, but currently operates another Child Nutrition Program, the sponsor would be required to restore the misspent SFSP funds to its nonprofit food service account. In cases where the organization does not intend to participate in the SFSP in the future and does not currently participate in any other Child Nutrition Programs, the State agency should notify the sponsor of the findings and retain documentation of the findings on file. If the organization applies for participation in any Child Nutrition Program in the future, the State agency should ensure the organization has proper controls in place to prevent a recurrence of the improper expenditures of nonprofit food service account funds. This is consistent with longstanding Department policy, issued during the implementation of the simplified cost accounting procedures (SFSP 01–2008, *Nationwide Expansion of Summer Food Service Program Simplified Cost Accounting Procedures*, January 2, 2008).

Therefore, the final rule retains the current requirement that *excess funds*, defined as the difference between any advance funding and reimbursement funding, when advance funds received by a sponsor are greater than the reimbursement amount earned by a sponsor, must be returned to the State agency at the end of program operations, even if the sponsor plans to return to the Program the following year. The final rule additionally clarifies that *unused reimbursement* may be retained by the sponsor. If the sponsor plans to return to the Program the following year, the unused reimbursement must be maintained in the sponsor's nonprofit food service account and must be put toward the operation of another Child Nutrition Program or for SFSP

operations the following summer. FNS has issued guidance instructing sponsors to utilize unused reimbursement for the improvement of the meal service or management of the Program or to use the funds for allowable costs in other Child Nutrition Programs.

Accordingly, this final rule adds definitions of “Excess funds” and “Unused reimbursement” under 7 CFR 225.2 and clarifies what sponsors should do with unused reimbursement under a new paragraph at 7 CFR 225.9(g). The final rule will retain the requirement for sponsors to utilize unused reimbursement to improve the Program, or for allowable costs in other Child Nutrition Programs and will not codify the proposed requirement to collect unused reimbursement from sponsors.

#### *e. State Agency Monitoring*

##### *7 CFR 225.7*

In order to maintain the integrity of Program operations, it is critical that State agencies and sponsors practice sound Program management. The proposed rule would change several provisions to provide additional requirements that would ensure thorough reviews of program operations. These changes expanded upon requirements for State agencies to establish financial management systems and standards for sponsor recordkeeping found at 7 CFR 225.7(d). In general, one commenter opposed the changes and one offered a recommendation. The commenter who opposed the provision believed that the procedures were too prescriptive and would increase the administrative burden for both sponsors and States. Another commenter offered the recommendation to provide additional funding and training to help States develop additional systems needed to support this requirement. Several commenters offered more detailed comments on the specific provisions, as discussed below.

##### *7 CFR 225.7(d)(2)(iii)(A)*

*Proposed Rule:* The proposed rule would require State agencies to determine if a sponsor provides a nutritious, high quality food service.

*Comments:* Two commenters supported the provision, while several others offered recommendations to provide additional guidance on what defines a nutritious, high quality food service.

*FNS Response:* FNS agrees with commenters that including a review of “nutritious, high quality food” is vague

and should not be codified in the regulations. FNS has issued additional guidance on operating a high quality meal service to ensure that sponsors are providing the best possible meals to children and that State agencies have the resources to support sponsors in serving high quality meals following the publication of this rule. FNS encourages State agencies and sponsors to review the overall quality of the meal service. Accordingly, this provision is absent from the final rule.

##### *7 CFR 225.7(d)(2)(iii)(B)*

*Proposed Rule:* The proposed rule would have required State agencies to determine if expenditures are allowable and consistent with FNS Instructions and guidance.

*Comments:* Two commenters offered support and requested additional guidance to define what is allowable.

*FNS Response:* FNS agrees with commenters that additional guidance is necessary for this provision. FNS has issued Instruction 796–4 that clearly outlines what costs are considered allowable in the SFSP. Accordingly, FNS has codified at 7 CFR 225.7(d)(2)(iii)(A) that the State agency should determine if expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the food service are properly identified and recorded as food service revenue.

##### *7 CFR 225.7(d)(2)(iii)(C)*

*Proposed Rule:* The proposed rule would require State agencies to determine if expenditures are consistent with expenditures of comparable sponsors.

*Comments:* Three State agencies opposed the part of the provision that requires a comparison to similar sponsors, saying that it is not a reasonable request for State agencies as they do not have the resources to conduct such a comparison and it would be technically difficult for States to accomplish.

*FNS Response:* FNS recognizes that comparing the expenditures of similar sponsors would be unnecessarily burdensome on the State agencies. State agencies should be aware of what reasonable costs of similarly sized sponsoring organizations would be; however, a formal comparison is not required. Accordingly, FNS has clarified in the codified language at 7 CFR 225.7(d)(2)(iii)(B) that State agencies should determine if expenditures are consistent with budgeted costs and previous year's expenditures.

## 7 CFR 225.7(d)(2)(iii)(D)

*Proposed Rule:* The proposed rule would require State agencies to determine if sponsor reimbursements have resulted in accumulation of net cash resources as defined in 7 CFR 225.7(f).

*Comments:* One commenter expressed support but also concern for how State agencies would be able to distinguish the difference when evaluating combined accounts.

*FNS Response:* State agencies must establish a system for monitoring and reviewing a sponsor's nonprofit food service accounts to ensure that the sponsor has not accumulated net cash resources over the limits as defined in 7 CFR 225.7(f). FNS expects that this knowledge will be developed through the review process. As mentioned in the discussion on excess funds and unused reimbursement, accumulations of net cash resources should be closely monitored by sponsors and State agencies to ensure resources are being appropriately managed. Accordingly, FNS has codified at 7 CFR 225.7(d)(2)(iii)(C) that State agencies should determine that reimbursements have not resulted in accumulation of net cash resources.

## 7 CFR 225.7(d)(2)(iii)(E)

*Proposed Rule:* The proposed rule would require State agencies to determine if the level of administrative spending is reasonable.

*Comments:* One commenter recommended providing specific guidance for determining when spending is reasonable. Another commenter opposed the provision, saying that it goes against the elimination of the distinction between operating and administrative reimbursements and would place an administrative burden on State agencies.

*FNS Response:* State agencies should be able to determine what is reasonable spending and ensure that sponsors are using reimbursements for administrative costs in a manner that is consistent with the operation of a nonprofit food service. Accordingly, FNS retains the proposed provision and codifies it at 7 CFR 225.7(d)(2)(iii)(D).

## 7 CFR 225.7(d)(2)(iii)(F)

*Proposed Rule:* The proposed rule would require State agencies to determine if there are any other issues identified by reviewers and whether these issues are being managed appropriately.

*Comments:* No commenters responded to this provision.

*FNS Response:* As FNS amended the final rule to put forth a list of

recommended conditions for State agencies to review, including other identified issues became redundant. Accordingly, this provision is absent from the final rule.

In summary, accordingly, the final rule removes the requirements at 7 CFR 225.7(d)(2)(iii) that the State agency review the specific aspects of sponsor operations listed in the regulatory text and instead provides a list of Program management issues for potential review by the State agency at 7 CFR 225.7(d)(2)(iii)(A) through (D).

## 7 CFR 225.7(f)

*Proposed Rule:* The proposed rule would have added additional requirements at 7 CFR 225.7(f) that the State must establish a system to monitor and review the sponsor's nonprofit food service to ensure that Program reimbursement funds are being used solely to conduct the food service operation. Under the proposed rule, the State must also ensure that sponsors do not have net cash resources totaling more than three months' average expenditures in their nonprofit food service accounts.

The addition of § 225.7(f), as proposed, would have codified that certain corrective actions may be necessary to improve food service quality under the following conditions:

- The sponsor's net cash resources exceed three months' average expenditures for the sponsor's nonprofit food service or such other amount as may be approved in accordance with the paragraph;
- The ratio of administrative to operational costs (as defined in 7 CFR 225.2) is high as compared to similar sponsors;
- There is significant use of alternative funding for food and/or other costs; or
- A significant portion of the food served is privately donated or purchased at a very low price.

*Comments:* On the criteria required for State agencies to review sponsor nonprofit food service, several commenters opposed portions of this section, specifically the requirement to use the three month cap on cash resources, the comparison between sponsors, the ratio of administrative to operating costs, the significant use of alternative funds to determine the quality of the nonprofit food service and the requirement for States to take corrective action should sponsors fall under any of these indicators. Commenters preferred these indicators to be considered but not required.

*FNS Response:* FNS appreciates the responses from various stakeholders

expressing concern about the proposed changes to require corrective action to improve food service quality under prescribed conditions. While the intent of this rule is to streamline Program operations and decrease the administrative burden for both States and sponsors, FNS must also ensure the integrity of the Program. FNS agrees with commenters that due to the short duration of summer meal programs, a net cash resource limit of three months' average expenditures may be considered too high. FNS recognizes that the prescriptive language proposed could add increased burden or unfairly target certain organizations that run quality programs but still meet the conditions specified in the proposed rule. For example, a food pantry might have a higher ratio of administrative costs to operating costs and have significant use of alternative funds. Under the proposed rule, the food pantry might have been subject to a higher level of scrutiny based on the criteria set forth, despite operating a high quality meal service.

Accordingly, due to the short duration of the Program, the final rule includes a limit of one month's net cash resources for sponsors that operate during the summer months but retains the three month limit for sponsors that operate Child Nutrition Programs year round at 7 CFR 225.7(f). Additionally, the final rule retains the conditions State agencies should review, as proposed, but rather than requiring a review of these conditions, encourages States to use these conditions as indicators of potential Program mismanagement.

## 7 CFR 225.11(f)(1)

*Proposed Rule:* The proposed rule sought to add to requirements at 7 CFR 225.11(f)(1) to direct the State agency to require the sponsor to implement appropriate corrective action if it is determined during a review that the sponsor was not providing a high quality meal service. The proposed rule outlined in the proposed changes to 7 CFR 225.7(f) how the State agency would make the determination if corrective action was necessary.

*Comments:* In response to the additional requirement for State agencies to require corrective action to improve the meal service if a sponsor is found to be operating a program with poor quality food service, six commenters either opposed or recommended additional guidance. Of the six commenters, four State agencies expressed concern that the guidance was too vague and they would not be able to effectively determine what constitutes a poor quality meal service.

*FNS Response:* FNS agrees with commenters that requiring corrective action for poor quality meal service is too vague and requires more guidance. Accordingly, the final rule removes the requirement for corrective action if a sponsor is determined to be operating a poor quality meal service and is operating below the reimbursement level, and instead adds a new paragraph at 7 CFR 225.11(g) that recommends that States provide technical assistance to sponsors in these circumstances. However, if State agencies observe violations during a review, they should act immediately, due to the short duration of summer program operations.

*f. Small Purchase Procedures*

7 CFR 225.15(m)

*Proposed Rule:* The proposed change would remove reference to the outdated small purchase threshold (referred to as simplified acquisition threshold in 2 CFR part 200 and throughout the remainder of this final rule) of \$10,000 and allow State and local agencies to use the simplified acquisition threshold for small purchases up to the threshold set by 2 CFR part 200.

*Comments:* FNS received five unique comments. Of these, three supported the provision, one commenter partially supported and partially opposed the provision, and one commenter offered a recommendation for improving the bid bond requirements. Commenters generally supported aligning the requirements for small purchase procedures with those already at 2 CFR part 200. One State agency opposed the requirement that all bids be submitted to the State agency for approval before acceptance, and that these bids are responded to within five working days of receipt, claiming that this would create a burden on the State agency.

Commenters also expressed concern that the bid bond requirements should be left to the discretion of the sponsor, as the new requirements might pass additional costs from Food Service Management Companies (FSMC) to the sponsor.

*FNS Response:* FNS appreciates the support for aligning the requirements for small purchase procedures with those already in Federal Regulations. The purpose of this provision is to align SFSP regulations with broader Federal requirements. Aligning the requirement with 2 CFR part 200 allows for periodic adjustments in the dollar value when the periodic adjustment occurs and relieves FNS of the requirement to change the dollar amount in the Program regulations. Some commenters provided responses to portions of the

provisions that did not contain proposed changes, specifically the comments related to the State agency responsibilities regarding bids and sponsor discretion in determining the amount of the bid bond. While FNS appreciates these comments, this final rule will only address the alignment of the simplified acquisition threshold. Accordingly, the final rule aligns regulations at 7 CFR 225.15(m)(4) through (6) with the simplified acquisition threshold with current Federal regulations at 2 CFR part 200.

*g. FSMCs and Procurement Standards*

7 CFR 225.6(h)(2), 7 CFR 225.6(h)(7)

*Proposed Rule:* The proposed rule sought to remove the existing limit of \$10,000 in aggregate for food service management companies, and instead link the standard contract threshold to 2 CFR part 200. This change would help ensure that the standard contract threshold in SFSP is adjusted regularly in accordance with the thresholds applied to the other Child Nutrition Programs. The proposed rule would apply this threshold to individual contracts, rather than aggregate contracts.

The proposed rule also offered changes to 7 CFR 225.6(h)(7) to make SFSP requirements consistent with NSLP requirements that pertain to food service management companies. The changes would allow sponsors to enter into annual contracts that may be renewed annually for up to four additional years. The rule also proposed that all contracts in excess of \$10,000 contain clauses for termination for both cause and convenience with 60-day notification.

*Comments:* FNS received eight unique comments regarding FSMCs and Procurement Standards, with four commenters supporting the provision, two commenters opposing the term for contract termination and two commenters offering recommendations for improving the rule consistent with preferred practice. Due to the short length of the Program, some commenters felt that a 60-day notification of termination was too long. Commenters recommended that a 30-day notification period would be better suited for the Program.

*FNS Response:* FNS recognizes that the Program has certain time constraints and that making the procurement standards consistent with NSLP might be impractical for sponsors. Accordingly, FNS amends 7 CFR 225.6(h)(2) to align the small purchase threshold to 2 CFR part 200. This final rule also adds a new paragraph at 7 CFR

225.6(h)(7) to set a maximum 60-day notification of termination for cause or convenience. The final rule retains language to allow sponsors to enter into annual contracts with FSMCs that may be renewed annually for up to four additional years.

7 CFR 225.17

*Proposed Rule:* The proposed rule would include the requirement for allowing all contracts to be terminated for cause or for convenience.

*Comments:* Two commenters expressed support for this change. One commenter specifically noted that they supported the change because it did not include the 60-day notification of termination clause contained in the proposed changes to 7 CFR 225.6(h)(7).

*FNS Response:* FNS agrees with commenters that this section should not include a 60-day notification of termination clause. Accordingly, the language in the final rule is codified as proposed under a new paragraph at 7 CFR 225.17(f).

*h. Administrative Oversight at Approved Meal Service Sites*

7 CFR 225.14(d)(3)

*Proposed Rule:* The proposed rule sought to clarify sponsors' responsibilities with respect to meal services at the approved meal service sites and emphasizes that sponsors must have "administrative oversight," rather than "direct operational control," of meal services. Current regulations require sponsors to have "direct operational control" of meal service sites, meaning they are responsible for managing site staff, including hiring and determining conditions of employment and termination.

Based on FNS's experience in administering SFSP and in consultation with local, State, and Federal administrators, USDA determined that sponsors find it difficult to comply with the understanding of "direct operational control." Many sponsors deliver meals to recreational sites that are not directly affiliated with or managed by the sponsors, thus they do not have the authority to hire or terminate staff. Instead, these sponsors have control over only the meal service provided at the site and related activities such as training of staff on meal counting and record keeping procedures.

*Comments:* FNS received 13 comments touching on this matter, five of which were unique. All commenters expressed support for the change to the provision.

*FNS Response:* FNS will retain the proposed language for the final rule.

Accordingly, the final rule defines sponsor oversight as “administrative oversight” and will not include direct operational control, at 7 CFR 225.14(d)(3).

*i. Options To Submit a Combined Claim*  
7 CFR 225.9(d)(3)

**Proposed Rule:** The proposed rule sought to make optional the requirement for sponsors operating for less than 10 days in the final month of operations to submit a combined claim for the final and immediate preceding month. Additionally, sponsors wishing to submit combined claims would be allowed to consolidate claims for reimbursement and submit a single claim for reimbursement in the following ways:

- Claims for 10 operating days or less in the initial month of operations may be combined with the claim for the subsequent month;
- Claims for 10 operating days or less in the final month of operations may be combined with the claim for the preceding month; and
- Claims for 3 consecutive months may be combined, as long as this combined claim only includes 10 operating days or less from each of the first and last months of Program operations.

**Comments:** FNS received four unique comments regarding the option for sponsors to submit a combined reimbursement claim. Two commenters supported the provision while two commenters opposed the provision. Commenters recommended that States be given the discretion to decide how claims were made in order to retain consistent methods.

**FNS Response:** The intent of this provision is to streamline the claims process for States and sponsors. The proposed language permits sponsors to submit a combined claim. Therefore, the language that was presented in the proposed rule is retained in the final rule with the addition of language specifying State agency discretion. Accordingly, the final rule amends 7 CFR 225.9(d)(3) to provide States with the flexibility to allow sponsors to submit combined claims for reimbursement.

*j. Delivery Notice Requirements*  
7 CFR 210.18, 7 CFR 225.13

**Proposed Rule:** FNS proposed changes that would specify in NSLP and SFSP regulations what constitutes proper delivery and receipt of a notice of action in an effort to be consistent with the regulations in the Child and Adult Care Food Program (CACFP). A

notice of action is considered delivered by certified mail, return receipt, by facsimile, or by email. Neither NSLP nor SFSP have requirements that explain notice and delivery by a State agency or FNS to an institution. FNS proposed this change because some State agencies have been experiencing difficulty in notifying institutions of review findings, required corrective actions, and terminations. By choosing to avoid accepting the State agency’s certified mail, non-complying institutions have continued to operate, claim reimbursement, and mismanage the Programs.

**Comments:** FNS received three unique comments, all of which supported the provision to make the requirements consistent with CACFP.

**FNS Response:** Accordingly, the final rule amends 7 CFR 210.18(i) and 225.13(b)(1) to include delivery notice requirements in NSLP and SFSP, respectively.

### III. Procedural Matters

*Executive Order 12866, 13563 and 13771*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been determined to be not significant by the Office of Management and Budget (OMB) in conformance with Executive Order 12866. Therefore, this rule has not been reviewed by OMB. No Regulatory Impact Analysis is required. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. FNS considers this rule to be an Executive Order 13771 deregulatory action.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of

small entities. Pursuant to that review, it has been certified that this final rule would not have a significant impact on a substantial number of small entities. This rule will streamline cost accounting procedures so that more time and resources may be directed toward increasing access, providing quality meal service to benefit eligible children, and ensuring Program integrity. While this rule will impact school food authorities, non-profit organizations, and local governments that choose to participate, its implementation will not have significant economic impact on any of those entities.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector.

Under section 202 of the UMRA, USDA generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule. This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of \$100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*Executive Order 12372*

The Summer Food Service Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.559. The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.555. Both of these Child Nutrition Programs are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since Child Nutrition Programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian Tribal Organizations, on an ongoing basis regarding program requirements and operation. This

provides FNS with the opportunity to receive regular input from program administrators which contributes to the development of feasible program requirements.

#### *Executive Order 13132, Federalism*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. USDA has considered the impact of this final rule on State and local governments and has determined that this rule does not have federalism implications. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. Appeal procedures are set forth at 7 CFR 225.13.

#### *Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with USDA Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to limit or reduce the ability of protected individuals to participate in the Summer Food Service Program or the National School Lunch Program.

#### *Executive Order 13175*

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. FNS has assessed the impact of this rule on Indian tribes and determined that this final rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FNS 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. FNS is unaware of any current Tribal laws that could be in conflict with this rule.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency before they can be implemented. Commenters are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

#### *E-Government Act Compliance*

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

#### **List of Subjects**

##### *7 CFR Part 210*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

##### *7 CFR Part 225*

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210 and 225 are amended as follows:

#### **PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.18, remove the last two sentences of paragraph (i)(3) and add, in their place, four sentences to read as follows:

#### **§ 210.18 Administrative reviews.**

\* \* \* \* \*

(i) \* \* \*

(3) \* \* \* This notice shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (*i.e.*, FNS or State agency) to which the appeal should be directed. The notice is considered to be received by the school food authority when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email. If the notice is undeliverable, it is considered to be received by the school food authority five days after being sent to the addressee's last known mailing address, facsimile number, or email address. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in paragraph (p) of this section for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.29(d)(3).

\* \* \* \* \*

#### **PART 225—SUMMER FOOD SERVICE PROGRAM**

■ 3. The authority citation for 7 CFR part 225 continues to read as follows:

**Authority:** Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 4. In § 225.2, add definitions of "Excess funds" and "Unused reimbursement" in alphabetical order to read as follows:

#### **§ 225.2 Definitions.**

\* \* \* \* \*

*Excess funds* means the difference between any advance funding and reimbursement funding, when advance funds received by a sponsor are greater than the reimbursement amount earned by a sponsor.

\* \* \* \* \*

*Unused reimbursement* means the difference between the amount of reimbursement earned and received and allowable costs, when reimbursement exceeds costs.

\* \* \* \* \*

■ 5. In § 225.6:

■ a. Amend paragraph (b)(7) by adding a sentence at the end of the paragraph;

■ b. Amend paragraph (h)(1) by removing the term "225.15(h)" and adding in its place the term "225.15(m)" and removing the words "of this part";

■ c. Amend paragraph (h)(2) introductory text by revising the second sentence;

■ d. Redesignate paragraph (h)(7) as paragraph (h)(8);

■ e. Add new paragraph (h)(7); and

■ f. Amend newly designated paragraph (h)(8) by removing the term “§ 225.15(h)(1)” and adding in its place the term “§ 225.15(m)”.

The revision and additions read as follows:

#### § 225.6 State agency responsibilities.

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \* State agencies may exempt school food authorities applying to operate the SFSP from submitting a separate budget to the State agency, provided that operation of the SFSP is included in the annual budget submitted for the National School Lunch Program.

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \* Sponsors that are public entities, sponsors with exclusive year-round contracts with a food service management company, and sponsors that have no food service management company contracts exceeding the simplified acquisition threshold in 2 CFR part 200, as applicable, may use their existing or usual form of contract, provided that such form of contract has been submitted to and approved by the State agency. \* \* \*

\* \* \* \* \*

(7) The contract between a sponsor and food service management company shall be no longer than 1 year; and options for the yearly renewal of a contract may not exceed 4 additional years. All contracts shall include a termination clause whereby either party may cancel for cause or for convenience with up to 60-day notification.

\* \* \* \* \*

#### ■ 6. In § 225.7:

■ a. Add paragraph (d)(2)(iii);

■ b. Add four sentences to the end of paragraph (f); and

■ c. Add paragraphs (f)(1) through (4).

The additions read as follows:

#### § 225.7 Program monitoring and assistance.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(iii) *Review of sponsor's operation.* State agencies should determine if:

(A) Expenditures are allowable and consistent with FNS Instructions and guidance and all funds accruing to the food service are properly identified and recorded as food service revenue;

(B) Expenditures are consistent with budgeted costs, and the previous year's expenditures taking into consideration any changes in circumstances;

(C) Reimbursements have not resulted in accumulation of net cash resources as defined in paragraph (f) of this section; and

(D) The level of administrative spending is reasonable and does not affect the sponsor's ability to operate a nonprofit food service and provide a quality meal service.

\* \* \* \* \*

(f) \* \* \* Additionally, each State agency shall establish a system for monitoring and reviewing sponsors' nonprofit food service to ensure that all Program reimbursement funds are used solely for the conduct of the food service operation. State agencies must review the net cash resources of the nonprofit food service of each sponsor participating in the Program and ensure that the net cash resources do not exceed one month's average expenditures for sponsors operating only during the summer months and three months' average expenditure for sponsors operating Child Nutrition Programs throughout the year. State agency approval shall be required for net cash resources in excess of requirements set forth in this paragraph (f). Based on this monitoring, the State agency may provide technical assistance to the sponsor to improve meal service quality or take other action designed to improve the nonprofit meal service quality under the following conditions, including but not limited to:

(1) The sponsor's net cash resources exceed the limits included in this paragraph (f) for the sponsor's nonprofit food service or such other amount as may be approved in accordance with this paragraph;

(2) The ratio of administrative to operating costs (as defined in § 225.2) is high;

(3) There is significant use of alternative funding for food and/or other costs; or

(4) A significant portion of the food served is privately donated or purchased at a very low price.

\* \* \* \* \*

#### ■ 7. In § 225.9:

■ a. Revise the last sentence of paragraph (a) and paragraphs (c) and (d); and

■ b. Add paragraph (g).

The revisions and additions read as follows:

#### § 225.9 Program assistance to sponsors.

(a) \* \* \* The amount of the start-up payment shall be deducted from the first

advance payment or, if the sponsor does not receive advance payments, from the first reimbursement.

\* \* \* \* \*

(c) *Advance payments.* At the sponsor's request, State agencies shall make advance payments to sponsors that have executed Program agreements in order to assist these sponsors in meeting expenses. For sponsors operating under a continuous school calendar, all advance payments shall be forwarded on the first day of each month of operation. Advance payments shall be made by the dates specified in paragraph (c)(1)(i) of this section for all other sponsors whose requests are received at least 30 days prior to those dates. Requests received less than 30 days prior to those dates shall be acted upon within 30 days of receipt. When making advance payments, State agencies shall observe the following criteria:

(1) *Payments.* (i) State agencies shall make advance payments by June 1, July 15, and August 15. To be eligible for the second and third advance payments, the sponsor must certify that it is operating the number of sites for which the budget was approved and that its projected costs do not differ significantly from the approved budget. Except for school food authorities, sponsors must conduct training sessions before receiving the second advance payment. Training sessions must cover Program duties and responsibilities for the sponsor's staff and for site personnel. A sponsor shall not receive advance payments for any month in which it will participate in the Program for less than 10 days. However, if a sponsor operates for less than 10 days in June but for at least 10 days in August, the second advance payment shall be made by August 15.

(ii) To determine the amount of the advance payment to any sponsor, the State agency shall employ whichever of the following methods will result in the larger payment:

(A) The total reimbursement paid to the sponsor for the same calendar month in the preceding year; or

(B) For vended sponsors, 50 percent of the amount determined by the State agency to be needed that month for meals, or, for self-preparation sponsors, 65 percent of the amount determined by the State agency to be needed that month for meals.

(2) *Advance payment estimates.* When determining the amount of advance payments payable to the sponsor, the State agency shall make the best possible estimate based on the sponsor's request and any other available data. Under no circumstances

may the amount of the advance payment exceed the greater of the amount estimated by the State agency to be needed by the sponsor to meet Program costs or \$40,000.

(3) *Deductions from advance payments.* The State agency shall deduct from advance payments the amount of any previous payment which is under dispute or which is part of a demand for recovery under § 225.12.

(4) *Withholding of advance payments.* If the State agency has reason to believe that a sponsor will not be able to submit a valid claim for reimbursement covering the month for which advance payments have already been made, the subsequent month's advance payment shall be withheld until a valid claim is received.

(5) *Repayment of excess advance payments.* Upon demand of the State agency, sponsors shall repay any advance Program payments in excess of the amount cited on a valid claim for reimbursement.

(d) *Reimbursements.* Sponsors shall not be eligible for meal reimbursements unless they have executed an agreement with the State agency. All reimbursements shall be in accordance with the terms of this agreement. Reimbursements shall not be paid for meals served at a site before the sponsor has received written notification that the site has been approved for participation in the Program. Income accruing to a sponsor's program shall be deducted from costs. The State agency may make full or partial reimbursement upon receipt of a claim for reimbursement, but shall first make any necessary adjustments in the amount to be paid. The following requirements shall be observed in submitting and paying claims:

(1) School food authorities that operate the Program, and operate more than one child nutrition program under a single State agency, must use a common claim form (as provided by the State agency) for claiming reimbursement for meals served under those programs.

(2) No reimbursement may be issued until the sponsor certifies that it operated all sites for which it is approved and that there has been no significant change in its projected expenses since its preceding claim and, for a sponsor receiving an advance payment for only one month, that there has been no significant change in its projected expenses since its initial advance payment.

(3) Sponsors must submit a monthly claim or a combined claim within 60 days of the last day of operation. Sponsors may not submit a combined

claim for meal reimbursements that crosses fiscal years. In addition, State agencies must ensure that the correct reimbursement rates are applied for meals claimed for months when different reimbursement rates are in effect. With approval from the State agency, sponsors have the flexibility to combine the claim for reimbursement in the following ways:

(i) For 10 operating days or less in their initial month of operations with the claim for the subsequent month;

(ii) For 10 operating days or less in their final month of operations with the claim for the preceding month; or

(iii) For 3 consecutive months, as long as this combined claim only includes 10 operating days or less from each of the first and last months of program operations.

(4) The State agency shall forward reimbursements within 45 days of receiving valid claims. If a claim is incomplete or invalid, the State agency shall return the claim to the sponsor within 30 days with an explanation of the reason for disapproval. If the sponsor submits a revised claim, final action shall be completed within 45 days of receipt.

(5) Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed and to enable the State agency to provide the Reports of Summer Food Service Program Operations required under § 225.8(b). In submitting a claim for reimbursement, each sponsor shall certify that the claim is correct and that records are available to support this claim. Failure to maintain such records may be grounds for denial of reimbursement for meals served claimed during the period covered by the records in question. The costs of meals served to adults performing necessary food service labor may be included in the claim. Under no circumstances may a sponsor claim the cost of any disallowed meals as operating costs.

(6) A final Claim for Reimbursement shall be postmarked or submitted to the State agency not later than 60 days after the last day of the month covered by the claim. State agencies may establish shorter deadlines at their discretion. Claims not filed within the 60 day deadline shall not be paid with Program funds unless FNS determines that an exception should be granted. The State agency shall promptly take corrective action with respect to any Claim for Reimbursement as determined necessary through its claim review process or otherwise. In taking such

corrective action, State agencies may make upward adjustments in Program funds claimed on claims filed within the 60 day deadline if such adjustments are completed within 90 days of the last day of the month covered by the claim and are reflected in the final Program Operations Report (FNS-418). Upward adjustments in Program funds claimed which are not reflected in the final FNS-418 for the month covered by the claim cannot be made unless authorized by FNS. Downward adjustments in Program funds claimed shall always be made without FNS authorization, regardless of when it is determined that such adjustments are necessary.

(7) Payments to a sponsor must equal the amount derived by multiplying the number of eligible meals, by type, actually served under the sponsor's program to eligible children by the current applicable reimbursement rate for each meal type. Sponsors must be eligible to receive additional reimbursement for each meal served to participating children at rural or self-preparation sites.

(8) On each January 1, or as soon thereafter or as practicable, FNS will publish a notice in the **Federal Register** announcing any adjustment to the reimbursement rates described in paragraph (d)(7) of this section. Adjustments will be based upon changes in the series for food away from home of the Consumer Price Index (CPI) for all urban consumers since the establishment of the rates. Higher rates will be established for Alaska and Hawaii, based on the CPI for those States.

(9) Sponsors of camps shall be reimbursed only for meals served to children in camps whose eligibility for Program meals is documented. Sponsors of NYSP sites shall only claim reimbursement for meals served to children enrolled in the NYSP.

(10) If a State agency has reason to believe that a sponsor or food service management company has engaged in unlawful acts in connection with Program operations, evidence found in audits, reviews, or investigations shall be a basis for nonpayment of the applicable sponsor's claims for reimbursement.

\* \* \* \* \*

(g) *Unused reimbursement.* If a sponsor receives more reimbursement than expended on allowable costs, the sponsor should use this unused reimbursement to improve the meal service or management of the Program. Unused reimbursement remaining at the end of the Program year must be used to pay allowable costs of other Child



Nutrition Programs or for SFSP operations the following Program year.

(1) If a sponsor does not return to participate in the Program the following year and does not operate any other Child Nutrition Programs, the sponsor is not required to return the unused reimbursement to the State agency.

(2) [Reserved]

■ 8. In § 225.11, add paragraph (g) to read as follows:

**§ 225.11 Corrective action procedures.**

(g) *Technical assistance for improved meal service.* If the State agency finds that a sponsor is operating a program with poor quality meal service and is operating below the reimbursement level, the State agency should provide technical assistance to the sponsor to improve the meal service.

■ 9. In § 225.12, revise the second sentence of paragraph (a) to read as follows:

**§ 225.12 Claims against sponsors.**

(a) \* \* \* State agencies shall consider claims for reimbursement not properly payable if a sponsor's records do not support all meals claimed and include all costs associated with the Program sufficient to justify that reimbursements were spent only on allowable Child Nutrition Program costs. \* \* \*

■ 10. In § 225.13, revise paragraph (b)(1) to read as follows:

**§ 225.13 Appeal procedures.**

(b) \* \* \*

(1) The sponsor or food service management company be advised in writing of the grounds upon which the State agency based the action. The notice of action shall also state that the sponsor or food service management company has the right to appeal the State's action. The notice is considered to be received by the sponsor or food service management company when it is delivered by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email. If the notice is undeliverable, it is considered to be received by the sponsor or food service management company five days after being sent to the addressee's last known mailing address, facsimile number, or email address;

■ 11. In § 225.14, revise paragraphs (d)(3) introductory text and (d)(3)(i) to read as follows:

**§ 225.14 Requirements for sponsor participation.**

(d) \* \* \*

(3) Sponsors which are units of local, municipal, county, or State government, and sponsors which are private nonprofit organizations, will only be approved to administer the Program at sites where they have administrative oversight. Administrative oversight means that the sponsor shall be responsible for:

(i) Maintaining contact with meal service staff, ensuring that there is adequately trained meal service staff on site, monitoring the meal service throughout the period of Program participation, and terminating meal service at a site if staff fail to comply with Program regulations; and

■ 12. In § 225.15:

■ a. Add paragraph (a)(4);

■ b. In paragraph (b)(3), remove the term “§ 225.9(d)(4)” and add in its place the term “§ 225.9(d)(5)”; and

■ c. Revise the first sentence of paragraph (c)(1), the second sentence of paragraph (m)(4) introductory text, and paragraphs (m)(4)(xii) and (m)(5) and (6).

The addition and revisions read as follows:

**§ 225.15 Management responsibilities of sponsors.**

(a) \* \* \*

(4) Sponsors must maintain documentation of a nonprofit food service including copies of all revenues received and expenses paid from the nonprofit food service account. Program reimbursements and expenditures may be included in a single nonprofit food service account with funds from any other Child Nutrition Programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, except the Special Supplemental Nutrition Program for Women, Infants, and Children. All Program reimbursement funds must be used solely for the conduct of the nonprofit food service operation. The net cash resources of the nonprofit food service of each sponsor participating in the Program may not exceed one month's average expenditures for sponsors operating only during the summer months and three months' average expenditures for sponsors operating Child Nutrition Programs throughout the year. State agency approval shall be required for net cash resources in excess of the requirements set forth in this paragraph (a)(4). Sponsors shall monitor Program costs and, in the event that net cash

resources exceed the requirements outlined, take action to improve the meal service or other aspects of the Program.

(c) \* \* \*

(1) Sponsors shall maintain accurate records justifying all meals claimed and documenting that all Program funds were spent only on allowable Child Nutrition Program costs. \* \* \*

(m) \* \* \*

(4) \* \* \* Sponsors that are schools or school food authorities and have an exclusive contract with a food service management company for year-round service, and sponsors whose total contracts with food service management companies will not exceed the simplified acquisition threshold in 2 CFR part 200, as applicable, shall not be required to comply with these procedures. \* \* \*

(xii) All bids in an amount which exceeds the lowest bid and all bids totaling the amount specified in the small purchase threshold in 2 CFR part 200, as applicable, or more are submitted to the State agency for approval before acceptance. State agencies shall respond to a request for approval of such bids within 5 working days of receipt.

(5) Each food service management company which submits a bid exceeding the simplified acquisition threshold in 2 CFR part 200, as applicable, shall obtain a bid bond in an amount not less than 5 percent nor more than 10 percent, as determined by the sponsor, of the value of the contract for which the bid is made. A copy of the bid bond shall accompany each bid.

(6) Each food service management company which enters into a food service contract exceeding the small purchase threshold in 2 CFR part 200, as applicable, with a sponsor shall obtain a performance bond in an amount not less than 10 percent nor more than 25 percent of the value of the contract for which the bid is made, as determined by the State agency. Any food service management company which enters into more than one contract with any one sponsor shall obtain a performance bond covering all contracts if the aggregate amount of the contracts exceeds the simplified acquisition threshold in 2 CFR part 200, as applicable. Sponsors shall require the food service management company to furnish a copy of the performance bond within ten days of the awarding of the contract.



■ 13. In § 225.17, add paragraph (f) to read as follows:

**§ 225.17 Procurement standards.**

\* \* \* \* \*

(f) All contracts in excess of \$10,000 must contain a clause allowing termination for cause or for convenience by the sponsor including the manner by which it will be effected and the basis for settlement.

Dated: May 16, 2018.

**Brandon Lipps,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2018–11806 Filed 5–31–18; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

#### General Administrative Regulations; Administrative Remedies for Non-Compliance

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains necessary amendments to address corrections in the General Administrative Regulations; Administrative Remedies for Non-Compliance regulations which contain outdated references.

**DATES:** Effective June 1, 2018.

**FOR FURTHER INFORMATION CONTACT:**

David L. Miller, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture (USDA), 1400 Independence Avenue SW, Stop 0801, Washington, DC 20250, telephone (202) 720–9830.

**SUPPLEMENTARY INFORMATION:**

#### Background

This correction is being published to correct the General Administrative Regulations; Subpart R—Administrative Remedies for Non-Compliance regulations. The outdated reference to “7 CFR part 3017” will be removed and replaced by the correct reference of “2 CFR parts 180 and 417” in §§ 400.451 and 400.456.

#### List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Crop insurance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 400 is corrected by making the following amendments:

## PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for part 400 continues to read as follows:

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

#### § 400.451 [Amended]

■ 2. Amend § 400.451 paragraph (a) by removing the reference to “7 CFR part 3017” and adding in its place “2 CFR parts 180 and 417”.

#### § 400.456 [Amended]

■ 3. Amend § 400.456, paragraphs (a), (b), and (c) by removing the references to “7 CFR part 3017” and adding in their place “2 CFR parts 180 and 417”.

Signed in Washington, DC, on May 23, 2018.

**Martin R. Barbre,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2018–11799 Filed 5–31–18; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA–2018–0471; Special Conditions No. 25–728–SC]

#### Special Conditions: Textron Aviation Inc. Model 700 Series Airplanes; Installed Rechargeable Lithium Batteries

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Textron Aviation Inc. (Textron) Model 700 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is the installation of rechargeable lithium batteries.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Textron Aviation Inc. on June 1, 2018. Send comments on or before July 16, 2018.

**ADDRESSES:** Send comments identified by Docket No. FAA–2018–0471 using any of the following methods:

- **Federal eRegulations Portal:** Go to <http://www.regulations.gov/> and follow the online instructions for sending your comments electronically.

- **Mail:** Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- **Hand Delivery or Courier:** Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- **Fax:** Fax comments to Docket Operations at 202–493–2251.

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

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

**FOR FURTHER INFORMATION CONTACT:** Nazih Khaouly, Airplane and Flight Crew Interface Section, AIR–671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3160; email [Nazih.Khaouly@faa.gov](mailto:Nazih.Khaouly@faa.gov).

**SUPPLEMENTARY INFORMATION:** The substance of these special conditions previously has been published in the **Federal Register** for public comment. These special conditions have been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that

prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

#### Comments Invited

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

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

#### Background

On November 20, 2014, Textron applied for a type certificate for their new Model 700 series airplanes. The Textron Model 700 series airplanes are transport-category, twin turboprop-powered airplanes with standard seating provisions for up to 12 passengers and 2 crewmembers, and a maximum takeoff weight of 38,514 lbs.

#### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.17, Textron must show that the Model 700 series airplanes meet the applicable provisions of part 25 as amended by amendments 25–1 through 25–139, 25–141, and 25–143.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Textron Model 700 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Textron Model 700 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of

the type certification basis under § 21.17(a)(2).

#### Novel or Unusual Design Features

The Textron Model 700 series airplanes will incorporate the following novel or unusual design features:

The installation of rechargeable lithium batteries. Known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

- Flightdeck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater-locator-beacons, navigation computers, integrated avionics computers, satellite network/communication systems, communication management units, and remote monitor electronic line replaceable units;
- Cabin safety, entertainment and communications equipment including emergency locator transmitters, life rafts, escape slides, seat belt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet/in-flight entertainment systems, satellite televisions, remotes and handsets; and
- Systems in cargo areas including door controls, sensors, video surveillance equipment and security systems.

#### Discussion

Rechargeable lithium batteries are considered to be a novel or unusual design feature in transport category airplanes, with respect to the requirements in § 25.1353. This type of battery has certain failure, operational, and maintenance characteristics that differ significantly from those of the nickel-cadmium and lead-acid rechargeable batteries currently approved for installation on transport category airplanes. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Special Condition 1 requires that each individual cell within a battery be designed to maintain safe temperatures and pressures. Special Condition 2 addresses these same issues but for the entire battery. Special Condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special Conditions 1 and 2 are intended to ensure that the cells and

battery are designed to eliminate the potential for uncontrollable failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special Conditions 3, 7, and 8 are self-explanatory, and the FAA does not provide further explanation for them at this time.

Special Condition 4 clarifies that the flammable-fluid fire-protection requirements of § 25.863 apply to rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special Condition 5 requires each rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more severe failure condition. Special Condition 6 requires each rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting special conditions 5 and 6 may be the same, but they are independent requirements addressing different hazards. Special Condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

Special Condition 9 requires rechargeable lithium batteries to have “automatic” means, for charge rate and disconnect, due to the fast acting nature of lithium battery chemical reactions. Manual intervention would not be timely or effective in mitigating the hazards associated with these batteries.

These special conditions will apply to all rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–123. Section 25.1353(b)(1) through (b)(4) at Amendment 25–123 will remain in effect for other battery installations.

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

#### Applicability

As discussed above, these special conditions are applicable to the Textron Model 700 series airplane. Should

Textron apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

### Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

### Authority Citation

The authority citation for these special conditions is as follows:

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

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Textron Aviation Inc. Model 700 series airplane:

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–123, each rechargeable lithium battery installation must:

1. Be designed to maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Be designed to prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure, and automatically control the charge rate of each cell to protect against adverse operating conditions, such as cell imbalance, back charging, overcharging and overheating.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Have a failure sensing and warning system to alert the flight crew if its failure affects safe operation of the airplane.
8. Have a monitoring and warning feature that alerts the flightcrew when

its charge state falls below acceptable levels if its function is required for safe operation of the airplane.

9. Have a means to automatically disconnect from its charging source in the event of an over-temperature condition, cell failure or battery failure.

Issued in Des Moines, Washington, on May 23, 2018.

**Victor Wicklund,**

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

[FR Doc. 2018–11455 Filed 5–31–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA–2017–1063; Product Identifier 2017–SW–088–AD; Amendment 39–19291; AD 2018–11–03]**

**RIN 2120–AA64**

#### **Airworthiness Directives; Airbus Helicopters**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) Airbus Helicopters Model SA–365C, SA–365C1, and SA–365C2 helicopters. This AD requires establishing a life limit of 2,000 hours time-in-service (TIS) for the Starflex star/mast connecting bolt (bolt) and removing from service each bolt that exceeds its life limit. This AD is prompted by the discovery that the bolt's life limit was not included in helicopter maintenance records. The actions of this AD are intended to prevent an unsafe condition on these products.

**DATES:** This AD becomes effective June 18, 2018.

We must receive comments on this AD by July 31, 2018.

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

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.
- **Fax:** 202–493–2251.
- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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

### 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–2017–1063; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any comments received, and other information. The street address for Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at [http://www.helicopters.airbus.com/website/en/ref/Technical-Support\\_73.html](http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html). You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email [matthew.fuller@faa.gov](mailto:matthew.fuller@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing

each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

### Discussion

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2016-0115-E, dated June 16, 2016, to correct an unsafe condition for Airbus Helicopters Model SA-365C, SA-365C1, SA-365C2, and SA-365C3 helicopters. EASA advises that the 2,000 flight hour life limit for the bolts was not referenced in the helicopter maintenance documentation. EASA states that some helicopters are therefore likely to continue flying with these bolts past their life limit. This condition, if not detected and corrected, could lead to bolt failure, resulting in main rotor mast, hub or blade damage and reduced helicopter control, EASA advises. As a result, the EASA AD requires replacing the bolts if they have reached or exceeded 2,000 flight hours, if the bolt part number (P/N) cannot be identified, or if the number of flight hours of the bolt is not known. The EASA AD also requires maintaining the continuous airworthiness records for the bolts.

### FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

### Related Service Information

Airbus Helicopters has issued Emergency Alert Service Bulletin No. SA365 65.51, Revision 0, dated June 2, 2016. This service information establishes a life limit of 2,000 flight hours for certain bolts installed on Airbus Helicopters Model SA-365C, SA-365C1, SA-365C2, and SA-365C3 helicopters and specifies replacing the bolts if necessary.

### AD Requirements

This AD requires the following before further flight:

- Removing from service any bolt P/N 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21,

365A31-1928-20, or 365A31-1143-20 that has accumulated 2,000 or more hours TIS or any bolt for which the hours TIS is unknown. Thereafter, removing from service each bolt P/N 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21, 365A31-1928-20, or 365A31-1143-20 before it accumulates 2,000 hours TIS.

- Removing from service any bolt with a P/N not listed in the AD or any bolt for which you cannot determine the P/N.

- Creating a component history card or equivalent record for each bolt P/N 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21, 365A31-1928-20, or 365A31-1143-20 and recording a life limit of 2,000 hours TIS.

### Differences Between This AD and the EASA AD

The EASA AD applies to Airbus Helicopters Model SA-365C3 helicopters. This AD does not because the SA-365C3 helicopter has no FAA type certificate.

### Costs of Compliance

There are no costs of compliance with this AD because there are no helicopters with this type certificate on the U.S. Registry.

### FAA's Justification and Determination of the Effective Date

There are no helicopters with this type certificate on the U.S. Registry. We believe it is therefore unlikely that we will receive any adverse comments or useful information about this AD from U.S. operators.

Therefore, we find good cause that notice and opportunity for prior public comment are unnecessary. In addition, for the reasons stated above, we find that good cause exists for making this amendment effective in less than 30 days.

### 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.

### Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

#### 2018-11-03 Airbus Helicopters:

Amendment 39-19291; Docket No. FAA-2017-1063; Product Identifier 2017-SW-088-AD.

#### (a) Applicability

This AD applies to Airbus Helicopters Model SA-365C, SA-365C1, and SA-365C2 helicopters, certificated in any category.

#### (b) Unsafe Condition

This AD defines the unsafe condition as a Starflex star/mast connecting bolt (bolt) remaining in service beyond its fatigue life. This condition could result in failure of a

bolt, leading to failure of the main rotor blade mast, hub, or blade and subsequent loss of control of the helicopter.

**(c) Effective Date**

This AD becomes effective June 18, 2018.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

Before further flight:

(1) Remove from service any bolt part number (P/N) 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21, 365A31-1928-20, or 365A31-1143-20 that has accumulated 2,000 or more hours time-in-service (TIS), or any bolt for which the hours TIS is unknown. Thereafter, remove from service each bolt P/N 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21, 365A31-1928-20, or 365A31-1143-20 before accumulating 2,000 hours TIS.

(2) Remove from service any bolt with a P/N not listed in paragraph (e)(1) of this AD or for which the P/N is unknown.

(3) Create a component history card or equivalent record for each bolt P/N 365A31-1182-20, 365A31-1182-21, 365A31-1183-20, 365A31-1183-21, 365A31-1928-20, and 365A31-1143-20 and record a life limit of 2,000 hours TIS.

**(f) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

(1) Airbus Helicopters Emergency Alert Service Bulletin No. 65.51, Revision 0, dated June 2, 2016, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at [http://www.helicopters.airbus.com/website/en/ref/Technical-Support\\_73.html](http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html). You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD

No. 2016-0115-E, dated June 16, 2016. You may view the EASA AD on the internet at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2017-1063.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head.

Issued in Fort Worth, Texas, on May 16, 2018.

**Scott A. Horn,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2018-11446 Filed 5-31-18; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200 and 201

[Release No. 34-83325]

#### Technical Amendments to Rules of Practice and Rules of Organization; Conduct and Ethics; and Information and Requests

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) is making technical amendments to certain rules of organization and rules of practice to indicate that Commission materials will no longer be compiled and published as the “SEC Docket” (“SEC Docket” or “Docket”), but will continue to be available on the SEC public website.

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

**FOR FURTHER INFORMATION CONTACT:** Hannah Riedel, Senior Counsel, (202) 551-5150, Office of the General Counsel, Securities and Exchange Commission or J. Lynn Taylor, Assistant Secretary, (202) 551-5400, Office of the Secretary, 100 F Street NE, Washington, DC 20549-9150.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In 1972, the Commission began compiling and publishing Commission orders and rulemaking releases in an SEC Docket for weekly dissemination to the public. The Commission has determined that publishing the SEC Docket is no longer a cost-efficient way to disseminate information to the public because all materials appearing in the SEC Docket have already been posted upon release on the SEC public website at [www.sec.gov](http://www.sec.gov).

In 2013, facing increases in publication costs and dwindling subscription numbers, the Commission began publishing the Docket electronically on the SEC website. Producing and posting the SEC Docket electronically continues to require significant staff resources. The Office of the Secretary estimates that approximately 600 staff hours are expended annually to prepare the Docket. Moreover, with Docket materials already posted elsewhere on the website several weeks before the Docket is completed and published, the Docket generally receives less than 0.01% of all SEC website traffic.

Accordingly, the Commission plans to immediately discontinue publication of the SEC Docket but to continue posting these materials on the SEC website in real time. In light of this change, the Commission is adopting technical amendments to Title 17, Chapter II of the Code of Federal Regulations to eliminate references to the SEC Docket and, where appropriate, replace references to the SEC Docket with references to the SEC website.

##### II. Administrative Law Matters

The Commission finds, in accordance with the Administrative Procedure Act (“APA”), that these revisions relate solely to agency organization, procedures, or practice and do not constitute a substantive rule. Accordingly, the APA’s provisions regarding notice of rulemaking, opportunity for public comment, and advance publication of the amendments are not applicable.<sup>1</sup> For the same reason, and because these amendments do not affect the rights or obligations of non-agency parties, the provisions of the Small Business Regulatory Enforcement Fairness Act are not applicable.<sup>2</sup> Additionally, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or other law, are not applicable.<sup>3</sup> These amendments do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995.<sup>4</sup> Further, because the amendments impose no new burdens on private parties, the Commission does not believe that the amendments will have any impact on competition for purposes of Section 23(a)(2) of the Exchange Act.<sup>5</sup>

<sup>1</sup> 5 U.S.C. 553.

<sup>2</sup> 5 U.S.C. 804(3)(C).

<sup>3</sup> 5 U.S.C. 601 *et seq.*

<sup>4</sup> 44 U.S.C. 3501 *et seq.*

<sup>5</sup> 15 U.S.C. 78w.

### III. Statutory Authority

These technical amendments are adopted pursuant to statutory authority granted to the Commission under Section 23(a) of the Exchange Act.

#### List of Subjects in 17 CFR Parts 200 and 201

Administrative practice and procedure.

#### Text of Amendments

For the reasons set out above, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

### PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

#### Subpart D—Information and Requests

- 1. The authority citation for Part 200, Subpart D, continues to read in part as follows:

**Authority:** 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77s, 77ggg(a), 77sss, 78m(F)(3), 78w, 80a–37, 80a–44(a), 80a–44(b), 80b–10(a), and 80b–11, unless otherwise noted.

\* \* \* \* \*

- 2. Section 200.80 is amended by revising paragraphs (a)(2) introductory text, (c)(1)(ii), and (e)(8)(ii) to read as follows:

#### § 200.80 Commission records and information.

(a) \* \* \*

(2) *Records available for public inspection and copying; documents published and indexed.* Except as provided in paragraph (b) of this section, the following materials are available for public inspection and copying from 10 a.m. to 3 p.m., E.T., at the public reference room located at 100 F Street NE, Washington, DC.

\* \* \* \* \*

(c)(1) \* \* \*

(ii) All regional offices of the Commission have available for public examination the materials set forth in paragraph (a)(2) of this section and the *SEC News Digest* and other SEC publications. Blank forms as well as other general information about the operations of the Commission described in paragraph (a)(1) of this section may also be available at particular regional offices.

\* \* \* \* \*

(e) \* \* \*

(8) \* \* \*

(ii) The Commission publishes daily the *SEC News Digest*, which summarizes the releases published by the Commission each day, contains

Commission announcements, and lists certain filings with the Commission.

\* \* \* \* \*

- 3. Section 200.80b is revised to read as follows:

#### § 200.80b Appendix B—SEC releases.

Free mailing list distribution of releases has been discontinued by the Commission because of rising costs and staff limitations. However, the texts of all releases under the various Acts, the corporate reorganization releases, and the litigation releases are available on the SEC website. Statistical series releases are contained in the *SEC Monthly Statistical Review*, which may be purchased through the Superintendent of Documents as described in § 200.80c.

### PART 201—RULES OF PRACTICE

#### Subpart D—Rules of Practice

- 4. The authority citation for Part 201, Subpart D, continues to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 77sss, 77ttt, 78c(b), 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

- 5. Section 201.360 is amended by revising paragraphs (c) and (d)(2) to read as follows:

#### § 201.360. Initial decision of hearing officer and timing of hearing.

\* \* \* \* \*

(c) *Filing, service and publication.* The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof on the SEC website; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

(d) \* \* \*

(2) If a party or aggrieved person entitled to review fails to file timely a petition for review or a motion to correct a manifest error of fact in the initial decision, and if the Commission does not order review of a decision on its own initiative, the Commission will issue an order that the decision has become final as to that party. The decision becomes final upon issuance of the order. The order of finality shall state the date on which sanctions, if any, take effect. Notice of the order shall be published on the SEC website.

### Subpart F—Fair Fund and Disgorgement Plans

- 6. The authority citation for Part 201, Subpart F, continues to read as follows:

**Authority:** 15 U.S.C. 77h–1, 77s, 77u, 78c(b), 78d–1, 78d–2, 78u–2, 78u–3, 78v, 78w, 80a–9, 80a–37, 80a–39, 80a–40, 80b–3, 80b–11, 80b–12, and 7246.

- 7. Section 201.1103 is revised to read as follows:

#### § 201.1103 Notice of proposed plan and opportunity for comment by non-parties.

Notice of a proposed plan of disgorgement or a proposed Fair Fund plan shall be published on the SEC website and in such other publications as the Commission or the hearing officer may require. The notice shall specify how copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Commission.

By the Commission.

Dated: May 24, 2018.

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2018–11618 Filed 5–31–18; 8:45 am]

**BILLING CODE 8011–01–P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG–2018–0307]

RIN 1625–AA08

#### Special Local Regulation; Lake of the Ozarks, Bagnell, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for all navigable waters of the Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO. This special local regulation is necessary to protect the public, participants, spectators, and the marine environment from potential hazards during the Lake Race 2018. Entry of persons or vessels into this regulated area is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective from 7 a.m. through 6 p.m. on June 2, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being

available in the docket, go to <http://www.regulations.gov>, type USCG–2018–0307 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2568, email [Sean.M.Peterson@uscg.mil](mailto:Sean.M.Peterson@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

CFR Code of Federal Regulations  
COTP Captain of the Port Sector Upper Mississippi River  
DHS Department of Homeland Security  
FR Federal Register  
MM Mile marker  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This special local regulation must be established by June 2, 2018 and we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing this rule. The NPRM process would delay the establishment of the special local regulation until after the scheduled date of the power boat race and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is necessary to ensure the safety the public, participants, spectators, and the marine environment during the power boat race.

##### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The

Captain of the Port Sector Upper Mississippi River (COTP) has determined that potential hazards associated with the Lake Race 2018 occurring on June 2, 2018 will be a safety concern for persons and vessels within four tenths of a mile stretch of the Osage arm of the Lake of the Ozarks. The purpose of this rule is to ensure safety of the public, participants, spectators, and the marine environment in the regulated area before, during, and after the Lake Race 2018.

##### **IV. Discussion of the Rule**

This rule establishes a temporary special local regulation from 7 a.m. through 6 p.m. on June 2, 2018 on all navigable waters of the Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO. The duration of the special local regulation is intended to protect the public from the power boat race before, during, and after the event. No vessel or person is permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM”.

All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

Spectator vessels desiring to enter, transit through or within, or exit the regulated area may do so only with permission from the COTP or a designated representative, and when permitted, must operate at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels. No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel. Any spectator vessel may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be

complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property. The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

##### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

###### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day for the special local regulation. This special local regulation cover a less than half-mile stretch of the arm of the Osage arm of the Lake of the Ozarks for eleven hours on one day. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the regulation so that waterway



users may plan accordingly for transits during this restriction, and the rule allows vessels to seek permission from the COTP or a designated representative to enter the regulated area.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation lasting eleven hours on a four-tenths of a mile stretch of the Osage arm of the Lake of the Ozarks. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration

supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 33 CFR 1.05–1.

■ 2. Add § 100.35T08–0307 to read as follows:

#### **§ 100.35T08–0307 Special Local Regulation; Lake of the Ozarks, Bagnell, MO.**

(a) *Location.* The following area is a special local regulation: All navigable waters of the Osage arm of the Lake of the Ozarks from mile marker (MM) 0.0 to MM 0.4 in Bagnell, MO.

(b) *Effective period.* This section is effective from 7 a.m. through 6 p.m. on June 2, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35, entry into this regulated area is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign “PATCOM”.

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The “official patrol vessels” consist of any Coast Guard, state, or local law enforcement and sponsor provided vessels assigned or approved by the COTP or a designated representative to patrol the regulated area.

(3) Spectator vessels desiring to transit the regulated area may do so only



with prior approval of the COTP or a designated representative and when so directed by that officer will be operated at a minimum safe navigation speed in a manner which will not endanger participants in the regulated area or any other vessels.

(4) No spectator vessel shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) Spectator vessels may anchor outside the regulated area, but may not anchor in, block, or loiter in a navigable channel. Spectator vessels may be moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event. Such mooring must be complete at least 30 minutes prior to the establishment of the regulated area and remain moored through the duration of the event.

(6) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(7) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this regulated area through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Broadcasts (MSIBs) as appropriate.

Dated: May 25, 2018.

**Scott A. Stoermer,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2018–11774 Filed 5–31–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2018–0447]

#### Drawbridge Operation Regulation; Harlem River, Bronx, New York

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge across the Harlem River, mile 6.8, at Bronx, New York. This temporary deviation is necessary to allow the bridge to remain in the closed-to-navigation position to facilitate replacement of the middle track.

**DATES:** This deviation is effective from 6 a.m. on June 9, 2018 to 5 p.m. on August 12, 2018.

**ADDRESSES:** The docket for this deviation, USCG–2018–0447 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 Judy Leung-Yee, Bridge Management Specialist, First District Bridge Branch, U.S. Coast Guard, telephone 212–514–4336, email [Judy.K.Leung-Yee@uscg.mil](mailto:Judy.K.Leung-Yee@uscg.mil).

**SUPPLEMENTARY INFORMATION:** New York City Transit, the bridge owner, requested a temporary deviation from the normal operating schedule to facilitate replacement of the middle track. The Broadway Bridge across the Harlem River, mile 6.8, has a vertical clearance in the closed position of 24 feet at mean high water and 29 feet at mean low water. The existing bridge operating regulations are listed at 33 CFR 117.789(b)(1).

Under this temporary deviation, the Broadway Bridge shall remain in the closed position between 6 a.m. and 7 p.m. on June 9, June 16, June 23, June 30, August 4 and August 11, 2018; and between 6 a.m. and 5 p.m. on June 17, July 1, August 5 and August 12, 2018.

The waterway is transited by commercial and recreational traffic. The Coast Guard notified known commercial vessel operators that transit the area, including the Sandy Hook Pilots Association and the local Tug/Tow Committee; there were no objections to this temporary deviation. Vessels able to

pass under the bridge in the closed position may do so at any time. The bridge will not be able to open for emergencies and there is no immediate alternate route for vessels to pass.

The Coast Guard will 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 vessel operators 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 effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 24, 2018.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist, First Coast Guard District.*

[FR Doc. 2018–11770 Filed 5–31–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2018–0386]

#### Drawbridge Operation Regulation; Reynolds Channel and Long Creek, Nassau County, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Long Beach Bridge across Reynolds Channel, mile 4.7, and the Loop Parkway Bridge across Long Creek, mile 0.7, at Nassau County, New York. This deviation is necessary to facilitate a fireworks display and allows the bridge to remain in the closed position for two and a half hours.

**DATES:** This deviation is effective from 9:30 p.m. June 30, 2018 to 11:59 p.m. on July 2, 2018.

**ADDRESSES:** The docket for this deviation, USCG–2018–0386, 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 Stephanie Lopez, Bridge Management Specialist,

First District Bridge Branch, U.S. Coast Guard; telephone 212-514-4335, email [Stephanie.E.Lopez@uscg.mil](mailto:Stephanie.E.Lopez@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Town of Hempstead Department of Public Works requested this temporary deviation and both Nassau County, the owner of the Long Beach Bridge, and the New York State Department of Transportation, the owner of the Loop Parkway Bridge, concur with the request to deviate from the normal operating schedules to facilitate the "Annual Salute to Veterans and Fireworks Display."

The Long Beach Bridge across Reynolds Channel, mile 4.7, has a vertical clearance of 22 feet at mean high water and 24 feet at mean low water in the closed position. The existing drawbridge operating regulation is listed at 33 CFR 117.799(g). The Loop Parkway Bridge across Long Creek, mile 0.7, has a vertical clearance of 21 feet at mean high water and 25 feet at mean low water in the closed position. The existing drawbridge operating regulation is listed at 33 CFR 117.799(f).

The temporary deviation will allow both bridges to remain closed from 9:30 p.m. to 11:59 p.m. on June 30, 2018 with rain date of July 1, 2018. Reynolds Channel and Long Creek are transited by seasonal recreational vessels and commercial vessels. Coordination with Coast Guard Sector Long Island Sound has indicated no mariner objections to the proposed short-term closure of the bridges.

Vessels that can pass under the bridges without an opening may do so at all times. The bridges will be able to open for emergencies. There is no 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 bridges so that vessel operators 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 effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 25, 2018.

**C.J. Bisignano,**

*Supervisory Bridge Management Specialist,  
First Coast Guard District.*

[FR Doc. 2018-11771 Filed 5-31-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2018-0341]

#### Drawbridge Operation Regulation; Sinepuxent Bay Harry Kelley (Route 50) Bridge, Ocean City, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Harry Kelley Bridge (Route 50), over Isle of Wight (Sinepuxent) Bay, mile 0.5 at Ocean City, MD. The deviation is necessary to accommodate Ocean City Air Show. This deviation allows the bridge to remain in their closed-to-navigation position.

**DATES:** The deviation is effective from 4:30 p.m. on June 16, 2018, until 5 p.m. on June 17, 2018.

**ADDRESSES:** The docket for this deviation, [USCG-2018-0341], 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 Ms. Kashanda Booker, Bridge Administration Branch Fifth District, Coast Guard; telephone 757-398-6227, email [Kashanda.l.booker@uscg.mil](mailto:Kashanda.l.booker@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The event director, Ocean City, Maryland, Department of Emergency Services, with approval from the Maryland State Highway Administration, who owns and operates the U.S. 50 (Harry Kelly) Bridge, has requested a temporary deviation from the current operating regulations to accommodate the free movement of pedestrians and vehicles during the 2017 Ocean City Air Show. The bridge is a double bascule bridge and has a vertical clearance in the closed position of 13 feet above mean high water.

The current operating schedule is set out in 33 CFR 117.559. Under this temporary deviation, the bridge will be maintained in the closed-to-navigation position from 4:30 p.m. to 5 p.m. on June 16 and 17, 2018. The Isle of Wight (Sinepuxent) Bay is used by a variety of vessels including small commercial vessels and recreational vessels. The Coast Guard has carefully considered

the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed position may do so at any time. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels unable to pass through the bridge in the closed position. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impacts caused by this 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 effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 15, 2018.

**Hal R. Pitts,**

*Bridge Program Manager, Fifth Coast Guard District.*

[FR Doc. 2018-11772 Filed 5-31-18; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2018-0455]

#### Recurring Safety Zone; Rice's Landing Riverfest, Rice's Landing, PA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Rice's Landing Riverfest from June 8 through June 9, 2018, to provide for the safety of life on the navigable waterways during this event. Our regulation for marine events within the Eighth Coast Guard District identifies the regulated area for this event in Rice's Landing, PA. During the enforcement periods, entry into this zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative.

**DATES:** The regulations in 33 CFR 165.801, Table 1, Line 7 will be enforced from 9:45 p.m. through 10:45 p.m., each day on June 8, 2018 and June 9, 2018.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of

enforcement, call or email Petty Officer Charles Morris, Marine Safety Unit Pittsburgh, U.S. Coast Guard; telephone 412-221-0807, email [Charles.F.Morris@uscg.mil](mailto:Charles.F.Morris@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a safety zone for the Rice's Landing Riverfest in 33 CFR 165.801, Table 1, Line 7 from 9:45 p.m. through 10:45 p.m. each day on June 8, 2018 and June 9, 2018. This action is being taken to provide for the safety of life on navigable waterways during this 2-day event. Our regulation for marine events within the Eighth Coast Guard District, § 165.801, specifies the location of the safety zone for the Rice's Landing Riverfest, which covers a less than one-mile stretch of the Monongahela River. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Marine Safety Unit Pittsburgh (COTP) or a designated representative. Persons or vessels desiring to enter into or pass through the area must request permission from the COTP or a designated representative. They can be reached on VHF FM channel 16. If permission is granted, all persons and vessel shall comply with the instructions of the COTP or designated representative.

In addition to this notice of enforcement in the **Federal Register**, the COTP or a designated representative will inform the public through Broadcast Notice to Mariners (BNM), Local Notices to Mariners (LNM), Marine Safety Information Bulletins (MSIBs), and/or through other means of public notice as appropriate at least 24 hours in advance of each enforcement.

Dated: May 25, 2018.

**L. McClain, Jr.,**

*Commander, U.S. Coast Guard, Captain of the Port Marine Safety Unit Pittsburgh.*

[FR Doc. 2018-11775 Filed 5-31-18; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2018-0379]

RIN 1625-AA00

#### Safety Zone; Upper Mississippi River, Mile Markers 179 to 180, St. Louis, MO

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters of the Upper

Mississippi River between mile markers 179 and 180, extending the entire width of the river. This action is necessary to provide for the safety of life and property on these navigable waters near the St. Louis Gateway Arch grounds during an air show practice and an air show/fireworks display. This temporary safety zone is necessary to protect persons and property from potential damage and safety hazards during the air show evolutions. Entry into the safety zone is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** This rule is effective from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2018-0379 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314-269-2332, email [Sean.M.Peterson@uscg.mil](mailto:Sean.M.Peterson@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port Sector Upper Mississippi River  
DHS Department of Homeland Security  
FR Federal Register  
MM Mile marker  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code  
UMR Upper Mississippi River

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone by July 3, 2018 and lack sufficient time to provide a reasonable comment period and then consider

those comments before issuing the rule. The NPRM process would delay the establishment of the safety zone until after the event and compromise public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of the rule is contrary to the public interest as it would delay the safety measures necessary to respond to potential safety hazards associated with the air show evolutions.

The Fair St. Louis will be holding air shows and a fireworks display in the vicinity of the St. Louis Gateway Arch from mile marker (MM) 179 to MM 180 on the 4th of July. A practice session for the air shows will be held on July 3, 2018 from noon through 2 p.m. The air shows will take place on July 4, 2018 twice: Between the hours of 12:30 p.m. through 2 p.m., and 6:45 p.m. through 8:15 p.m. The fireworks display will take place from 9 p.m. through 10 p.m. on July 4, 2018.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. The purpose of this rule to provide for the safety of life and property during the air shows and the fireworks display. Over the years, there have been unfortunate instances of aircraft mishaps that involve crashing during performances at various air shows around the world. Occasionally, these incidents result in a wide area of scattered debris in the water that can damage property or cause significant injury or death to the public observing the air shows. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that a safety zone is necessary to protect the general public from hazards associated with the aerobatic and high speed aerial flight demonstrations. In addition, potential hazards associated with firework displays include accidental discharge of fireworks, dangerous projectiles, and falling embers or other debris. The COTP has determined that a safety zone is necessary to protect the general public from hazards associated with the fireworks display. The purpose of this rule is to ensure the safety of life and property on the navigable waters in the safety zone before, during, and after the air show practice, the air shows, and the fireworks display.

##### IV. Discussion of the Rule

This rule establishes a safety zone from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018. It will be enforced

during four separate periods, once on July 3, 2018 from noon through 2 p.m., and three times on July 4, 2018 from noon to 2 p.m., from 6:30 p.m. to 8:15 p.m., and from 8:30 p.m. to 10:30 p.m. The safety zone will cover all navigable waters between mile markers (MMs) 179 and 180, extending the entire width of the river, on the Upper Mississippi River (UMR) in St. Louis, MO. Entry of vessels or persons into this zone is prohibited unless authorized by the COTP or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF-FM (156.8 MHz) by the call sign "PATCOM". The COTP or a designated representative may be contacted on VHF-FM channel 13 or 16, or by phone at by telephone at 314-269-2332. All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a one-mile stretch of the

UMR for a total of seven and a half hours. Moreover, the Coast Guard would issue a BNMs via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding these rules. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting a total of seven and a half hours that will prohibit entry on a one-mile stretch of the UMR on July 3rd and 4th, 2018. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01,

Rev. 01. A Record of Environmental Consideration is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

- 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T08–0379 to read as follows:

#### § 165.T08–0379 Safety Zone; Upper Mississippi River, mile markers 179 to 180, St. Louis, MO.

(a) *Location.* The following area is a safety zone: all navigable waters of the Upper Mississippi River between mile markers (MMs) 179 to 180, extending the entire width of the river, in St. Louis, MO.

(b) *Effective period.* This section is effective from noon on July 3, 2018 through 10:30 p.m. on July 4, 2018.

(c) *Enforcement periods.* This section will be enforced as follows:

(1) On July 3, 2018, from noon through 2 p.m.; and

(2) On July 4, 2018, from noon through 2 p.m.; from 6:30 p.m. through 8:15 p.m.; and from 8:30 p.m. through 10:30 p.m.

(d) *Regulations.* (1) Under the general safety zone regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless authorized by the Captain of the Port Sector Upper Mississippi River (COTP) or a designated representative. A designated representative may be a Patrol Commander (PATCOM). The PATCOM may be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by

the call sign “PATCOM”. They may be contacted on VHF–FM channel 13 or 16, or by phone at by telephone at 314–269–2332.

(2) All persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: May 24, 2018.

**S.A. Stoermer,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi.*

[FR Doc. 2018–11768 Filed 5–31–18; 8:45 am]

**BILLING CODE 9110–04–P**

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2018–0477]

RIN 1625–AA00

#### Safety Zone; Offshore Barrier Test, Lake Huron, North Lakeport, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for navigable waters within a 2000 yard radius of a portion of Lake Huron, MI. This zone is necessary to protect a Coast Guard Cutter and divers operating from the vessel as part of a test of a maritime oil recovery system.

**DATES:** This temporary final rule is effective without actual notice from June 1, 2018 through 4 p.m. on June 2, 2018. For the purposes of enforcement, actual notice will be used from 7 a.m. May 30, 2018 through June 1, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2018–0477 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email Tracy Girard,

Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9564, or email [Tracy.M.Girard@uscg.mil](mailto:Tracy.M.Girard@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port Detroit  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of Proposed Rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The Coast Guard did not receive the final details of this offshore barrier test in time to publish an NPRM. As such, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would inhibit the Coast Guard’s ability to protect participants, mariners and vessels from the hazards associated with this event.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Detroit (COTP) has determined that potential hazard associated with offshore barrier test from 7 a.m. on May 30, 2018 through 4 p.m. on June 2, 2018 will be a safety concern to anyone within a 2000 yard radius of the site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the offshore barrier test is being conducted.

##### IV. Discussion of the Rule

This rule establishes a safety zone from 7 a.m. on May 30 until 4 p.m. on

June 2, 2018. The safety zone will encompass all U.S. navigable waters of Lake Huron, North Lakeport, MI, within a 2000 yard of position 43°08.7' N, 082°26.5' W (NAD 83). No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake Huron from 7 a.m. on May 30, 2018 through 4 p.m. on June 2, 2018. Moreover, the Coast Guard will issue Broadcast Notice to Mariners (BNM) via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety

zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for

federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 4 days that will prohibit entry into a designated area. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protestors. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0477 to read as follows:

**§ 165.T09–0477 Safety Zone; Offshore Barrier Test, Lake Huron, North Lakeport, MI.**

(a) *Location.* A safety zone is established to include all U.S. navigable waters of Lake Huron, North Lakeport, MI, within on a 2000 yard radius of position 43°08.7" N, 082°26.5" W (NAD 83).

(b) *Enforcement period.* The regulated area described in paragraph (a) of this section will be enforced daily from 7 a.m. until 4 p.m. from May 30, 2018 until June 2, 2018.

(c) *Regulations.* (1) No vessel or person may enter, transit through, or anchor within the safety zone unless authorized by the Captain of the Port Detroit (COTP), or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or his on-scene representative.

(3) The “on-scene representative” of COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the Captain of the Port Detroit to act on his behalf.

(4) Vessel operators shall contact the COTP or his on-scene representative to obtain permission to enter or operate within the safety zone. The COTP or his on-scene representative may be contacted via VHF Channel 16 or at (313) 568–9464. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP or his on-scene representative.

Dated: May 23, 2018.

**Jeffrey W. Novak,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2018–11646 Filed 5–31–18; 8:45 am]

**BILLING CODE 9110–04–P**

**SUMMARY:** The U.S. Copyright Office is amending its regulation governing the deposit of published copies or phonorecords for the Library of Congress to correct an inadvertent error.

**DATES:** Effective June 1, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202–707–8040, or by email at [rkas@loc.gov](mailto:rkas@loc.gov) and [ebertin@loc.gov](mailto:ebertin@loc.gov); or Anna Bonny Chauvet, Assistant General Counsel, by telephone at 202–707–8350, or by email at [achau@loc.gov](mailto:achau@loc.gov).

**SUPPLEMENTARY INFORMATION:** On January 17, 2018, the Office published a final rule regarding the deposit requirements for certain types of literary works and musical compositions. 83 FR 2371 (Jan. 17, 2018) (“Deposit Requirements Final Rule”). Among other things, the Deposit Requirements Final Rule amended 37 CFR 202.19. On January 30, 2018, the Office published a final rule regarding the group registration of newspapers. 83 FR 4144 (Jan. 30, 2018) (“Group Newspaper Registration Final Rule”). The Group Newspaper Registration Final Rule also amended 37 CFR 202.19, but the amendments inadvertently eliminated a provision that had been added by the Deposit Requirements Final Rule. The Deposit Requirements Final Rule went into effect February 16, 2018. The Group Newspaper Registration Final Rule went into effect March 1, 2018.

Thus, the Copyright Office is amending 37 CFR 202.19 to correct this error.

**List of Subjects in 37 CFR Part 202**

Copyright.

**Final Regulation**

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 202, as follows:

**PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT**

■ 1. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

■ 2. Amend § 202.19 as follows:

■ a. Redesignate paragraph (d)(2)(ix) as paragraph (d)(2)(x).

■ b. Add a new paragraph (d)(2)(ix) to read as follows:

**§ 202.19 Deposit of published copies or phonorecords for the Library of Congress.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ix) In the case of published literary monographs, the deposit of one complete copy of the best edition of the work will suffice in lieu of the two copies required by paragraph (d)(1) of this section, unless the Copyright Office issues a demand for a second copy pursuant to 17 U.S.C. 407(d).

\* \* \* \* \*

Dated: May 21, 2018.

**Karyn A. Temple,**

*Acting Register of Copyrights and Director of the U.S. Copyright Office.*

Approved by:

**Carla D. Hayden,**

*Librarian of Congress.*

[FR Doc. 2018–11841 Filed 5–31–18; 8:45 am]

**BILLING CODE 1410–30–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R05–OAR–2016–0058; FRL–9978–61—Region 5]**

**Air Plan Approval; Michigan; Regional Haze Progress Report**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Michigan state implementation plan (SIP). Michigan has satisfied the progress report requirements of the Regional Haze Rule. Michigan has also provided a determination of the adequacy of its regional haze plan with the progress report.

**DATES:** This final rule is effective on July 2, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2016–0058. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *i.e.*, 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 either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency,

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 202**

**[Docket No. 2018–5]**

**Group Registration of Newspapers**

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Final rule.



Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, [alvarez.gilberto@epa.gov](mailto:alvarez.gilberto@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

- I. Background
- II. What is EPA’s response to the comments?
- III. What action is EPA taking?
- IV. Statutory and Executive Order Reviews

**I Background**

States are required to submit a progress report every five years that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area within the State and in each mandatory Class I Federal area outside the State which may be affected by emissions from within the State. *See* 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of their existing regional haze SIP. *See* 40 CFR 51.308(h). The first progress report is due five years after the submittal of the initial regional haze SIP.

Michigan submitted its regional haze plan on November 5, 2010. EPA partially approved Michigan’s regional haze plan into its SIP on December 3, 2012 (77 FR 71533).

As part of this action, EPA found that the State’s submittal appropriately addressed the best available retrofit technology (BART) requirements for some sources but failed to satisfy BART for two sources, namely St. Marys Cement (SMC) and Escanaba Paper Company. EPA promulgated a Federal Implementation Plan (FIP) that included nitrogen oxide emission (NOx) limits for these two sources and sulfur dioxide emission limits for SMC to satisfy these requirements on December 3, 2012 (77 FR 71533).

In order to satisfy the requirements for BART for certain taconite ore processing facilities in Minnesota and Michigan,

EPA promulgated a taconite FIP on February 6, 2013 (78 FR 8706), and revised the taconite FIP on April 9, 2015 (81 FR 21672). In Michigan, the taconite facility impacted by this FIP is the Tilden Mining Company.

Michigan submitted its five-year progress report on January 12, 2016. The State submitted its determination of adequacy with the progress report.

The emission reductions from several Federal programs are contributing to visibility improvement in Michigan. In its regional haze plan, Michigan considered the emission reductions from the Tier 2 Gasoline, Heavy-duty Highway Diesel, Non-road Diesel, and a variety of Maximum Achievable Control Technology programs. Michigan also relied, in part, on the Clean Air Interstate Rule (CAIR) to meet certain regional haze requirements. EPA issued a limited disapproval of Michigan’s regional haze SIP based on its reliance on CAIR and issued a FIP on June 11, 2012 replacing reliance on CAIR with reliance on the Cross State Air Pollution Rule (CSAPR) (77 FR 33642).

EPA published a direct final rule (DFR) on October 18, 2017 (82 FR 48435), approving the Michigan regional haze progress report as a revision to the Michigan SIP, along with a proposed rule (82 FR 48473), that provided a 30-day public comment period.

The DFR states that if EPA received adverse comments, EPA would publish a timely withdrawal of the DFR in the **Federal Register** informing the public that the rule will not take effect. EPA received adverse comments during the comment period, and the October 18, 2017 DFR approving the Michigan regional haze progress report was withdrawn on December 8, 2017 (82 FR 57836). The adverse comments received are addressed below.

EPA evaluated the Michigan submittal assessing the state’s progress in implementing its regional haze plan during the first half of the first implementation period, as well as the statutory and regulatory background for Michigan’s regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Michigan progress report.

**II. What is EPA’s response to the comments?**

EPA received four comments on the DFR (82 FR 48435). In the first comment, New Jersey expressed concern over sources in Michigan impacting Class I areas in the northeast. The second and third comments were anonymous and dealt with Federal Implementation Plans (FIPs) and regional trading programs, respectively.

A fourth comment was not relevant to the rulemaking. We will address the comments here.

*Comment #1*—EPA received a comment from the New Jersey Department of Environmental Protection (NJDEP) stating that EPA cannot approve the Michigan regional haze 5-year progress report because it is unclear how the State has addressed the request from the Mid-Atlantic Northeast Visibility Union (MANE-VU) states to reduce emissions from several electric generating units in Michigan. NJDEP noted that two of the facilities in Michigan identified by MANE-VU—Trenton Channel (Unit 9A) and Saint Clair (Unit 7)—have not reduced sulfur dioxide emissions and thus remain large uncontrolled sources of sulfur dioxide that adversely impact visibility in the MANE-VU region.

*EPA’s Response*—Michigan is a member of the Midwest Regional Planning Organization (Midwest RPO), a collaborative effort of state governments and federal agencies to coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Midwest. During the first planning period of the regional haze program, the Midwest RPO and other regional planning organizations facilitated consultations between states to help in the determination of appropriate control strategies for regional haze. The adequacy of Michigan’s consultation with other states and its responses to other states’ requests for specific emissions reductions were reviewed in EPA’s assessment of its regional haze SIP submitted in 2010. EPA approved Michigan’s decision to not require source-specific controls at Trenton Channel (Unit 9A) and Saint Clair (Unit 7) at that time. Given this, NJDEP’s comments regarding Michigan’s response to the request from MANE-VU fall outside the scope of this rulemaking.

We do note, however, that the two sources specifically mentioned in NJDEP’s comment, Trenton Channel Unit 9A and Saint Clair Unit 7, owned by DTE Energy, are tentatively scheduled to be shut down <sup>1</sup> in 2023.

<sup>1</sup> According to testimony by DTE before the Michigan Public Service Commission, DTE “tentatively plans” to retire Trenton Channel Unit 9 and St Clair Unit 7. “Qualifications and Direct Testimony of Franklin D. Warren; DTE Electric Company’s Application Proposed Notice of Hearing, Direct Testimony and Exhibits before the Michigan Public Service Commission” (April 17, 2017). The company has subsequently indicated that the coal fired power plant units will be replaced with a natural gas facility.



EPA concludes that Michigan has adequately addressed the provisions under 40 CFR 51.308(h).

**Comment #2**—EPA received an anonymous comment that argued that EPA cannot approve the Michigan regional haze 5-year progress report because Michigan relies on FIPs which cannot be enforced by the public.

**EPA's Response**—We do not agree with the comment that measures contained in FIPs are not federally enforceable. Emission standards or limitations in a FIP are potentially subject to enforcement through action by citizens in the district courts of the United States. 42 U.S.C. 7604.

**Comment #3**—EPA received an anonymous comment that argued that EPA cannot approve the Michigan regional haze 5-year progress report because EPA should not be allowed to use regional trading programs to achieve BART reductions.

**EPA's Response**—The regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the first planning period have been met by the existing plan. As such, this comment raises issues outside the scope of this rulemaking. We do note, however, that EPA's determination that states may rely on CSAPR, a regional trading program, to meet the BART requirements has been upheld by the Court of Appeals for the District of Columbia Circuit. *Utility Air Regulatory Group v. EPA*, 885 F.3d 714 (D.C. Cir. 2018).

In summary, EPA disagrees that the points raised by the commenters prevent approval of the progress report. EPA finds that Michigan's progress report satisfies 40 CFR 51.308.

### III. What action is EPA taking?

EPA is approving the Michigan regional haze progress report under the CAA as a revision to the Michigan SIP. EPA finds that Michigan has satisfied the progress report requirements of the Regional Haze Rule. EPA also finds that Michigan has met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

### IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 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, Sulfur oxides, Volatile organic compounds.

Dated: May 16, 2018.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

- 2. In § 52.1170, the table in paragraph (e) is amended by adding the entry “Regional Haze Progress Report” to follow the entry titled “Regional Haze Plan” to read as follows:

#### § 52.1170 Identification of plan.

*	*	*	*	*
(e)	*	*	*	

## EPA—APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
* Regional Haze Progress Report .....	* Statewide .....	* 1/12/2016	* 6/1/2018, [insert <b>Federal Register</b> citation]	* 
*	*	*	*	*

[FR Doc. 2018–11566 Filed 5–31–18; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[EPA–R03–OAR–2017–0738; FRL–9978–57—Region 3]****Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emissions Statement Rule Certification for the 2008 Ozone National Ambient Air Quality Standard****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the Commonwealth of Virginia (Virginia or the Commonwealth). Under the Clean Air Act (CAA), states' SIPs must require stationary sources in ozone nonattainment areas classified as marginal or above to report annual emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC). This emissions statement requirement also applies to stationary sources located in the Ozone Transport Region (OTR) that emit or have the potential to emit at least 50 tons per year (tpy) of VOC or 100 tpy of NO<sub>x</sub>. The SIP revision provides Virginia's certification that its existing emissions statement program satisfies the emissions statement requirements of the CAA for the 2008 ozone National Ambient Air Quality Standards (NAAQS). EPA is approving Virginia's emissions statement program certification for the 2008 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

**DATES:** This final rule is effective on July 2, 2018.**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0738. All documents in the docket are listed on the <https://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 <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Sara Calcinore, (215) 814 2043, or by email at [calcinore.sara@epa.gov](mailto:calcinore.sara@epa.gov).**SUPPLEMENTARY INFORMATION:****I. Background**

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. *See* 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every 5 years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. The 0.075 ppm standard is referred to as the 2008 ozone NAAQS. *See* 73 FR 16436 (March 27, 2008).

On May 21, 2012 and June 11, 2012, EPA designated nonattainment areas for the 2008 ozone NAAQS. 77 FR 30088 and 77 FR 34221. Effective July 20, 2012, the Washington, DC–MD–VA area was designated as marginal nonattainment for the 2008 ozone

NAAQS. The Virginia portion of the Washington, DC–MD–VA nonattainment area is comprised of Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City. *See* 40 CFR 81.347.

Section 182 of the CAA identifies additional plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) of the CAA requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources. Sources that are within marginal or above ozone nonattainment areas must annually report the actual emissions of NO<sub>x</sub> and VOC to the state. However, states may waive sources that emit under 25 tpy of NO<sub>x</sub> and VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. *See* CAA section 182(a)(3)(B)(ii).

Additionally, portions of Virginia are included in the ozone transport region (OTR) established by Congress in section 184 of the CAA. The OTR is comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and portions of Virginia. The areas designated as in the Virginia portion of the OTR are as follows: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.<sup>1</sup>

Pursuant to section 184(b)(2), any stationary source located in the OTR that emits or has the potential to emit at least 50 tpy of VOC shall be considered a major stationary source

<sup>1</sup> *See, e.g.*, “Approval and Promulgation of Air Quality Implementation Plans; Virginia; NSR in the Ozone Transport Region”, 71 FR 39570 (July 13, 2006) and 71 FR 890 (January 6, 2006).

and subject to the requirements which would be applicable to major stationary sources if the area was classified as a moderate nonattainment area. See CAA section 184. Thus, states within the OTR are subject to plan (or SIP) requirements in CAA section 182(b) applicable to moderate nonattainment areas. Also, section 182(f)(1) of the CAA requires that the plan provisions required for major stationary sources of VOC also apply to major stationary sources of NO<sub>x</sub> for states with ozone nonattainment areas. A major stationary source of NO<sub>x</sub> is defined as a stationary facility or source of air pollutants which directly emits, or has the potential to emit, 100 tpy or more of NO<sub>x</sub>. See CAA section 302(j).

In summary, sources located within the portions of Virginia included in the OTR, including areas designated as attainment for the 2008 ozone NAAQS, that emit more than 50 tpy of VOC or 100 tpy of NO<sub>x</sub> are considered major sources and are subject to the same requirements as major stationary sources located in moderate or above nonattainment areas. These requirements include the emissions statement requirements of CAA section 182(a)(3)(B). See CAA section 182(f) and 184(b)(2). Sources located in designated marginal or above nonattainment areas must also submit an emissions statement as required by CAA section 182(a)(3)(B). As stated previously, states may waive sources that emit less than the 25 tpy of NO<sub>x</sub> and 25 tpy of VOC threshold if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. See CAA section 182(a)(3)(B)(ii). States are required by section 182(a)(3)(B) of the CAA to submit, for approval into the state's SIP, rules requiring the sources described above to provide annual statements showing their actual emissions of NO<sub>x</sub> and VOC to the state.

The EPA published guidance on source emissions statements in a July 1992 memorandum titled, "Guidance on the Implementation of an Emission Statement Program" and in a March 14, 2006 memorandum titled, "Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation" (2006 memorandum). In addition, on March 6, 2015, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including the emissions statement requirements of CAA section 182(a)(3)(B) (2015 final rule). 80 FR 12264. The 2006 memorandum clarified that the source emissions statement requirement of CAA section 182(a)(3)(B) was applicable to all areas designated

nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Per EPA's 2015 final rule, the source emissions statement requirement also applies to all areas designated nonattainment for the 2008 ozone NAAQS.

According to EPA's 2015 final rule, most areas that are required to have an emissions statement program for the 2008 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. EPA's 2015 final rule states that, "If an area has a previously approved emissions statement rule in force for the 1997 ozone NAAQS or the 1-hour ozone NAAQS that covers all portions of the nonattainment area for the 2008 ozone NAAQS, such rule should be sufficient for purposes of the emissions statement requirement for the 2008 ozone NAAQS." In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2008 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval into the SIP to meet the requirements of CAA section 182(a)(3)(B). In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statement rule.

In summary, Virginia is required to submit, as a formal revision to its SIP, a statement certifying that Virginia's existing emissions statement program satisfies the requirements of CAA section 182(a)(3)(B) and covers the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS.<sup>2</sup>

## II. Summary of SIP Revision and EPA Analysis

On August 1, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted, as a formal revision to its SIP, a statement certifying that Virginia's existing SIP-approved emissions statement program covers the Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2008 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). In its submittal, Virginia states that the emissions statement requirements of CAA section 182(a)(3)(B) are contained under

9VAC5-20-160 (Registration) of the Virginia Administrative Code and are SIP-approved under 40 CFR 52.2420(c). According to Virginia, these provisions mandate that facilities emitting more than 25 tpy of NO<sub>x</sub> or VOC must submit emission statements to Virginia while those emitting less than 25 tpy must comply with inventory requirements.

The provisions under 9VAC5-20-160 that implement Virginia's emissions statement program were approved into the Virginia SIP on May 2, 1995 (60 FR 21451).<sup>3</sup> These provisions require the owner of any stationary source that emits 25 tpy or more of VOC or NO<sub>x</sub> and is located in an emissions control area designated under 9VAC5-20-206 (Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas) to submit an emissions statement to the Virginia State Air Pollution Control Board by April 15 of each year for the emissions discharged during the previous calendar year.<sup>4</sup> Emissions statements are required to be prepared and submitted in accordance with 9VAC5-20-121 (Air Quality Program Policies and Procedures), which references Virginia's January 1, 1993 document AQP-8 titled, "Procedures for Preparing and Submitting Emission Statements for Stationary Sources." The provisions under 9VAC5-20-121 were

<sup>3</sup> The provisions under 9VAC5-20-160 were derived from VR120-02-31. EPA's May 2, 1995 direct final rulemaking (DFR) approved a SIP revision submitted by the Commonwealth of Virginia requesting the addition of provisions under VR120-02-31 paragraph B, which established Virginia's emissions statement program, and Appendix S (Air Quality Program Policies and Procedures), which described the procedure for preparing and submitting emissions statements for stationary sources, to the Virginia SIP. See 60 FR 21451. On March 6, 1992, the Virginia State Assembly enacted Chapter 216—an act to amend Section 9-77.7, Code of Virginia, which authorized reorganization of the Virginia Administrative Code, including reorganization of the air pollution control regulations, effective July 1, 1992. Beginning April 17, 1995, Virginia began publication of its air quality control regulations in the new format. On April 21, 2000, EPA approved a SIP revision from Virginia requesting the reorganization and renumbering of the Virginia SIP to match the recodification of Virginia's air pollution control regulations under the Virginia Administrative Code. See 65 FR 21315. As a result, the SIP-approved provisions under VR120-02-31 and Appendix S are now under 9VAC5-20-160 and 9VAC5-20-121, respectively.

<sup>4</sup> The emissions control areas defined under 9VAC5-20-206 include the Northern Virginia Emissions Control Area, the Fredericksburg Emissions Control Area, the Richmond Emissions Control Area, the Hampton Roads Emissions Control Area, and the Western Virginia Emissions Control Area. The Northern Virginia Emissions Control Area consists of the localities of Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

<sup>2</sup> EPA did not require Virginia or other states to certify that its existing SIP-approved emissions statement program continued to satisfy CAA requirements for areas in the OTR to have an emissions statement program.

also approved into the Virginia SIP on May 2, 1995 (60 FR 21451).

EPA's review of the Commonwealth of Virginia's submittal finds that Virginia's existing, SIP-approved emissions statement program under 9VAC5–20–160 satisfies the requirements of CAA section 182(a)(3)(B) for emission statements for sources located in marginal or above nonattainment areas including such sources in the Virginia portion of the Washington, DC–MD–VA nonattainment area for the 2008 ozone NAAQS. EPA notes 9VAC5–20–160 also requires sources located in portions of Virginia included in the OTR to submit required emission statements in accordance with CAA section 184 (OTR requirements) and 182 (plan submissions and requirements for ozone nonattainment areas). Pursuant to CAA sections 182 and 184, Virginia is required to have an emissions statement program for sources located in marginal or above nonattainment areas and the portions of Virginia included in the OTR. EPA finds the provisions under 9VAC5–20–160 satisfy these requirements of CAA sections 182 and 184 because they apply to the Northern Virginia Emissions Control Area, which includes the Virginia localities within the Virginia portion of the Washington, DC–MD–VA nonattainment area for the 2008 ozone NAAQS (*i.e.*, Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City), and the portions of Virginia included in the OTR (*i.e.*, Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City). EPA also finds Virginia's emissions thresholds for sources that are required to submit an emissions statement meet the requirements of CAA sections 182 and 184. As stated above, 9VAC5–20–160 requires the owner of any stationary source located in an emissions control area that emits 25 tpy or more of VOC or NO<sub>x</sub> to annually submit an emissions statement. This 25 tpy threshold is equivalent to the threshold required by CAA section 182. As previously mentioned, per CAA section 182(a)(3)(B)(ii), states may waive sources that emit less than 25 tpy of NO<sub>x</sub> or VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. Virginia does provide emissions inventories for nonattainment areas as required by CAA

section 172(c)(3).<sup>5</sup> Therefore, EPA has determined that 9VAC5–20–160, which is currently in the Virginia SIP, is appropriate to address the emissions statement requirements in section 182(a)(3)(B) for the 2008 ozone NAAQS.

On March 12, 2018 (83 FR 10652), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA found the Commonwealth's August 1, 2017 emissions statement program certification to be approvable under CAA section 182(a)(3)(B) and proposed to approve it as a revision to the Virginia SIP.

EPA received public comments on our March 12, 2018 proposal to approve Virginia's emissions statement certification for the 2008 ozone NAAQS. All of the submitted comments were either supportive of or not specific to this action and thus are not addressed here.

### III. Final Action

EPA is approving the Commonwealth's August 1, 2017 emissions statement program certification as a revision to the Virginia SIP.

### 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

<sup>5</sup> See, e.g., "Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington DC–MD–VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard," 80 FR 27255 (May 13, 2015).

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

## V. Statutory and Executive Order Reviews

### A. General Requirements

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

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

### B. Submission to Congress and the Comptroller General

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

### C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by July 31, 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 approving Virginia's certification that its existing SIP-approved emissions statement program under 9VAC5-20-160 satisfies the requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

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

Dated: May 15, 2018.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e)(1) is amended by adding the entry "Emissions Statement Rule Certification for the 2008 Ozone NAAQS" at the end of the table to read as follows:

#### § 52.2420 Identification of plan.

*	*	*	*	*
(e)	*	*	*	
(1)	*	*	*	

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Emissions State-ment Rule Cer-tification for the 2008 Ozone NAAQS.	Virginia portion of the Washington, DC–MD–VA nonattainment area for the 2008 ozone NAAQS ( <i>i.e.</i> , Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City) as well as the portions of Virginia included in the Ozone Transport Region (OTR) ( <i>i.e.</i> , Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City).	8/01/17	6/01/18, [In-sert <b>Federal Register</b> citation].	Certification that Virginia's previously SIP-approved regulations at 9VAC5–20–160 meet the emissions statement requirements of CAA section 182(a)(3)(B) for the 2008 ozone NAAQS.

\* \* \* \* \*

[FR Doc. 2018–11570 Filed 5–31–18; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA–R07–OAR–2018–0021; FRL–9978–80–Region 7]

### Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE, for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP) Including Maximum Achievable Control Technology (MACT) Standards

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

**ACTION:** Delegation of authority.

**SUMMARY:** The States of Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska, have submitted updated regulations for delegation of EPA authority for implementation and enforcement of NSPS, NESHAP, and MACT standards. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies. All sources subject to the requirements of EPA regulations are also subject to the equivalent requirements of the above-mentioned state or local agencies. For the current, most up-to-date, status of delegations to the above-mentioned agencies, please refer to the

web pages in the “What does this action do?” section of this document.

**DATES:** This document is effective on June 1, 2018. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Copies of documents relative to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Road, Lenexa, Kansas 66219. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this document must be submitted with respect to sources located in the jurisdictions identified in this document, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, Wallace State Office Building, 502 E 9th Street, Des Moines, Iowa 50319.

Kansas Department of Health and the Environment, Bureau of Air, 1000 SW Jackson Street, Suite 310, Topeka, Kansas 66612–1367.

Missouri Department of Natural Resources, Air Pollution Control Program, PO Box 176, Jefferson City, Missouri 65102–0176.

Nebraska Department of Environmental Quality, Air Quality Division, 1200 “N” Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Health Department, Division of Environmental Public Health, Air Quality Section, 3140 “N” Street, Lincoln, Nebraska 68510

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68107.

Duplicates of required documents must also continue to be submitted to the EPA Regional Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula Higbee at (913) 551–7028, or by email at [higbee.paula@epa.gov](mailto:higbee.paula@epa.gov).

**SUPPLEMENTARY INFORMATION:** The supplementary information is organized in the following order:

- What does this action do?
- What is the authority for delegation?
- What does delegation accomplish?
- What has been delegated?
- What has not been delegated?

### List of Delegation Tables

Table I—NSPS, 40 CFR part 60

Table II—NESHAP, 40 CFR part 61

Table III—NESHAP, 40 CFR part 63

### I. What does this action do?

EPA is providing notice of an update to its delegable authority for implementation and enforcement of the Federal standards shown in the tables below to the states of Iowa, Kansas, Missouri, and Nebraska. This action updates the delegation tables previously published at 80 FR 10596 (February 27, 2015). EPA has established procedures by which these agencies are automatically delegated the authority to implement the standards when they adopt regulations which are identical to the Federal standards. We then periodically provide notice of the new and revised standards for which delegation has been given. This document does not affect or alter the status of the listed standards under state or Federal law.

For the current, most up-to-date, status of delegations to the above-mentioned agencies, please refer to the following web pages:

Iowa <https://go.usa.gov/xQ8yQ>

Kansas <https://go.usa.gov/xQ8yE>

Missouri <https://go.usa.gov/xQ8ym>

Nebraska <https://go.usa.gov/xQ8yy>

**II. What is the authority for delegation?**

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS are codified at 40 CFR part 60.

2. Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63, respectively.

**III. What does delegation accomplish?**

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the concurrent authority to enforce the standards.

**IV. What has been delegated?**

Tables I, II, and III below list the delegated standards. Each item listed in the Subpart column has two relevant dates listed in each column for each state. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state or local agency has adopted the applicable standard through the date as noted in the table. The second date is the most recent effective date of the state agency rule for which the EPA has granted the delegation. This document specifically addresses revisions to the columns for Iowa, Kansas, Missouri, and Nebraska and the local agencies of Lincoln-Lancaster County, Nebraska, and the city of Omaha, Nebraska. If there are no dates listed in the delegation table, the state has not accepted delegation of the standard and implementation of those standards reside with EPA.

**V. What has not been delegated?**

1. The EPA regulations effective after the first date specified in each block have not been delegated, and authority

for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. In such cases, a specific section of the standard details what authorities can and cannot be delegated. You should review the applicable standard in the CFR for this information.

3. In some cases, the state rules do not adopt the Federal standard in its entirety. Each state rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between the EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR part 63, subpart A, General Provisions (see Table III), EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in 40 CFR 63.91(g)(2).

**List of Delegation Tables****TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7**

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A .....	General Provisions .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12; 12/30/13; Except 60.4; 60.9; and 60.10.	7/1/13 5/13/14
D .....	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	1/20/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Da .....	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	1/20/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Db .....	Industrial-Commercial-Institutional Steam Generating Units .....	1/20/11 10/24/12	07/01/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Dc .....	Small Industrial-Commercial-Institutional Steam Generating Units .....	1/20/11 10/24/12	07/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
E .....	Incinerators .....	9/11/15 4/22/17	07/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Ea .....	Municipal Waste Combustors for Which Construction is Commenced After December 20, 1989, and on or before September 20, 1994.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Eb .....	Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994, or for Which Modification or Reconstruction is Commenced After June 19, 1996.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Ec .....	Hospital/Medical/Infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	.....	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
F .....	Portland Cement Plants .....	9/11/15 7/25/16	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
G .....	Nitric Acid Plants .....	9/11/15 3/22/17	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Ga .....	Nitric Acid Plants for Which Construction, Reconstruction, or Modification Commenced After October 14, 2011.	8/14/12 3/22/17	.....	6/30/12 12/30/13	7/1/13 5/13/14
H .....	Sulfuric Acid Plants .....	9/11/15	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
I .....	Hot Mix Asphalt Facilities .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
J .....	Petroleum Refineries .....	.....	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Ja .....	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	.....	.....	6/30/12 12/30/13	7/1/13 5/13/14
K .....	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Ka .....	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14
Kb .....	Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 12/30/13	7/1/13 5/13/14

TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
L .....	Secondary Lead Smelters .....	.....	7/1/10	6/30/12 .....	7/1/13
			11/14/14	12/30/13 .....	5/13/14
M .....	Secondary Brass and Bronze Production Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
N .....	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	05/13/14
Na .....	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
O .....	Sewage Treatment Plants .....	6/28/11	7/01/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
P .....	Primary Copper Smelters .....	.....	7/1/10	6/30/12 .....	7/1/13
			11/14/14	12/30/13 .....	5/13/14
Q .....	Primary Zinc Smelters .....	.....	7/1/10	6/30/12 .....	7/1/13
			11/14/14	12/30/13 .....	5/13/14
R .....	Primary Lead Smelters .....	.....	7/01/10	6/30/12 .....	7/1/13
			11/14/14	12/30/13 .....	5/13/14
S .....	Primary Aluminum Reduction Plants .....	.....	7/1/10	6/30/12 .....	7/01/13
			11/14/14	12/30/13 .....	5/13/14
T .....	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
U .....	Phosphate Fertilizer Industry: Superphosphoric Acid Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
V .....	Phosphate Fertilizer Industry: Diammonium Phosphate Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
W .....	Phosphate Fertilizer Industry: Triple Superphosphate Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
X .....	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	6/28/11	7/1/10	6/30/12 .....	7/01/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
Y .....	Coal Preparation Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
Z .....	Ferroalloy Production Facilities .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
AA .....	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
AAa .....	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
BB .....	Kraft Pulp Mills .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	05/13/14
BBa .....	Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013.	.....	.....	.....	.....
CC .....	Glass Manufacturing Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
DD .....	Grain Elevators .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
EE .....	Surface Coating of Metal Furniture .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
GG .....	Stationary Gas Turbines .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
HH .....	Lime Manufacturing Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
KK .....	Lead-Acid Battery Manufacturing Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
LL .....	Metallic Mineral Processing Plants .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
MM .....	Automobile and Light Duty Truck Surface Coating Operations .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
NN .....	Phosphate Rock Plants .....	6/28/11	7/01/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
PP .....	Ammonium Sulfate Manufacture .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
QQ .....	Graphic Arts Industry: Publication Rotogravure Printing .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
RR .....	Pressure Sensitive Tape and Label Surface Coating Operations .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
SS .....	Industrial Surface Coating: Large Appliances .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
TT .....	Metal Coil Surface Coating .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
UU .....	Asphalt Processing and Asphalt Roofing Manufacture .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
VV .....	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
V Va .....	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
WW .....	Beverage Can Surface Coating Industry .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14
XX .....	Bulk Gasoline Terminals .....	6/28/11	7/1/10	6/30/12 .....	7/1/13
		10/24/12	11/14/14	12/30/13 .....	5/13/14



TABLE I—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
AAA .....	New Residential Wood Heaters .....	.....	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
BBB .....	Rubber Tire Manufacturing Industry .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
DDD .....	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
FFF .....	Flexible Vinyl and Urethane Coating and Printing .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
GGG .....	Equipment Leaks of VOC in Petroleum Refineries .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
GGGa .....	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
HHH .....	Synthetic Fiber Production Facilities .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
III .....	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) AIR Oxidation Unit Processes.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
JJJ .....	Petroleum Dry Cleaners .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
KKK .....	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
LLL .....	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
NNN .....	Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
OOO .....	Nonmetallic Mineral Processing Plants .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
PPP .....	Wool Fiberglass Insulation Manufacturing Plants .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
QQQ .....	VOC Emissions from Petroleum Refinery Wastewater Systems .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
RRR .....	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
SSS .....	Magnetic Tape Coating Facilities .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
TTT .....	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
UUU .....	Calciners and Dryers in Mineral Industries .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
VVV .....	Polymeric Coating of Supporting Substrates Facilities .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
WWW .....	Municipal Solid Waste Landfills .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
AAAA .....	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
CCCC .....	Commercial and Industrial Solid Waste Incineration Units for Which Construction is Commenced After November 30, 1999 or for Which Modification or Reconstruction is Commenced on or After June 1, 2001.	.....	.....	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
DDDD .....	Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.	.....	7/1/10 11/14/14	.....	7/1/13 5/13/14
EEEE .....	Other Solid Waste Incineration Units for Which Construction Commenced After December 9, 2004 or Modification or Reconstruction Commenced On or After June 16, 2006.	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
FFFF .....	Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004.	.....	7/1/10 11/14/14	.....	7/1/13 5/13/14
IIII .....	Stationary Compression Ignition Internal Combustion Engines .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
JJJJ .....	Stationary Spark Ignition Internal Combustion Engines .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
KKKK .....	Stationary Combustion Turbines .....	6/28/11 10/24/12	7/1/10 11/14/14	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
LLLL .....	New Sewage Sludge Incinerator Units .....	.....	.....	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
OOOO .....	Crude Oil and Natural Gas Production, Transmission and Distribution .....	.....	.....	6/30/12 ..... 12/30/13 .....	7/1/13 5/13/14
OOOOa .....	Crude Oil and Natural Gas Production, Transmission and Distribution for which Construction, Reconstruction, or Modification Commenced After September 18, 2015.	.....	.....	.....	.....
QQQQ .....	New Residential Hydronic Heaters and Forced Air Furnaces .....	.....	.....	.....	.....
TTTT .....	Greenhouse Gas Emissions for Electric Generating Units .....	.....	.....	.....	.....

TABLE II—DELEGATION OF AUTHORITY PART 61—NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A .....	General Provisions .....	9/19/11 ..... 10/24/12 .....	701/10; 12/28/12; Except 61.04; 61.16; and 61.17.	6/30/12; 12/30/13; Except 61.04; 61.16; and 61.17.	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
B .....	Radon Emissions from Under- ground Uranium Mines.	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable.
C .....	Beryllium .....	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
D .....	Beryllium Rocket Motor Fir- ing.	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
E .....	Mercury .....	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
F .....	Vinyl Chloride .....	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
J .....	Equipment Leaks (Fugitive Emission Sources) of Benzene.	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
L .....	Benzene Emissions from Coke By-Product Recov- ery Plants.	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
M .....	Asbestos .....	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
N .....	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	9/19/12 ..... 3/22/17 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	07/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
O .....	Inorganic Arsenic Emissions From Primary Copper Smelters.	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
P .....	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Produc- tion Facilities.	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	07/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
Q .....	Radon Emissions From De- partment of Energy Facili- ties.	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable.
R .....	Radon Emissions From Phosphogypsum Stacks.	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable.
T .....	Radon Emissions From the Disposal of Uranium Mill Tailings.	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable.
V .....	Equipment Leaks (Fugitive Emission Sources).	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
W .....	Radon Emissions From Op- erating Mill Tailings.	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable ....	Not delegable.
Y .....	Benzene Emissions From Benzene Storage Vessels.	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
BB .....	Benzene Emissions From Benzene Transfer Oper- ations.	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12
FF .....	Benzene Waste Operations	9/19/11 ..... 10/24/12 .....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/01 ..... 7/21/10 .....	7/1/13 ..... 12/10/13 .....	7/1/09 12/22/12

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A .....	General Provisions .....	9/19/11 7/25/16	7/1/10; 12/28/12; Ex- cept 63.6(f)(1), (g), (h)(1) and (h)(9); 63.7(e)(2)(ii) and (f); 63.8(f); 63.10(f); 63.12; 63.13; 63.14(b)(27) and phrase “and table 5 to subpart DDDDD of this part”; 63.14(b)(35); (39) through (53); and (55) through (62); in 63.14(i)(1), the phrase “table 5 to subpart DDDDD of this part”; and 63.15.	6/30/12; 12/30/13; Ex- cept 63.13 & 63.15(a)(2).	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
F .....	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 ..... 5/13/14 .....	7/1/13 ..... 12/10/13 .....	7/1/11 12/22/12

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
G .....	Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
H .....	Organic Hazardous Air Pollutants for Equipment Leaks.	9/19/11 10/24/12	0/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
I .....	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
J .....	Polyvinyl Chloride and Copolymers Production	.....	7/1/10; 11/14/14; Except 63.15.	.....	.....	.....	.....
L .....	Coke Oven Batteries .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	.....	.....	.....
M .....	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
N .....	Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	9/19/12 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
O .....	Ethylene Oxide Emissions Standards for Sterilization Facilities.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
Q .....	Industrial Process Cooling Towers .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
R .....	Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
S .....	Pulp and Paper Industry .....	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
T .....	Halogenated Solvent Cleaning .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 0/13/14	7/1/13 12/10/13	7/1/11 12/22/12
U .....	Polymers and Resins Group I .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
W .....	Epoxy Resins Production and Non-Nylon Polyamides Production.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
X .....	Secondary Lead Smelting .....	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
Y .....	Marine Tank Vessel Loading Operations .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	.....	.....	.....
AA/BB .....	Phosphoric Acid Manufacturing Plants/Phosphate Fertilizers Production Plants.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	12/9/16 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
CC .....	Petroleum Refineries .....	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
DD .....	Off-Site Waste and Recovery Operations .....	3/18/15 7/25/16	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
EE .....	Magnetic Tape Manufacturing Operations .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
GG .....	Aerospace Industry Surface Coating Manufacturing and Rework Facilities.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	12/7/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
HH .....	Oil and Natural Gas Production Facilities .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
II .....	Shipbuilding and Ship Repair (Surface Coating).	.....	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	.....	.....	.....
JJ .....	Wood Furniture Manufacturing Operations .....	11/21/11 7/25/16	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
KK .....	Printing and Publishing Industry .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
LL .....	Primary Aluminum Reduction Plants .....	.....	7/1/10 ..... 12/28/12 .....	10/15/15 ..... 7/30/17 .....	7/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
MM .....	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Along Semichemical Pulp Mills.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
NN .....	Wool Fiberglass Mfg (area sources) .....	.....	.....	.....	.....	.....	.....
OO .....	Tanks—Level 1 .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
PP .....	Containers .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	07/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
QQ .....	Surface Impoundments .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
RR .....	Individual Drain Systems .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
SS .....	Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
TT .....	Equipment Leaks—Control Level 1 Standards	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
UU .....	Equipment Leaks—Control Level 2 Standards	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
VV .....	Oil-Water Separators and Organic-Water Separators.	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
WW .....	Storage Vessel (Tanks)—Control Level 2 .....	9/19/11 10/24/12	7/1/10 ..... 12/28/12 .....	7/1/15 ..... 7/30/17 .....	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
XX .....	Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
YY .....	Generic Maximum Achievable Control Technology Standards.	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
CCC .....	Steel Pickling-HCL Process Facilities and Hydrochloric Acid Regeneration Plants.	10/8/14	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
DDD .....	Mineral Wool Production .....	7/25/16	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
EEE .....	Hazardous Waste Combustors .....	7/29/15	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
GGG .....	Pharmaceutical Production .....	7/25/16	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
HHH .....	Natural Gas Transmission and Storage Facilities.	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
III .....	Flexible Polyurethane Foam Production .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
JJJ .....	Polymers and Resins Group IV .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
LLL .....	Portland Cement Manufacturing Industry .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
MMM .....	Pesticide Active Ingredient Production .....	7/25/16	7/1/10 .....	9/11/15 .....	7/1/13	7/1/13	7/1/11
NNN .....	Wool Fiberglass Manufacturing .....	3/22/17	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
OOO .....	Manufacture of Amino/Phenolic Resins .....	3/27/14	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
PPP .....	Polyether Polyols Production .....	7/25/16	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
QQQ .....	Primary Copper Smelting .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
RRR .....	Secondary Aluminum Production .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
TTT .....	Primary Lead Smelting .....	7/25/16	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
UUU .....	Petroleum Refineries .....	12/28/12	7/1/10 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
VVV .....	Publicly Owned Treatment Works .....	7/1/10	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
XXX .....	Ferroalloys Production .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
AAAA .....	Municipal Solid Waste Landfills .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
CCCC .....	Manufacturing of Nutritional Yeast .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
DDDD .....	Plywood and Composite Wood Products .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
EEEE .....	Organic Liquids Distribution (Non-Gasoline) ....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
FFFF .....	Misc. Organic Chemical Manufacturing .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
GGGG .....	Solvent Extraction for Vegetable Oil Production.	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
HHHH .....	Wet Formed Fiberglass Mat Production .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
IIII .....	Surface Coating of Automobiles and Light-Duty Trucks.	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
JJJJ .....	Paper and Other Web Coating .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
KKKK .....	Surface Coating of Metal Cans .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
MMMM .....	Surface Coating of Misc. Metal Parts and Products.	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
NNNN .....	Surface Coating of Large Appliances .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
OOOO .....	Printing, Coating and Dyeing of Fabrics and Other Textiles.	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
PPPP .....	Surface Coating of Plastic Parts and Products	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
QQQQ .....	Surface Coating of Wood Building Products ...	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
RRRR .....	Surface Coating of Metal Furniture .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
SSSS .....	Surface Coating of Metal Coil .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
TTTT .....	Leather Finishing Operations .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
UUUU .....	Cellulose Products Manufacturing .....	10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12
VVVV .....	Boat Manufacturing .....	9/19/11	7/1/10 .....	7/1/15 .....	7/1/13	7/1/13	7/1/11
		10/24/12	12/28/12 .....	7/30/17 .....	5/13/14	12/10/13	12/22/12

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
WWWW	Reinforced Plastic Composites Production	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
XXXX	Rubber Tire Manufacturing	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
YYYY	Stationary Combustion Turbines	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
ZZZZ	Stationary Reciprocating Internal Combustion Engines.	3/6/13 10/23/13	3/6/13 11/14/14	7/1/15 7/30/17 *only major sources.	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
AAAAA	Lime Manufacturing Plants	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
BBBBB	Semiconductor Manufacturing	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17			
CCCCC	Coke Ovens: Pushing, Quenching, and Battery Stacks.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17			
DDDDD	Industrial, Commercial and Institutional Boilers and Process Heaters.			11/20/15	7/1/13	7/1/13	
EEEEE	Iron and Steel Foundries	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
FFFFF	Integrated Iron and Steel Manufacturing Facilities.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
GGGGG	Site Remediation	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
HHHHH	Misc. Coating Manufacturing	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
IIIII	Mercury Cell Chlor-Alkali Plants	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17			
JJJJJ	Brick and Structural Clay Products Manufacturing.			12/4/15			
KKKKK	Clay Ceramics Manufacturing			7/30/17			
LLLLL	Asphalt Processing and Asphalt Roofing Manufacturing.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	07/1/11 12/22/12
MMMMM	Flexible Poly-urethane Foam Fabrication Operation.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
NNNNN	Hydrochloric Acid Production	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
PPPPP	Engine Test Cells/Stands	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
QQQQQ	Friction Materials Manufacturing Facilities	9/19/11 10/24/12	07/01/10 12/28/12	7/1/15 7/30/17			
RRRRR	Taconite Iron Ore Processing		7/1/10	7/1/15			
SSSSS	Refractory Products Manufacturing	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
TTTTT	Primary Magnesium Refining		07/1/10 12/28/12	7/1/15 7/30/17			
UUUUU	Coal and Oil-fired Electric Utility Steam Generating Units.			7/1/15	7/1/13	7/1/13	
WWWWW	Hospital Ethylene Oxide Sterilizer	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
YYYYY	Electric Arc Furnace Steelmaking Facilities or Stainless and Non-stainless Steel Manufacturing (EAFs).	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
ZZZZZ	Iron and Steel Foundries Area Sources	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
BBBBBB	Gasoline Distribution Bulk Terminal, Bulk Plant and Pipeline Facilities.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
CCCCCC	Gasoline Distribution, Gasoline Dispensing Facilities.	1/24/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
DDDDDD	PVC & Copolymer Production		7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
EEEEEE	Primary Copper Smelting		7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
FFFFFF	Secondary Copper Smelting		7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
GGGGGG	Primary Nonferrous Metal		7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 05/13/14	7/1/13 12/10/13	7/1/11 12/22/12
HHHHHH	Paint Stripping Operations, Misc. Surface Coating, Autobody Refinishing.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
JJJJJJ	Industrial, Commercial, and Institutional Boilers.			7/1/15	7/1/13	7/1/13	
LLLLLL	Acrylic/Modacrylic Fibers Production	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	
MMMMMM	Carbon Black Production	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 05/13/14	7/1/13 12/10/13	
NNNNNN	Chromium Compounds	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	
OOOOOO	Flexible Polyurethane Foam Fabrication and Production.	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17*	7/1/13 5/13/14	7/1/13 12/10/13	

TABLE III—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
PPPPPP .....	Lead Acid Battery Manufacturing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
QQQQQQ .....	Wood Preserving .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
RRRRRR .....	Clay Ceramics Manufacturing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
SSSSSS .....	Pressed & Blown Glass Manufacturing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
TTTTTT .....	Secondary Non-Ferrous Metals .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	7/1/11 12/22/12
VVVVVV .....	Chemical Manufacturing Area Sources .....	12/21/12 9/10/14	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
WWWWWW .....	Plating and Polishing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
XXXXXX .....	Metal Fabrication and Finishing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
YYYYYY .....	Ferroalloys Production .....	.....	7/1/10 12/28/12	7/1/15 7/30/17 *	7/1/13 5/13/14	7/1/13 12/10/13	.....
ZZZZZZ .....	Area Source Standards for Aluminum, Copper and Other Nonferrous Foundries. ....	.....	07/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
AAAAAA .....	Asphalt Processing and Asphalt Roofing Manufacturing. ....	.....	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
BBBBBB .....	Chemical Preparations Industry .....	.....	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
CCCCCC .....	Paints and Allied Products Manufacturing .....	9/19/11 10/24/12	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
DDDDDD .....	Prepared Foods Manufacturing .....	12/23/11 9/10/14	7/1/10 12/28/12	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
EEEEEE .....	Gold Mine Ore Processing and Production Area Source Category. ....	.....	.....	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....
HHHHHH .....	Polyvinyl Chloride and Copolymers Production .....	.....	.....	7/1/15 7/30/17	7/1/13 5/13/14	7/1/13 12/10/13	.....

\* At this time, Missouri is temporarily not accepting delegation for area source NESHAP requirements (40 CFR part 63, subparts WWWWW–YYYYYY) within the State of Missouri as described in an August 24, 2010 letter from MDNR to the U.S. EPA, Region 7.

### Summary of This Action

All sources subject to the requirements of 40 CFR parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

This document informs the public of delegations to the above-mentioned agencies of the above-referenced Federal regulations.

### Authority

This document is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: May 21, 2018.

**Karen A. Flornoy,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2018–11757 Filed 5–31–18; 8:45 am]

**BILLING CODE 6560–50–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

**[EPA–R04–OAR–2018–0017; FRL–9978–93–Region 4]**

#### Air Plan Approval and Air Quality Designation; SC; Redesignation of the Greenville-Spartanburg Unclassifiable Area

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

**ACTION:** Final rule.

**SUMMARY:** On January 22, 2018, the State of South Carolina, through the Department of Health and Environmental Control (DHEC), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Greenville-Spartanburg, South Carolina fine particulate matter (PM<sub>2.5</sub>) unclassifiable area (hereinafter referred to as the “Greenville Area” or “Area”) to unclassifiable/attainment for the 1997 primary and secondary annual PM<sub>2.5</sub> national ambient air quality standards (NAAQS). The Greenville Area is comprised of Anderson, Greenville, and Spartanburg Counties in South Carolina. EPA is approving the State’s request and

redesignating the Area to unclassifiable/attainment for the 1997 primary and secondary annual PM<sub>2.5</sub> NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the PM<sub>2.5</sub> monitors in the Area are in compliance with the 1997 primary and secondary annual PM<sub>2.5</sub> NAAQS.

**DATES:** This rule will be effective July 2, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0017. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Sanchez can be reached by telephone at (404) 562–9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On July 18, 1997 (62 FR 38652), EPA revised the NAAQS for particulate matter to add new standards for PM<sub>2.5</sub> (annual and 24-hour). The primary and secondary annual standards were each set at a level of 15.0 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations. The primary and secondary 24-hour standards were each set at a level of 65 µg/m<sup>3</sup>, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the Clean Air Act (CAA). EPA and state air quality agencies initiated the monitoring process for the 1997 PM<sub>2.5</sub> NAAQS in 1999, and deployed all air quality monitors by January 2001. On January 5, 2005 (70 FR 944), EPA designated areas across the country as nonattainment, unclassifiable, or unclassifiable/attainment<sup>1</sup> for the 1997 PM<sub>2.5</sub> NAAQS

based upon air quality monitoring data from these monitors for calendar years 2001–2003.

Greenville County, South Carolina, had a monitor with less than three years of data because the monitor had not been in operation for the full 2001–2003 period. Based upon the data that was obtained during its operation, the monitor indicated a potential to violate the 1997 annual PM<sub>2.5</sub> NAAQS. Also, Anderson and Spartanburg Counties had emissions and population levels that potentially contributed to the elevated concentrations of PM<sub>2.5</sub> at the Greenville monitor in question. Therefore, EPA designated all three counties—Anderson, Greenville and Spartanburg—as unclassifiable for the 1997 annual PM<sub>2.5</sub> NAAQS.

On January 22, 2018, South Carolina submitted a request for EPA to redesignate the Greenville Area to unclassifiable/attainment for the 1997 annual PM<sub>2.5</sub> NAAQS now that there is sufficient data to determine that the Area is in attainment. In a notice of proposed rulemaking (NPRM) published on March 13, 2018 (83 FR 10814), EPA proposed to approve the State's redesignation request. The details of South Carolina's submittal and the rationale for EPA's actions are further explained in the NPRM. EPA did not receive any adverse comments on the proposed action.

### **II. Final Action**

EPA is approving South Carolina's redesignation request and redesignating the Greenville Area from unclassifiable to unclassifiable/attainment for the 1997 primary and secondary annual PM<sub>2.5</sub> NAAQS.

### **III. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not in and of itself create any new requirements. Accordingly, this action merely redesignates an area to unclassifiable/attainment and does not impose additional requirements. 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 redesignations 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
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this action does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Catawba Indian Nation Reservation is located within the State of South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, “all state and local environmental laws and regulations apply to the Catawba Indian Nation and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” However, because no tribal lands are located within the Area and the redesignation does not create new requirements, EPA has determined that this rule does not have substantial direct effects on an Indian Tribe. EPA notes this action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

<sup>1</sup> For the initial PM area designations in 2005 (for the 1997 PM<sub>2.5</sub> NAAQS), EPA used a designation category of “unclassifiable/attainment” for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category “unclassifiable” for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the “attainment” category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 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 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 18, 2018.

**Onis” Trey” Glenn, III,**  
*Regional Administrator, Region 4.*

40 CFR part 81 is amended as follows:

#### PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.341, the table entitled “South Carolina-1997 Annual PM<sub>2.5</sub> NAAQS (Primary and secondary)” is amended under the heading “Greenville-Spartanburg, SC:” by revising the entries for “Anderson County”, “Greenville County”, and “Spartanburg County” to read as follows:

#### § 81.341 South Carolina.

\* \* \* \* \*

#### SOUTH CAROLINA—1997 ANNUAL PM<sub>2.5</sub> NAAQS

[Primary and secondary]

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date	Type
Greenville-Spartanburg, SC:				
Anderson County .....	June 1, 2018 .....	Unclassifiable/Attainment.		
Greenville County .....	June 1, 2018 .....	Unclassifiable/Attainment.		
Spartanburg County .....	June 1, 2018 .....	Unclassifiable/Attainment.		
* * * * *				

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 90 days after January 5, 2005, unless otherwise noted.

\* \* \* \* \*

[FR Doc. 2018–11833 Filed 5–31–18; 8:45 am]

BILLING CODE 6560–50–P

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R8–ES–2016–0127;  
FXES11130900000 167 FF09E42000]

RIN 1018–BB39

#### Endangered and Threatened Wildlife and Plants; Removing *Trichostema austromontanum* ssp. *compactum* (Hidden Lake Bluecurls) From the Federal List of Endangered and Threatened Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule; document availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, are removing the plant *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls) from the Federal List of Endangered and Threatened Plants on the basis of

recovery. This action is based on a review of the best available scientific and commercial information, which indicates that the threats to *T. a. ssp. compactum* have been eliminated or reduced to the point where it no longer meets the definition of an endangered species or a threatened species under the Endangered Species Act of 1973, as amended. This rule also announces the availability of a post-delisting monitoring plan for *T. a. ssp. compactum*.

**DATES:** This rule becomes effective July 2, 2018.

**ADDRESSES:** This final rule and the post-delisting monitoring plan are available on the internet at <http://www.regulations.gov> in Docket No. FWS–R8–ES–2016–0127 or <https://ecos.fws.gov>. Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at <http://www.regulations.gov>. Comments, materials, and documentation that we considered in this rulemaking will be available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Carlsbad Fish and

Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440; facsimile (fax) 760–431–5901.

**FOR FURTHER INFORMATION CONTACT:** G. Mendel Stewart, Field Supervisor, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440; facsimile (fax) 760–431–5901. If you use a telecommunications device for the deaf, call the Federal Relay Service at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

#### Previous Federal Action

In carrying out our responsibility to enforce the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), we, the U.S. Fish and Wildlife Service (Service), maintain the Lists of Endangered and Threatened Wildlife and Plants in title 50 of the Code of Federal Regulations (CFR). We added *Trichostema austromontanum* ssp. *compactum* to the List of Endangered and Threatened Plants in 1998 (63 FR 49006, September 14, 1998). On January 5, 2017, we proposed to remove this subspecies from the List.

Please refer to the proposed delisting rule for *Trichostema austromontanum*



ssp. *compactum* (82 FR 1296, January 5, 2017) for a detailed description of previous Federal actions concerning this subspecies.

#### Subspecies Information

*Trichostema austromontanum* ssp. *compactum*, a member of the Lamiaceae (mint family), was described by F. Harlan Lewis (1945) based on specimens collected in 1941, by M.L. Hilend at Hidden Lake in the San Jacinto Mountains of Riverside County, California. *Trichostema a. ssp. compactum* is a compact, soft-villous (with long, shaggy hairs), annual plant, approximately 4 inches (in) (10 centimeters (cm)) tall, with short internodes (stem segments between leaves), elliptic leaves, and blue flowers with a five-lobed corolla (Lewis 1945, pp. 280–281, 284–285; Lewis 1993, p. 732). For a detailed discussion and species description of *Trichostema austromontanum* ssp. *compactum*, please see our proposed delisting rule (82 FR 1296, January 5, 2017).

*Trichostema austromontanum* ssp. *compactum* is found only on the margins of Hidden Lake, a small montane vernal pool, in the San Jacinto Mountains, Riverside County, California. At an elevation of 8,700 feet (ft) (2,650 meters (m)), Hidden Lake is Riverside County's only high-elevation vernal pool (Bauder 1999, pp. 3–4), and is owned and managed by Mount San Jacinto State Park (Park). Hidden Lake is located within a California State Park Natural Preserve (The Hidden Lake Divide Natural Preserve) and is surrounded by the Mount San Jacinto State Wilderness Area (CDPR 2002, pp. 62–63). The single pool that supports the entire range of *T. a. ssp. compactum* encompasses an area of approximately 2 acres (ac) (1 hectare (ha)) and is about 4 ft (1.3 m) deep during the period of maximum inundation (November to April) (Bauder 1999, p. 13; CDPR 2002, pp. 62–63). The pool shrinks in size as the seasons progress, sometimes remaining wet in the center and other times drying out completely.

A small portion of the population (36 individuals) of *Trichostema austromontanum* ssp. *compactum* was once observed less than 300 ft (91 m) outside of the Hidden Lake area of inundation (Fraga and Wall 2007, p. 10). This area is within the vernal pool's watershed, and is within the aforementioned Natural Preserve and State Wilderness. We do not consider this small group of individuals to be biologically separate from the rest of the population within the margins of Hidden Lake because the areas are in

such close proximity to each other and are connected through the watershed.

Several studies have examined the breeding system, habitat parameters, and micro-distribution of *Trichostema austromontanum* ssp. *compactum* and its relatives (Lewis 1945, pp. 276–303; Lewis 1960, pp. 93–97; Spira 1980, pp. 278–284; Bauder 1999, pp. 1–41). Seeds of *T. a. ssp. compactum* typically germinate in early July, and plants complete their life cycle as the temperature begins to drop to freezing (October to November) (Fraga and Wall 2007, pp. 2–5). Plants generally flower between July and September, but flowering has been documented as late as November (Bauder 1999, p. 1; Fraga and Wall 2007, pp. 4–5). Fruits and seeds begin to develop in early August and continue to develop until November (Fraga and Wall 2007, pp. 2–5). *Trichostema austromontanum* ssp. *compactum* has no documented pollinators and is self-compatible (flowers are able to be fertilized by pollen from the same plant) (89.1 percent seed set with the exclusion of pollinators) (Spira 1980, p. 282). Spira (1980, p. 280) also found that insects visiting the other subspecies of *T. austromontanum* lacked pollen grains on their dorsal surface (which is needed for the transfer of pollen to stigma) and, therefore, were not acting as effective pollinators. More research is needed to investigate the importance of pollinators for reproduction and seed set of *T. a. ssp. compactum*.

*Trichostema austromontanum* ssp. *compactum* produces seeds that contribute to a viable seed bank, which provides adaptability to variable environmental conditions. In nature, plants occur around the margins of Hidden Lake in open soil that is exposed during the summer after the water recedes (Bauder 1999, p. 37). A germination study of *T. a. ssp. compactum* was conducted by Bauder (1999) using controlled light and temperature growing chambers. Results from the study indicated that daily temperature maxima must be in the range of 77 to 86 degrees Fahrenheit (°F) (25 to 30 degrees Celsius (°C)) for germination to occur (Bauder 1999, p. 37). This study also showed that seeds require a period of cold stratification and a cycle of wet and dry conditions to break their dormancy (Bauder 1999, pp. 28–30, 37). A large portion of the seeds produced by *T. a. ssp. compactum* did not germinate in this study and a subsequent germination study conducted by staff at Rancho Santa Ana Botanic Garden (RSABG). The authors of both reports suggested that seeds that do not germinate remain in the soil as

a seed bank over multiple seasons until specific environmental and physiological conditions are met (Bauder 1999, p. 37; RSABG 2009, p. 5; see also Baskin and Baskin 1989, pp. 54–66).

The soil seed bank provides a buffering mechanism for this taxon against the variability of its habitat conditions and periodic drought years. For example, there may be a year when Hidden Lake dries atypically fast or is subject to a seasonal inundation (e.g., from a late-summer thunderstorm), which may lead to a catastrophic loss of a standing population prior to seed set. Thus, a soil seed bank offsets the loss of seeds in poor years. This strategy helps *Trichostema austromontanum* ssp. *compactum* to remain viable in a variable environment, similar to other species adapted to vernal pool habitat or desert environments (Philippi 1993, pp. 481–484; Simovich and Hathaway 1997, pp. 41–43). Due to the complex nature of this strategy to be maintained through varied conditions, we recommend as part of the post-delisting monitoring (PDM) plan to conduct research on seed bank density, seed viability, seed longevity, and reproductive potential of standing plants to better understand the long-term health of this subspecies and the likelihood that the small occurrence will remain viable.

#### Range, Distribution, Abundance, and Habitat

Surveys have shown that the population size of *Trichostema austromontanum* ssp. *compactum* differs greatly from year to year. This fluctuation may be due to the amount of precipitation, the extent of suitable habitat along the margins of the lake, or a combination of factors. The population has been documented to be as large as 243,000 individuals in 2012, to as few as 75 individuals in 2000 (Fraga and Wall 2010, p. 6; CNDDDB 2011, p. 1; Fraga 2016, pers. comm.). Despite the annual differences in population size, the population is considered stable because the variation in population size is primarily due to natural factors and because similar variations are seen over a multi-year period.

*Trichostema austromontanum* ssp. *compactum* seeds germinate around the margin of Hidden Lake as the ponded water evaporates (Bauder 1999, pp. 20–23). Though the highest density of plants has been observed in different portions of the vernal pool margin, observations of *T. a. ssp. compactum* were most abundant on the northern margin of the vernal pool (Fraga and Wall 2007, p. 4) and the eastern portion

of the vernal pool (Fraga 2017, p. 3). These areas likely receive more sunlight due to the lack of trees just to the south where the pool is located. A small portion of the population is located in a swale (a low area where runoff collects) approximately 300 ft (91 m) away to the northeast from the vernal pool between the Desert View Overlook and Hidden Lake.

#### Pre-Listing Threats

Prior to listing, the Service and others were concerned that, without the protections and implementation of proper management actions, *Trichostema austromontanum* ssp. *compactum* could become in danger of extinction and possibly go extinct. *Trichostema austromontanum* ssp. *compactum* was subsequently listed as a threatened species due to vulnerabilities associated with trampling and due to its limited numbers (63 FR 49006, September 14, 1998). For a detailed discussion of pre-listing threats of *Trichostema austromontanum* ssp. *compactum*, please see our proposed delisting rule (82 FR 1296, January 5, 2017).

#### Recovery Implementation

A formal recovery plan for *Trichostema austromontanum* ssp. *compactum* has not been prepared, and, therefore, specific delisting criteria have not been developed for the subspecies. However, the Service reviewed the status of the subspecies in the 2006 and 2013 5-year reviews (Service 2006; 2013). In those reviews, the Service identified remaining threats to the taxon and actions that could be taken to make progress in addressing those threats and ensuring long-term management. These included demonstrating that: (1) Management by the California Department of Parks and Recreation (CDPR) has been effective; (2) stochastic threats are not significant; and (3) sufficient seed is banked for reintroduction after an adverse stochastic event (Service 2013, pp. 14–15). Additionally, a Conservation Strategy was developed that outlined additional conservation actions for this taxon (Fraga and Kietzer 2009, entire). We identified in the 2009 Spotlight Species Action Plan (Service 2009, pp. 2–4, 6) specific actions that would ameliorate threats and ensure long-term management:

(1) Continue Work With CDPR as Partners To Monitor Visitor Use at Hidden Lake;

(2) Monitor the Population and Habitat of *Trichostema austromontanum* ssp. *compactum*;

(3) Complete Collections for Seed Banking;

(4) Devise Long-Term Protocol for Seed Banking and Use of Seeds in Recovery; and

(5) Finalize the Conservation Strategy and a Long-Term Management Plan for the Subspecies, and a Long-Term Agreement With CDPR That Will Include Established Monitoring and the Implementation of an Adaptive Management Plan.

Existing conservation efforts for each of these actions are discussed below.

#### (1) Continue Work With CDPR as Partners To Monitor Visitor Use at Hidden Lake

Monitoring of visitor use at Hidden Lake was conducted by CDPR from 2007 to 2015 (Kietzer 2011a, pp. 4–5). Although unauthorized access to the area appears to have been minimized (Fraga and Wall 2010, p. 5; Kietzer 2011a, pp. 4–5), CDPR will continue to monitor visitor use as described in the PDM plan. This action has been fully implemented, and we expect implementation to continue as part of the PDM plan and Conservation Strategy.

#### (2) Monitor Population and Habitat of *Trichostema austromontanum* ssp. *compactum*

In coordination with the Service, CDPR and RSABG developed a monitoring protocol for *Trichostema austromontanum* ssp. *compactum* resulting from several years of investigation (2006 to 2009), which included mapping the area of occupancy of *T. a.* ssp. *compactum* around Hidden Lake and conducting census counts to estimate population size (Fraga and Wall 2010, pp. 4–6; Fraga 2012, pp. 1–4). Additionally, equipment for monitoring Hidden Lake's microclimate and its effects on the lake level was installed by CDPR in 2010 (Kietzer 2011a, pp. 2–3; Kietzer 2011b, p. 4). Over the past few years, CDPR and RSABG have worked together to develop and implement a more robust statistical sampling method. Initial results suggest that plant numbers were previously underestimated in annual surveys (Kietzer 2016, pers. comm.). Monitoring of this taxon and its habitat will continue as described in the PDM plan and Conservation Strategy.

#### (3) Complete Collections for Seed Banking

Collection of *Trichostema austromontanum* ssp. *compactum* seeds and establishment of an *ex situ* (off-site) conservation seed bank at RSABG occurred over 3 years (2006, 2008, and

2009). As a precaution, backup samples from each year's collections will be stored at the U.S. Department of Agriculture's National Center for Genetic Resource Preservation in Fort Collins, Colorado (Fraga and Wall 2010, p. 7). This action will provide insurance against the subspecies going extinct if the natural occurrence were extirpated due to an adverse stochastic event or other circumstances (such as disease or prolonged drought).

#### (4) Devise Long-Term Protocol for Seed Banking and Use of Seeds in Recovery

*Trichostema austromontanum* ssp. *compactum* seeds collected at Hidden Lake are being stored at RSABG. Additional germination trials are needed to determine a long-term protocol for seed banking and use of seeds to sustain recovery. This project is ongoing and is discussed in further detail in the PDM plan.

#### (5) Finalize the Conservation Strategy and a Long-Term Management Plan for the Subspecies, and a Long-Term Agreement With CDPR That Will Include Established Monitoring and the Implementation of an Adaptive Management Plan

The Conservation Strategy was used as the foundation for the PDM plan. Methods for long-term monitoring of this taxon are discussed further in the PDM plan (see ADDRESSES for information on viewing the PDM plan).

#### Summary of Changes From the Proposed Rule

We have considered all comments and information received during the comment period for the proposed rule to delist *Trichostema austromontanum* ssp. *compactum*. In this final rule, we have made only minor changes based on comments received during the public comment period. We made changes in response to peer reviewer recommendations, and included an expanded discussion of stochastic events (such as wildfire) that could impact the subspecies and its habitat.

#### Summary of Factors Affecting *Trichostema austromontanum* ssp. *compactum*

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species on, reclassifying species on, or removing species from the Lists of Endangered and Threatened Wildlife and Plants. "Species" is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife

which interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered species or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (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. A species may be reclassified on the same basis.

A recovered species is one that no longer meets the Act's definition of endangered species or threatened species. Determining whether a species is recovered requires consideration of whether the species is still an endangered species or threatened species because of any of the five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and those that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting (*i.e.*, reclassifying a species from an endangered species to a threatened species) and the removal or reduction of the Act's protections.

A species is an "endangered species" for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a "threatened species" if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term "foreseeable future." For this final delisting rule, our forecast of future impacts is based on a review of the period of available data for each potential threat and, when possible, a projection of the situation at least for a similar time period into the future. For example:

- The effect of trampling on *Trichostema austromontanum* ssp. *compactum* can be addressed through management of hikers and equestrians, which CDPR does through implementing regulatory mechanisms. CDPR started addressing the impacts about the time the subspecies was listed, in particular with the Mount San Jacinto State Park general plan update in 2002. This plan serves as a "long-range management tool" by providing "conceptual parameters for future management actions" (CDPR 2002, p. 3).

To assess the timeframe of this regulatory mechanism, we note that it does not include an "expiration date" or equivalent. Further, we note that in 2010, CDPR changed its approach to the duration of a given Park's general plan, stating in its Planning Handbook (CDPR 2010, p. 17) that CDPR previously considered general plans to have a 15- to 20-year planning horizon or lifespan. Under the current planning structure of broad, goal-oriented general plans and subordinate, more focused management plans, general plans are no longer thought of as having expiration dates or a finite lifespan when they would be considered invalid. General plans are reconsidered for amendments or revisions when circumstances and needs dictate, such as additional land acquisitions and/or substantial development considerations that were not addressed in the general plan or evaluated during the general plan process.

Thus, for trampling, we have about a 15-year record of management actions to benefit *Trichostema austromontanum* ssp. *compactum* that are linked to the general plan's implementation, and because the general plan is a long-term document (more than 15 to 20 years), we expect that management will continue into the future for at least 20 years. At the future point when the general plan is updated, the public—including the Service—will have the opportunity to review and comment on the new general plan under the State's California Environmental Quality Act (CEQA) process (independent of the subspecies' listing status).

- The timeline for examining the effects of small populations is inherently difficult to assess, especially for an annual plant, and the effects are inherently difficult to address. This is especially true for a population that is naturally small, which is the case for *Trichostema austromontanum* ssp. *compactum*. Population trend data can help with that assessment. As detailed in the PDM plan, we have at least rough estimates of population size going back to 1979, though with a gap between 1993 and 2006, when more formalized monitoring began. Thus, we have a general idea about the population's size over a span of about 40 years.

- Although information exists regarding potential impacts from climate change beyond a 50-year timeframe, the projections depend on an increasing number of assumptions, and thus become more uncertain with increasingly large timeframes. Therefore, a timeframe of 50 years is used to provide the best balance of

scope of impacts considered, versus certainty of those impacts.

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

No threats to the habitat of *Trichostema austromontanum* ssp. *compactum* were identified in the final listing rule (63 FR 49006, September 14, 1998). Habitat loss or alteration associated with land use and land management practices is not now a threat, nor do we expect it to be in the future. The land where *T. a.* ssp. *compactum* occurs is owned and managed by the Mount San Jacinto State Park and is located within a California State Park Natural Preserve, which is surrounded by the San Jacinto State Wilderness Area (CDPR 2002, pp. 62–63). Because the only known occurrence of this subspecies is on State-owned land designated as State Wilderness inside a State Park, and the Hidden Lake area has been designated as the Hidden Lake Divide Natural Preserve, the subspecies and its habitat are protected from any development or other modification of habitat. Some habitat disturbance from recreational activities has occurred in the past. As discussed below, surveys have been conducted at Hidden Lake in recent years, and observers found that habitat disturbances have been minimized (Fraga and Wall 2010, p. 5). We anticipate that these conditions will remain essentially the same in the future because of the CDPR's implementation of the Park's general plan.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

As described in the proposed rule and reaffirmed here, there are no threats now nor are there likely to be any threats in the future to *Trichostema austromontanum* ssp. *compactum*, throughout its range, related to overutilization for commercial, recreational, scientific, or educational purposes. For a detailed discussion of potential threats related to overutilization for commercial, recreational, scientific, or educational purposes, please see our proposed delisting rule (82 FR 1296, January 5, 2017).

#### C. Disease or Predation

No threats to *Trichostema austromontanum* ssp. *compactum* were attributed to Factor C in the 1998 listing rule (63 FR 49006, September 14, 1998). We have no data to suggest that herbivory or disease are affecting *T. a.*

ssp. *compactum*, nor do we have data that suggest impacts from these sources will become a threat in the future.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

In our discussions under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats.

Although inadequacy of existing regulatory mechanisms was not specifically identified as a threat to *Trichostema austromontanum* ssp. *compactum* at the time of listing, we did discuss the very limited number of protections that existed for the subspecies at that time (63 FR 49006, September 14, 1998). Specifically, we discussed conservation provisions under section 404 of the Federal Clean Water Act (CWA; 33 U.S.C. 1251 *et seq.*) and land management of CDPR at the Park.

#### Section 404 of the Federal Clean Water Act (CWA)

Under section 404 of the Federal CWA, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into waters of the United States, which include navigable and isolated waters, headwaters, and adjacent wetlands (33 U.S.C. 1344). Any action with the potential to impact waters of the United States must be reviewed under the Federal CWA, National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and (when listed species may also be impacted) the Act. However, because the only known occurrence of this subspecies was on State-owned land designated as a State Wilderness inside a State Park, we concluded at the time the subspecies was listed that it was unlikely that fill materials will be discharged and thus protections associated with section 404 of the Federal CWA would not be relevant. Now, Hidden Lake is within an area designated by the State as a Natural Preserve, which itself is within State Wilderness. As such, we continue to conclude that it is unlikely that an action will occur that would trigger section 404 of the Federal CWA.

#### California Department of Parks and Recreation

As discussed above, the entire known distribution of *Trichostema*

*austromontanum* ssp. *compactum* occurs at a single vernal pool known as Hidden Lake, owned by the State of California and managed by CDPR. Under existing regulatory mechanisms enacted by the State of California, CDPR manages specifically for the conservation of the subspecies. While discussion of CDPR's management of many aspects of the conservation needs of the subspecies might also be appropriately discussed under other factors (e.g., eliminating trails to maintain natural drainage could also be discussed under factor A; efforts to reduce and manage impacts from recreational activities could also be discussed under factor E), it is included here for ease of discussion since CDPR's authority to provide for the continued conservation of the species flows from regulatory protections provided by State regulations, designations, and the Park's general plan. Such management was being implemented before listing and is being implemented today. Prior to listing, the protections included actions to reduce impacts from visitors by removing references to Hidden Lake from trail maps and signs. Since listing, the CDPR installed barriers in 2000, to exclude equestrian use of the area surrounding Hidden Lake (Guaracha 2006, pers. comm.), thereby reducing the threat of trampling to the subspecies (see Factor E discussion, below).

As a part of the 2002 general plan for Mount San Jacinto State Park, CDPR designated Hidden Lake and its associated watershed area as the Hidden Divide Natural Preserve (Preserve) (CDPR 2002, pp. 62–63). As a Preserve, the 255-ac (103-ha) area is afforded regulatory protection under California Public Resources Code section 5019.71, which states, “[t]he purpose of natural preserves shall be to preserve such features as rare or endangered plant and animal species and their supporting ecosystems.” This allows CDPR to manage Hidden Lake specifically for the conservation of *Trichostema austromontanum* ssp. *compactum* and other sensitive resources found in the area, as opposed to pre-designation when recreational use was part of management considerations. We summarize below the management actions CDPR has taken for the conservation of the subspecies associated with management under the natural preserve designation.

With funding from the Service's Showing Success Grant Program (a Service initiative, discontinued in 2012, that provided funding for final actions needed to bring a species to the point it could be downlisted or delisted), CDPR conducted a survey of the

Preserve boundary and erected signs along the official trail informing visitors that off-trail hiking is prohibited in the Preserve. Additionally, these funds were used to install an automated weather station, conduct monitoring of unauthorized visitors, and establish monitoring protocols for *Trichostema austromontanum* ssp. *compactum* in coordination with RSABG and the Service, which will allow for future management of the area and visitors' activity based on the regulatory mechanisms now available. Due to the remote location, the weather station at Hidden Lake has been difficult to maintain, however, CDPR plans to resolve these issues in the future in order to obtain useful data from this station.

Additionally, CDPR has recently constructed the Hidden Divide Trail to minimize impacts to *Trichostema austromontanum* ssp. *compactum* from now-unauthorized access, while facilitating future authorized but restricted visits to the Preserve. This process involved eliminating an existing unauthorized trail and moving it approximately 20 to 40 ft (6 to 12 m) upslope and away from the margin of Hidden Lake where the largest portion of *T. a.* ssp. *compactum* occurs. The trail bed is incorporated into the existing slope where it should be easier, compared to the unauthorized trail, to maintain natural drainage patterns in the Hidden Lake's watershed. Inspections of the completed trail will take place by trained CDPR staff during peak seasons, and maintenance will occur as needed to prevent alteration of natural hydrology. The new Hidden Divide Trail will not directly connect to other Park trails and will remain off maps and unadvertised by Park staff. Once completed, CDPR will allow access to the trail through a limited permit system or guided tour only for those visitors who inquire about the site. Horses will not be allowed. The trail will provide some viewing areas with interpretive signs to educate visitors about the unique ecosystem supporting *T. a.* ssp. *compactum*. Fencing has been erected along the trail to restrict physical access to Hidden Lake; signs will also help minimize off-trail use.

Based on the regulatory mechanisms now available, CDPR will increase visitor monitoring and begin a zero-tolerance program, issuing citations to off-trail visitors within the Preserve (Fraga and Kietzer 2009, pp. 16–17). Finally, adaptive management techniques will be applied. For example, CDPR will monitor *Trichostema austromontanum* ssp.

*compactum* populations and visitor use of the Hidden Lake area; the combined information will allow CDPR to control visitation, minimizing impact to the subspecies and its habitat (Fraga and Kietzer 2009, p. 22).

Additionally, Hidden Lake and the Hidden Divide Natural Preserve are within an area designated as State Wilderness. California Public Resources Code section 5019.68 recognizes such areas “as areas where the earth and its community of life are untrammelled by man and where man himself is a visitor who does not remain.” California Public Resources Code sections 5093.30–5093.40, the California Wilderness Act, also states that wilderness areas, including Mount San Jacinto State Wilderness, “shall be administered for the use and enjoyment of the people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, provide for the protection of such areas, [and] preserve their wilderness character.” As the Conservation Strategy for the subspecies notes, “Being within a Natural Preserve and a State Wilderness Area provides [*Trichostema austromontanum*] ssp. *compactum* the highest level of protection for natural resources that the State Park System has to offer” (Fraga and Kietzer 2009, p. 19). Thus, these regulatory mechanisms will help minimize the likelihood of future threats to *T. a. ssp. compactum* and its habitat at Hidden Lake.

These protections enacted by the CDPR associated with the Preserve are expected to remain should this subspecies be delisted, and we conclude that these protections are adequate to reduce or eliminate existing or potential future threats to *Trichostema austromontanum* ssp. *compactum* now and in the future.

#### Summary of Factor D

We conclude that, in absence of the protections afforded by the Act, the other existing regulatory mechanisms will continue to provide adequate protections to ensure that threats to *Trichostema austromontanum* ssp. *compactum* are controlled through management and monitoring programs established by CDPR. Listing under the Act provided support for the Service and CDPR to establish management and monitoring programs to provide for the conservation of *T. a. ssp. compactum*. If this subspecies is removed from the Federal List of Endangered and Threatened Plants, the primary protections for *T. a. ssp. compactum* will be provided by CDPR through conservation actions to benefit the subspecies in the Preserve. These

protections are applied in connection with the Park’s existing general plan, and we expect that they will remain unchanged at least until a new plan is adopted, which would not occur until circumstances or needs dictate and, moreover, would not occur without the opportunity of review and comment by the Service and public. This, in turn, would likely mean that any changes to the protections provided by the new general plan would not result in substantial impacts to *T. a. ssp. compactum*. In conclusion, we find that the currently existing regulatory mechanisms described above are adequate, and they will remain adequate to protect *T. a. ssp. compactum* and its habitat across its range now and in the future.

#### E. Other Natural or Manmade Factors Affecting Its Continued Existence

In the 1998 final listing rule, we stated that *Trichostema austromontanum* ssp. *compactum* was particularly vulnerable to trampling by recreational visitors and that the subspecies’ low numbers and extremely localized range further made it more susceptible to disturbance, which included trampling during the flowering season (63 FR 49006, September 14, 1998, pp. 49016–49017). In our 2013 5-year review (Service 2013, pp. 13–14), we also identified effects associated with global climate change as potential threats, which were not considered at the time of listing. Trampling, low numbers of individuals, and climate change are discussed below.

#### Trampling

At the time of listing, we concluded that trampling was a threat to *Trichostema austromontanum* ssp. *compactum* due to its extremely narrow endemic habitat and easy accessibility to Hidden Lake from the trail, just over a mile from the Palm Springs Aerial Tramway (63 FR 49006, September 14, 1998). This site became increasingly popular with the development of the Tramway in 1964 and the Desert Divide Trail in 1979. Measures such as removing references to Hidden Lake from State Park interpretive materials and eliminating existing trails helped to ameliorate impacts from visitors, but did not prevent all trampling impacts. The 1998 listing rule (63 FR 49006, September 14, 1998) indicated the subspecies continued to experience ongoing impacts from trampling by hikers and horses at that time.

Since listing, CDPR, in cooperation with RSABG staff, finalized the Conservation Strategy for *Trichostema austromontanum* ssp. *compactum*

(Hidden Lake bluecurls; Lamiaceae) (Fraga and Kietzer 2009, entire), and CDPR has completed several actions to minimize the threat of trampling to the subspecies (Fraga and Kietzer 2009, pp. 25–26). CDPR reduced the likelihood of visitation to the area (by both humans and horses) by removing references to Hidden Lake from trails, maps, and signs in the Park, and physically obscuring trails to the lake (72 FR 54377, September 25, 2007; see also Fraga and Kietzer 2009, p. 16). Additionally, CDPR installed a wooden barrier fence at historical access points to exclude equestrian use (Fraga and Kietzer 2009, p. 16). CDPR also designated Hidden Lake and its associated watershed area as a Natural Preserve as part of their 2002 general plan revision (CDPR 2002, pp. 62–63), as discussed under Factor D, above. Although a low number of hikers currently access the Hidden Lake area despite efforts to exclude visitors from the area, impacts from trampling appear to have been minimized (Fraga and Wall 2010, p. 5; Kietzer 2011a, pp. 4–5). Furthermore, there is no evidence that horses have had access to the area around Hidden Lake since the exclusionary fences were installed in 2000 (Fraga and Kietzer 2009, p. 13; Fraga and Wall 2010, p. 5).

We expect that most of these measures to benefit *Trichostema austromontanum* ssp. *compactum* will remain in place for at least the next few decades while the 2002 general plan is active. Further, we expect future general plans to continue to prevent impacts to *T. a. ssp. compactum* because, compared to the time of listing, CDPR has taken measures to minimize future impacts of certain recreational uses of Hidden Lake that are incompatible with the conservation of the subspecies. This is illustrated by CDPR’s formal designation of the Preserve. Thus, trampling of *T. a. ssp. compactum* by hikers and horses has largely been eliminated, and there is little likelihood that trampling will be a threat to the subspecies in the future.

#### Low Numbers of Individuals

In the final listing rule (63 FR 49006, September 14, 1998), we described the vulnerabilities associated with low numbers, stating that the limited numbers and extremely localized range of *Trichostema austromontanum* ssp. *compactum* make this taxon more susceptible to single disturbance events such as trampling during the flowering season or alteration of the local water table from soil compression. However, the 1998 final rule did not provide details explaining why we concluded

that the subspecies was more susceptible to disturbance. We provide additional explanation in our 2013 5-year review (Service 2013, p. 12), in which we note that conservation biology literature (such as Shaffer 1981, pp. 131–134; 1987, pp. 69–86; Primack 1998, pp. 301–308; Leppig and White 2006, pp. 264–274) commonly notes the increased vulnerability of taxa known from only one or very few locations and when only small populations exist. We then explained that the threat associated with low numbers of individuals was based on the concern that in years when there were fewer than 100 individual plants, very little seed was produced, resulting in a species that may not be self-sustaining.

Based on new information since the time of listing, we now know that it is likely that *Trichostema austromontanum* ssp. *compactum* is able to survive years with poor conditions and very few flowering plants because of the existing, naturally occurring, onsite seed bank in the soil (Bauder 1999, p. 37). The majority of seeds of *T. a. ssp. compactum* produced each year are likely deposited in the soils of the basin of Hidden Lake because there are no known means of seed dispersal. We have also found through germination experiments that only a small percentage of seeds germinate, even when conditions are appropriate (Bauder 1999, p. 28; Fraga and Wall 2009, p. 5). This suggests that some proportion of *T. a. ssp. compactum* seeds likely remain dormant in the soil and survive through years lacking adequate environmental conditions for plants to reach maturity and reproduce. In the PDM plan, we recommend monitoring reproductive success of the taxon, because it may be cause for concern if the reproductive potential decreases. Data collected since 1980 on this taxon show that the standing population size fluctuates from fewer than 100 to greater than 10,000 plants, but the presence of a persistent soil seed bank demonstrates resiliency and has allowed the subspecies to remain viable. The differences in standing population size of *T. a. ssp. compactum*, especially absent evidence of trampling, may still be best characterized as natural variation or fluctuation tied to the annual water level of Hidden Lake (Bauder and McMillan 1998, pp. 63–66; Bauder 1999, pp. 13–17). In this manner, we conclude that the low numbers of individuals in some years is a temporary phenomenon and does not pose a long-term threat to this plant. Nevertheless, an *ex situ* seed bank (an offsite, artificial

collection of seeds held in special climate-controlled conditions for long-term storage) has been established and is discussed further in the PDM plan.

As noted in the 2013 5-year review (Service 2013, pp. 12–13), species known from only one or a few populations, or that exist in populations with low numbers of individuals, are more vulnerable to stochastic (random) events. For example, a fire, flood, or drought is likely to be more devastating to a small, localized population than to a large, widespread population. Though increased vulnerability to stochastic events has not been documented for *Trichostema austromontanum* ssp. *compactum* in the past, nor were specific concerns discussed in detail in the final listing rule (63 FR 49006, September 14, 1998), fire could affect the area in the future. A fire burned near Hidden Lake in 2013 (Mountain Fire). Though there were no impacts to *T. a. ssp. compactum*, a large fire could potentially affect the lake, and subsequently *T. a. ssp. compactum*, through increased sedimentation or changes to the hydrology.

While it is possible that stochastic events could impact *Trichostema austromontanum* ssp. *compactum* in the future, we conclude that this threat alone is not significant enough to cause long-term population declines because the natural persistent seed bank in the soil would likely survive such events, including fire. RSABG collected *T. a. ssp. compactum* seeds over 3 years (2006, 2008, and 2009) and is maintaining an *ex situ* (offsite) conservation seed bank. As indicated in the PDM plan, additional research is needed to estimate the size of the seed bank, as well as additional collections during years of high and low abundance. Maintenance of this seed bank provides insurance against the subspecies going extinct if the natural occurrence were extirpated due to an adverse stochastic event or other circumstances (such as disease or prolonged drought).

#### Climate Change

Here, we consider observed or likely environmental changes resulting from ongoing and projected changes in climate. The 1998 listing rule did not discuss the potential impacts of climate change on *Trichostema austromontanum* ssp. *compactum* or its habitat (63 FR 49006, September 14, 1998). As defined by the Intergovernmental Panel on Climate Change (IPCC), the term “climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for

such measurements, although shorter or longer periods also may be used (IPCC 2013a, p. 1,450). The term “climate change” thus refers to a change in the mean or the variability of relevant properties, which persists for an extended period, typically decades or longer, due to natural conditions (e.g., solar cycles) or human-caused changes in the composition of atmosphere or in land use (IPCC 2013a, p. 1,450).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring. In particular, warming of the climate system is unequivocal, and many of the observed changes in the last 60 years are unprecedented over decades to millennia (IPCC 2013b, p. 4). The current rate of climate change may be as fast as any extended warming period over the past 65 million years and is projected to accelerate in the next 30 to 80 years (National Research Council 2013, p. 5). Thus, rapid climate change is adding to other sources of extinction pressures, such as land use and invasive species, which will likely place extinction rates in this era among just a handful of the severe biodiversity crises observed in Earth’s geological record (AAAS 2014, p. 17).

Examples of various other observed and projected changes in climate and associated effects and risks, and the bases for them, are provided for global and regional scales in reports issued by the IPCC (2013c, 2014), and similar types of information for the United States and regions within it can be found in the National Climate Assessment (Melillo *et al.* 2014, entire).

Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate and is “extremely likely” (defined by the IPCC as 95 to 100 percent likelihood) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from fossil fuel use (IPCC 2013b, p. 17 and related citations).

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions. Model results yield very similar projections of average global warming until about 2030, and thereafter the magnitude and rate of warming vary through the end of the

century depending on the assumptions about population levels, emissions of GHGs, and other factors that influence climate change. Thus, absent extremely rapid stabilization of GHGs at a global level, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by human actions regarding GHG emissions (IPCC 2013b, 2014; entire).

Global climate projections are informative, and in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2013c, 2014; entire) and within the United States (Melillo *et al.* 2014, entire). Therefore, we use “downscaled” projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling).

Various changes in climate may have direct or indirect effects on species. These may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables like habitat fragmentation (for examples, see Franco *et al.* 2006; Forister *et al.* 2010; Galbraith *et al.* 2010; Chen *et al.* 2011; Bertelsmeier *et al.* 2013, entire). In addition to considering individual species, scientists are evaluating potential climate change-related impacts to, and responses of, ecological systems, habitat conditions, and groups of species (e.g., Deutsch *et al.* 2008; Berg *et al.* 2010; Euskirchen *et al.* 2009; McKechnie and Wolf 2010; Sinervo *et al.* 2010; Beaumont *et al.* 2011; McKelvey *et al.* 2011; Rogers and Schindler 2011; Ballard *et al.* 2012).

Regional temperature observations are often used as an indicator of how climate is changing. The Western Regional Climate Center (WRCC) has defined 11 climate regions for evaluating various climate trends in California (Abatzoglou *et al.* 2009, p. 1535). The relevant WRCC climate region for the distribution of *Trichostema austromontanum* ssp. *compactum* within the San Jacinto Mountains is the Southern Interior Region.

Two indicators of temperature, the increase in mean temperature and the

increase in maximum temperature, are important for evaluating trends in climate change in California. For the Southern Interior climate region, linear trends (evaluated over a 100-year time period) indicate an increase in mean temperatures (January through December) of approximately  $1.71 \pm 0.47$  °F per 100 years ( $0.95 \pm 0.26$  °C per 100 years) since 1895, and  $3.11 \pm 1.16$  °F per 100 years ( $1.73 \pm 0.64$  °C per 100 years) since 1949 (WRCC 2016). Similarly, the maximum temperature 100-year trend for the Southern Interior Region shows an increase of about  $1.48 \pm 0.57$  °F per 100 years ( $0.82 \pm 0.32$  °C per 100 years) since 1895, and  $2.54 \pm 1.38$  °F per 100 years ( $1.41 \pm 0.77$  °C per 100 years) since 1949 (WRCC 2016). It is logical to assume the rate of temperature increase for this region is higher for the second time period (i.e., since 1949) than for the first time period (i.e., since 1895) due to the increased use of fossil fuels in the 20th century.

Climate models provide climate projections into the future, which help inform our evaluations of potential future impacts, but these projections become more uncertain with increasingly large timeframes. Pierce *et al.* (2013, entire) presented both Statewide and regional probabilistic estimates of temperature and precipitation changes for California (by the 2060s) using downscaled data from 16 global circulation models and 3 nested regional climate models. The study looked at a historical (1985–1994) and a future (2060–2069) time period using the IPCC Special Report on Emission Scenarios A2 (Pierce *et al.* 2013, p. 841), which is an IPCC-defined scenario used for the IPCC’s Third and Fourth Assessment reports, and is based on a global population growth scenario and economic conditions that result in a relatively high level of atmospheric GHGs by 2100 (IPCC 2007, pp. 44–45; see Stocker *et al.* 2013, pp. 60–68, and Walsh *et al.* 2014, pp. 25–28, for discussions and comparisons of the prior and current IPCC approaches and outcomes). Importantly, the projections by Pierce *et al.* (2013, pp. 852–853) include daily distributions and natural internal climate variability.

Simulations using these downscaling methods project an increase in yearly temperature for the Southern California Mountains region ranging from 3.78 °F to 5.22 °F (2.1 °C to 2.9 °C) by the 2060s time period, compared to 1985–1994 (Pierce *et al.* 2013, p. 844). Averaging across all models and downscaling techniques, the simulations project a yearly averaged warming of 4.32 °F (2.4 °C) by the 2060s (Pierce *et al.* 2013, p. 842).

While we do not have information to suggest warmer temperatures will directly impact *Trichostema austromontanum* ssp. *compactum*, there can be indirect effects. For example, Williams *et al.* (2015, p. 6826) found, “anthropogenic warming has intensified the recent drought [in California] as part of a chronic drying trend that is becoming increasingly detectable,” but they also noted that it was, “small relative to the range of natural climate variability.” Shukla *et al.* (2015, p. 4392) also found that temperature was an important factor in exacerbating drought conditions in California in 2014, although they noted that the low level of precipitation was the primary driver. Thus, the anticipated increasing temperatures (driven by global climate change) are likely to contribute to increased severity of droughts when they occur. However, because the natural climate of California is so variable, it is not clear whether increased drought severity will have substantial impact on *T. a. ssp. compactum*, which can take advantage of wetter years, when they occur, to replenish its natural seed bank.

Higher temperatures can also be expected to result in increased evaporation, which suggests that Hidden Lake will likely dry more quickly over a season. However, the effects of increased evaporation to habitat occupied by *Trichostema austromontanum* ssp. *compactum* or to the plant’s life history are uncertain. For example, faster evaporation of Hidden Lake might provide an increased growing season (more time at the beginning) because more habitat may be available earlier in the season (the plant primarily grows in the dry portions of the lakebed), or it could result in a shorter growing season (less time at the end) because the area dries out too much and the plants may desiccate before producing seed, or the two processes could happen together and produce a shift in the growing season (same overall amount of growth time, just starting earlier in the year). Observed increases in temperature over the past 100 years do not appear to have currently adversely affected the subspecies. Based on the best available regional data, current and future trends do not lead us to conclude that change in ambient temperature is currently a threat to *T. a. ssp. compactum* or likely to become one in the future.

Precipitation patterns can also be used as an indicator of how climate is changing. We obtained yearly precipitation data for the Idyllwild region of the San Jacinto Mountains from the National Oceanic and



Atmospheric Administration's National Centers for Environmental Information (<http://www.ncdc.noaa.gov/>). We then conducted a nonparametric correlation test, the Mann-Kendall statistical test (Hipel and McLeod 1994, pp. 63–64, 856–858), to evaluate trends in precipitation over time. This analysis was conducted using the R and R Studio software programs (R Development Core Team 2014) with the “Kendall” package, version 2.2 (McLeod 2011). We found no significant trend in precipitation over time (increasing or decreasing) from 1944–2015 (Grizzle 2016, pers. comm.). There is no information currently available that would lead us to conclude that potential changes in the amount of precipitation are a threat now or likely to be in the future. However, changes in the timing and type (rain or snow) of precipitation could alter the unique environment of Hidden Lake and potentially impact habitat where this taxon occurs in the future. To address this concern, we have included monitoring in the PDM plan (see Post-Delisting Monitoring, below) to provide baseline data on climatic conditions as well as the duration and depth of ponding that occurs at Hidden Lake. Additionally, the maintenance of the *ex situ* seed bank provides some flexibility to respond to stochastic events including those associated with a changing climate.

#### Summary of Factor E

Management actions implemented at Hidden Lake by CDPR in recent years have reduced the threat of trampling to a minimal level. At the time of listing, we were concerned that low numbers of individuals in some years threatened the existence of *Trichostema austromontanum* ssp. *compactum*. Since listing, data suggest this subspecies has a soil seed bank and germination mechanisms that have allowed the taxon to remain viable over time, even in years when very few plants flower and set seed. Low numbers of individuals in certain years followed by years with high numbers of individuals suggests this is a natural phenomenon for this taxon. Though stochastic events, such as wildfire, could affect the subspecies in the future, the soil seedbank will likely be maintained, facilitating future growth. Climate change was also identified as a potential threat since listing, but we do not consider it to be a substantial threat at this time, and ongoing management and monitoring is designed to detect future changes.

#### Summary of Comments and Recommendations

In the proposed rule published on January 5, 2017 (82 FR 1296), we requested that all interested parties submit written comments on the proposal by March 6, 2017. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We did not receive any requests for a public hearing. Another comment period was opened on November 1, 2017, for 30 days in order to publish a legal notice and to give all interested parties further opportunity to comment on the proposed rule to delist *Trichostema austromontanum* subsp. *compactum* (82 FR 50606). Newspaper notices inviting general public comment were published in The Desert Sun.

During the comment periods for the proposed rule, we received a total of 17 comment letters or statements directly addressing the proposed action. These included 4 comments from peer reviewers and 13 comments during open comment periods (1 from the State and 12 from the general public) that are posted on Federal docket no. FWS–R8–ES–2016–0127. Three of the public comments (including comments from the State) supported the proposed action to delist *Trichostema austromontanum* ssp. *compactum*. A fourth commenter provided no relevant information related to *T. a. ssp. compactum*. The remaining nine public commenters objected to the action to delist the subspecies; however, of these, only one provided substantive information regarding the proposed delisting rule.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from seven knowledgeable individuals with scientific expertise that included familiarity with *Trichostema austromontanum* ssp. *compactum* and its habitat, biological needs, and threats, as well as familiarity with conservation biology, plant systematics, rare species, and plant phylogeography. We received responses from four of the peer reviewers. The reviewers generally supported the proposed delisting rule and commented that the current status of *T. a. ssp. compactum* is accurately presented.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the delisting of *Trichostema austromontanum* ssp. *compactum*. Substantive comments received during the comment period are addressed below and, where

appropriate, incorporated directly into this final rule and the post-delisting monitoring plan.

#### Comments From Peer Reviewers

*Comment (1):* Multiple reviewers commented on the natural seed bank. One peer reviewer expressed concern with the density of the seed bank and said it would be useful to know more about the mean seed set in order to be better able to predict size of the seed bank and stability of the population. Another peer reviewer recommended identifying specific targets for number of plants/seeds stored and stated that different genotypes may be represented in different years, so *ex situ* collections should target multiple years including those with large and small numbers of plants.

*Our Response:* We appreciate the suggestions from peer reviewers and identified additional research that is needed to inform implementation of the PDM plan.

*Comment (2):* One peer reviewer asked whether the proposed 13-year monitoring will result in the appropriate data to assess if the species remains recovered and whether monitoring every 3 years provides enough information to assess trends. They recommended monitoring more regularly, perhaps in paired years.

*Our Response:* Though more regular surveys will likely occur (State Parks and RSABG have conducted annual surveys for the past several years), this PDM plan describes at a minimum the 5 years of post-delisting monitoring that will occur following removal from the Federal List of Endangered and Threatened Plants. These 5 years of monitoring have been expanded over a 13-year period to enable us to look for and detect changes in the population following delisting. The PDM plan further indicates that at the end of each survey year and at the end of the planned 13-year monitoring period, PDM data will be assessed to determine whether the survey protocols are functioning as anticipated and whether any changes in species protection are needed. If monitoring indicates that the species may be less secure than anticipated, the duration of the PDM period may be extended. Additional parameters or increased monitoring frequency could also be considered to increase the probability of detecting any future declines.

*Comment (3):* Peer reviewers made several additional recommendations for the final PDM plan, including: (1) Clarifying the trigger for re-listing and how it will be confirmed from monitoring; (2) monitoring of visitation



rates to Hidden Lake bluecurls; (3) monitoring potential dispersal rates of nonnative plant species; (4) clarifying triggers for how the ex-situ seed bank would be used should it be needed, and how seeds would be used for reintroduction; and (5) clarifying genetic diversity, seed viability, and seed collection standards for seeds stored in the ex-situ seed bank.

**Our Response:** We appreciate the suggestions from the peer reviewers, and have adjusted the PDM plan to incorporate these recommendations.

**Comment (4):** One peer reviewer indicated that they have concerns regarding the sampling approach between the two methods described in the PDM plan. The reviewer indicated that an entire population census approach would be best to monitor population trends for this annual plant rather than restricted random sampling in years when large numbers of plants occur.

**Our Response:** We appreciate the information from peer reviewers. Annual surveys were conducted using this refined monitoring plan for the past 5 years. We will continue to work with our partners to evaluate methods for detecting trends.

**Comment (5):** One peer reviewer suggested that it is premature to suggest that *Trichostema austromontanum* ssp. *compactum* is not commonly pollinated by insects.

**Our Response:** We have made revisions to the final rule to reflect that additional research is needed to investigate the importance of pollinators for reproduction and seed set of *Trichostema austromontanum* ssp. *compactum*.

**Comment (6):** One peer reviewer thought that we had underestimated the potential threat from wildfire, given recent drought and resulting increases in dead or stressed trees in the San Jacinto Mountains and a fire in close proximity to Hidden Lake in 2013. The reviewer noted that, despite the species' long-lived seed bank, a wildfire could result in altered hydrology and increased sedimentation into Hidden Lake.

**Our Response:** We have added a short discussion of fire and stochastic events to the discussion of threats above. While we acknowledge that there is a chance that fire could impact the species, the natural and ex situ seed banks provide the ability to respond to this type of stochastic event, should it occur.

#### Public Comments

**Comment (7):** One public commenter recommended that post-delisting monitoring should be extended to a

minimum of 25 years in order to monitor ongoing changes in climate and that status reviews be completed every 5 years and made publicly available.

**Our Response:** Section 4(g) of the Act states that the Secretary shall implement a system in cooperation with the States to monitor effectively for not less than 5 years the status of all species that have recovered to the point at which the measures provided pursuant to the Act are no longer necessary. As discussed above, the PDM plan for *Trichostema austromontanum* subsp. *compactum* expands the required 5-year period to 13 years. More regular surveys will likely occur as State Parks and RSABG have conducted annual surveys for the past several years. Furthermore, the PDM plan indicates that at the end of the 13-year monitoring period the PDM data will be assessed to determine whether the data collection protocols are functioning as anticipated and whether changes in species protection are needed. We have determined that this timeframe is sufficient, and if monitoring indicates that the species may be less secure than anticipated, the duration of the PDM period may be extended.

**Comment (8):** One public commenter stated that the PDM plan needs triggers for action if downward trends or impacts are reported from monitoring efforts.

**Our Response:** If data produced as part of or in conjunction with this PDM plan suggest that *Trichostema austromontanum* subsp. *compactum* are in decline or habitat destruction at Hidden Lake reaches a magnitude such that the species is likely to become endangered, it would trigger potential commencement of re-listing procedures. The justifications for four potential outcomes are described in the PDM plan. These actions are based on the status of trends and current impacts to the species and lay out the steps needed to determine if additional protections are needed.

**Comment (9):** One public commenter stated that the main threat to *Trichostema austromontanum* ssp. *compactum* is trampling by hikers. The commenter suggested that the Service and the Department of the Interior restrict access from known populations and that research be conducted to identify where plants occur so that trails could be rerouted to avoid them.

**Our Response:** The entire distribution where *Trichostema austromontanum* ssp. *compactum* occurs is owned by the State of California and managed by CDPR. As discussed above, CDPR has conducted surveys for this subspecies for the past several years and

protections enacted in association with the Preserve and Wilderness designation are anticipated to remain should this subspecies be delisted. They are working to minimize impacts to *T. a. ssp. compactum* through construction of a new trail (Hidden Divide Trail), which will minimize unauthorized access and enable access only through a permit system. The trail will provide viewing areas and interpretive signs to educate visitors about the unique ecosystem, and fencing has been installed to restrict physical access.

#### Determination

##### Standard for Review

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of “endangered species” or “threatened species.” The Act defines an “endangered species” as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a “threatened species” as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether a species meets the definition of “endangered species” or “threatened species” because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. The same factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

On July 1, 2014, we published a final policy interpreting the phrase “significant portion of its range” (SPR) (79 FR 37578). Aspects of that policy were vacated for species that occur in Arizona by the United States District Court for the District of Arizona. *CBD v. Jewell*, No. CV–14–02506–TUC–RM (Mar. 29, 2017), *clarified by the court*, Mar. 29, 2017. Since *Trichostema austromontanum* ssp. *compactum* does not occur in Arizona, for this finding we rely on the SPR Policy, and also provide additional explanation and support for our interpretation of the SPR phrase. In our policy, we interpret the phrase “significant portion of its range” in the Act's definitions of “endangered species” and “threatened species” to

provide an independent basis for listing a species in its entirety; thus there are two situations (or factual bases) under which a species would qualify for listing: A species may be in danger of extinction or likely to become so in the foreseeable future throughout all of its range; or a species may be in danger of extinction or likely to become so throughout a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an “endangered species.” The same analysis applies to “threatened species.”

Our final policy addresses the consequences of finding a species is in danger of extinction in an SPR, and what would constitute an SPR. The final policy states that (1) if a species is found to be endangered or threatened throughout a significant portion of its range, the entire species is listed as an endangered species or a threatened species, respectively, and the Act’s protections apply to all individuals of the species wherever found; (2) a portion of the range of a species is “significant” if the species is not currently endangered or threatened throughout all of its range, but the portion’s contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range; (3) the range of a species is considered to be the general geographical area within which that species can be found at the time the Service or the National Marine Fisheries Service makes any particular status determination; and (4) if a vertebrate species is endangered or threatened throughout an SPR, and the population in that significant portion is a valid distinct population segment (DPS), we will list the DPS rather than the entire taxonomic species or subspecies.

The SPR policy applies to analyses for all status determinations, including listing, delisting, and reclassification determinations. As described in the first element of our policy, once the Service determines that a “species”—which can include a species, subspecies, or DPS—meets the definition of “endangered species” or “threatened species,” the species must be listed in its entirety and the Act’s protections applied consistently to all individuals of the species wherever found (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

For the second element, the policy sets out the procedure for analyzing whether any portion is an SPR; the

procedure is similar, regardless of the type of status determination we are making. The first step in our assessment of the status of a species is to determine its status throughout all of its range. We subsequently examine whether, in light of the species’ status throughout all of its range, it is necessary to determine its status throughout a significant portion of its range. If we determine that the species is in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range, we list the species as an endangered (or threatened) species and no SPR analysis is required. The policy explains in detail the bases for this conclusion—including that this process ensures that the SPR language provides an independent basis for listing; maximizes the flexibility of the Service to provide protections for the species; and eliminates the potential confusion if a species could meet the definitions of both “endangered species” and “threatened species” based on its statuses throughout its range and in a significant portion of its range. *See, e.g.*, SPR Policy, 79 FR 37580–81, July 1, 2014.

#### *Hidden Lake Bluecurls Determination of Status Throughout All of Its Range*

No threats attributable to Factors A, B, or C were identified at the time *Trichostema austromontanum* ssp. *compactum* was listed in 1998. Threats identified at the time of listing included impacts associated with human and horse trampling (Factor E), the limited numbers and an extremely localized range of *T. a. ssp. compactum* (Factor E), and the limited protections afforded by the CDPR to reduce or eliminate those threats (Factor D). Since listing, conditions associated with climate change (Factor E) have been identified as a potential rangewide threat to the subspecies.

We now have sufficient data to show that management enacted by CDPR to benefit *Trichostema austromontanum* ssp. *compactum* and its habitat at Hidden Lake has been effective and will continue to be in the foreseeable future. CDPR, as the operative land manager, has demonstrated a long-term commitment to provide for the conservation of *T. a. ssp. compactum*. Their staff, in cooperation with RSABG staff, finalized the Conservation Strategy for *Trichostema austromontanum* ssp. *compactum* (Hidden Lake bluecurls; Lamiaceae) (Fraga and Kietzer 2009, entire), which outlined immediate conservation actions, goals, and conservation measures for the recovery and long-term management of the subspecies. In subsequent years, both

entities have continued to monitor the area and have developed an improved survey methodology for *T. a. ssp. compactum*. Because *T. a. ssp. compactum* is entirely within Mount San Jacinto State Park, is within the Mount San Jacinto State Wilderness Area, and is within the recently established Preserve, CDPR is able to manage Hidden Lake specifically for the conservation of *T. a. ssp. compactum* and its habitat, along with other sensitive resources found in the area.

Trampling by humans has been minimized, and no visible impacts to *Trichostema austromontanum* ssp. *compactum* have been observed from trampling by horses since 2000 because of CDPR’s management. CDPR indicated that the Hidden Divide Trail will be a pedestrian trail and equestrian use will not be authorized. Therefore, we no longer consider *T. a. ssp. compactum* to be threatened by trampling. The low numbers of standing plants in some years appears to be a natural phenomenon for this subspecies. The species’ soil seed bank provides resiliency that allows the species to remain viable through years with poor conditions, and, therefore, low numbers in some years is not considered a threat at this time. The *ex situ* seed banking program at RSABG also provides insurance for this subspecies by assuring propagation potential should future stochastic events or climate change adversely impact the endemic population. Actions taken by CDPR and RSABG have reduced the threats associated with trampling, small population size, and stochastic events to a manageable level.

Since listing, we have become aware of the potential for anthropogenic climate change to affect all biota, including *Trichostema austromontanum* ssp. *compactum*. While available information indicates that temperatures are increasing, there is no clear signal as to the potential impacts to *T. a. ssp. compactum* at this time. Additionally, the lack of a significant declining trend in the amount of precipitation suggests that there is no immediate cause for concern, but potential impacts to *T. a. ssp. compactum* from changes in the timing and type of precipitation should be monitored in the future.

Ongoing management by CDPR and protections provided by designation as a State Wilderness Area as well as designation as the Hidden Lake Divide Natural Preserve work to protect this area from development or other habitat disturbance. Management by State Parks has successfully ameliorated threats to the species and the species’ adaptations,

including the soil seedbank, provide sufficient resilience to withstand its variable environment. Having considered the individual and cumulative impact of threats on this subspecies, we find that *Trichostema austromontanum* ssp. *compactum* is not in danger of extinction throughout all of its range, nor is it likely to become so in the foreseeable future.

#### *Determination of Status Throughout a Significant Portion of Its Range*

Consistent with our interpretation that there are two independent bases for listing species as described above, after examining the status of Hidden Lake bluecurls throughout all of its range, we now examine whether it is necessary to determine its status throughout a significant portion of its range. Per our final SPR policy, we must give operational effect to both the “throughout all” of its range language and the SPR phrase in the definitions of “endangered species” and “threatened species.” We have concluded that to give operational effect to both the “throughout all” language and the SPR phrase, the Service should conduct an SPR analysis if (and only if) a species does not warrant listing according to the “throughout all” language.

If the species is neither endangered nor threatened throughout all of its range, we determine whether the species is endangered or threatened throughout a significant portion of its range. To undertake this analysis, we first identify any portions of the species’ range that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that there are any portions of the species’ range: (1) That may be “significant” and (2) where the species may be in danger of extinction or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

In practice, one key part of identifying portions for further analysis may be

whether the threats or effects of threats are geographically concentrated in some way. If a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and the threats to the species are essentially uniform throughout its range, then the species is not likely to be in danger of extinction or likely to become so in the foreseeable future in any portion of its range and no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the species’ range that are not “significant,” such portions will not warrant further consideration.

We evaluate the significance of the portion of the range based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for “significant” in terms of an increase in the risk of extinction for the species. We conclude in our policy that such a biologically based definition of “significant” best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species’ conservation. We determine if a portion’s biological contribution is so important that the portion qualifies as “significant” by asking whether, *without that portion*, the status of the species would be so impaired that the species would be in danger of extinction or likely to become so in the foreseeable future (*i.e.*, would be an “endangered species” or a “threatened species”). Conversely, we would not consider the portion of the range at issue to be “significant” if there is sufficient viability elsewhere in the species’ range that the species would not be in danger of extinction or likely to become so throughout its range even if the population in that portion of the range in question became extirpated (extinct locally).

If we identify any portions (1) that may be significant and (2) where the species may be in danger of extinction or likely to become so in the foreseeable future, we engage in a more-detailed analysis to determine whether these standards are indeed met. The identification of an SPR does not create a presumption, prejudice, or other determination as to whether the species is in danger of extinction or likely to become so in the foreseeable future in that identified SPR. We must go through a separate analysis to determine whether the species is in danger of extinction or likely to become so in the SPR. To make that determination, we will use the same standards and methodology that we use to determine if a species is in danger of extinction or

likely to become so in the foreseeable future throughout all of its range.

If we have identified portions of the species’ range for further analysis, we conduct a detailed analysis of the significance of the portion and the status of the species in that portion. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. If we address significance first and determine that a portion of the range is not “significant,” we do not need to determine whether the species is in danger of extinction or likely to become so in the foreseeable future there; if we address the status of the species in portions of its range first and determine that the species is not in danger of extinction or likely to become so in a portion of its range, we do not need to determine if that portion is “significant.”

Applying the process described above, to identify whether any portions warrant further consideration for *Trichostema austromontanum* ssp. *compactum*, we determine whether there is substantial information indicating that (1) particular portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future.

First, we will consider whether there is substantial information to indicate that *Trichostema austromontanum* ssp. *compactum* faces any threats or effects of threats that are geographically concentrated in any portion of the subspecies’ range.

*Trichostema austromontanum* ssp. *compactum* is a narrow endemic plant subspecies, found only in and around Hidden Lake in Mount San Jacinto State Park. Its entire range is about 2 ac (1 ha) in size. It is an annual plant, which means it completes its life cycle in less than 1 year. As previously noted, it has a natural seed bank in the soil, with seeds that persist for extended periods of time. Although the number and distribution of standing (growing) plants varies from year to year, the distribution of the seeds in soil is likely fairly ubiquitous within the area occupied by the subspecies. Within this 2-ac (1-ha) area, there is no natural division that would arbitrarily separate one portion of the range from another. Because of the limited geographic area the subspecies occupies, the entire subspecies experiences similar conditions and management by CDPR such that no portion of the subspecies’ range is likely to experience a different or elevated level of threats.

We conclude that there are no portions of the subspecies' range that are likely to be both significant and be in danger of extinction or likely to become so in the foreseeable future. Therefore, no portion warrants further consideration to determine whether the subspecies is in danger of extinction or likely to become so in a significant portion of its range.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Trichostema austromontanum* ssp. *compactum*. Because the species is neither in danger of extinction now nor likely to become so in the foreseeable future throughout all or any significant portion of its range, the species does not meet the definition of an endangered species or threatened species. Therefore, we find that *T. a. ssp. compactum* no longer requires the protection of the Act, and we are removing the subspecies from the List of Endangered and Threatened Plants.

#### Effects of This Rule

The Act sets forth a series of general prohibitions and exceptions that apply to all endangered plants. The Act's implementing regulations extend most of the prohibitions provided under section 9(a)(2) of the Act to threatened plants (see 50 CFR 17.61 and 17.71). It is illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce *Trichostema austromontanum* ssp. *compactum* to possession from areas under Federal jurisdiction. Section 7 of the Act requires that Federal agencies consult with us to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the subspecies' continued existence. This final rule revises 50 CFR 17.12 to remove *T. a. ssp. compactum* from the Federal List of Endangered and Threatened Plants, and these prohibitions no longer apply. Because critical habitat has not been designated for this taxon, this rule does not affect 50 CFR 17.96.

#### Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a system to monitor effectively, for not less than 5 years, all species that have been recovered and

delisted. The purpose of this post-delisting monitoring is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The monitoring is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of post-delisting monitoring programs, but we remain responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of post-delisting monitoring. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

#### Post-Delisting Monitoring Plan Overview

We prepared a PDM plan for *Trichostema austromontanum* ssp. *compactum*. The plan discusses the current status of the taxon and describes the methods proposed for monitoring after the taxon is removed from the Federal List of Endangered and Threatened Plants (<https://ecos.fws.gov>). The PDM plan:

- (1) Summarizes the status of *Trichostema austromontanum* ssp. *compactum* at the time the final delisting rule published;
- (2) Describes frequency and duration of monitoring;
- (3) Discusses monitoring methods and potential sampling regimes;
- (4) Defines what potential triggers will be evaluated for additional monitoring;
- (5) Outlines reporting requirements and procedures;
- (6) Indicates what additional research is needed to implement the PDM plan; and
- (7) Proposes a schedule for implementing the PDM plan and defines responsibilities.

It is our intent to work with our partners towards maintaining the recovered status of *Trichostema austromontanum* ssp. *compactum*.

#### Required Determinations

##### National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment

or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the 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 all references cited in this final rule is available on the internet at <http://www.regulations.gov> under Docket No. FWS-R8-ES-2016-0127, or upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary author of this final rule is the Carlsbad Fish and Wildlife Office in Carlsbad, California, in coordination with the Pacific Southwest Regional Office in Sacramento, California.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

Accordingly, we 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.

##### § 17.12 [Amended]

- 2. Amend § 17.12(h) by removing the entry for “*Trichostema austromontanum* ssp. *compactum*” under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Dated: May 1, 2018.

**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. 2018–11786 Filed 5–31–18; 8:45 am]

**BILLING CODE P**

# Proposed Rules

Federal Register

Vol. 83, No. 106

Friday, June 1, 2018

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 TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0495; Product Identifier 2017-NM-089-AD]

RIN 2120-AA64

#### Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 777-200 and -300 series airplanes. This proposed AD was prompted by reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. This proposed AD would require incorporating operating limitations, or modifying the water and fuel scavenge systems in the fuel tanks and certain electrical panels. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Boeing service information identified in this NPRM, contact Boeing

Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>.

You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. Boeing service information is also available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0495.

#### 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-2018-0495; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3555; email: [kevin.nguyen@faa.gov](mailto:kevin.nguyen@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2018-0495; Product Identifier 2017-NM-089-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

#### Discussion

We have received reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. During flight, any water in the fuel can sink to the bottom of the fuel tank. This water can enter the fuel scavenge inlets and can then freeze as it travels from the body center fuel tank into the colder fuel scavenge tubes in the left and right cheek center fuel tanks (outboard of the side of body ribs). The flow of scavenge fuel from the center fuel tank to the main fuel tanks can then decrease or stop. When this occurs, as much as 700 pounds of fuel can remain unavailable during flight. If the fuel quantity decreases to the quantity of the unavailable fuel, then fuel exhaustion will occur, which could lead to subsequent power loss of all engines.

#### Related Rulemaking

We issued AD 2002-16-15, Amendment 39-12854 (67 FR 54333, August 22, 2002), applicable to certain Boeing Model 777 series airplanes, that requires modification of the supports for the wire bundles of the fuel quantity indicator system (FQIS), and follow-on actions if necessary. AD 2002-16-15 was issued to prevent chafing of the FQIS wiring on surrounding structures and system, which could result in exposure of the bare conductor in close proximity to structures or other electrically conductive return paths, and potential electrical arcing and explosion in the fuel tank in the event of an additional wiring failure outside the fuel tank. Paragraph (a)(2) of AD 2002-16-15 requires modifying the supports for the FQIS wire bundles in the center fuel tank (including installing spacers on the FQIS wiring support brackets and standoffs, installing a clamp next to the grommet at each tank unit, and replacing the clamp filler O-rings), in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777-28-0016, dated April 27, 2000.

This proposed AD would require incorporating operating limitations, or modifying the water and fuel scavenge systems in the fuel tanks and certain electrical panels.

Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, provides instructions to modify the fuel tanks scavenge system. For airplanes identified as Groups 1 through 4 and 7 through 14 in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, a minor adjustment to a certain FQIS wire bundle routing to allow the installation of a new fuel scavenge tube would need to be made. Although this minor adjustment is a deviation from the wire routing layout required by paragraph (a)(2) of AD 2002–16–15, the separation of the wire bundles from chafing and rubbing against a new fuel scavenge inlet tube is maintained, which is the safety objective of AD 2002–16–15.

Because of the difference in the FQIS wire bundle routing required in paragraph (a)(2) of AD 2002–16–15 and routing specified in paragraph (h) of this proposed AD, we have determined that operators of airplanes identified as Groups 1 through 4 and 7 through 14 in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, would need an alternative method of compliance (AMOC) to paragraph (a)(2) of AD 2002–16–15. Therefore, paragraph (j)(5) of this proposed AD specifies that

accomplishment of the engine fuel feed system modification specified in paragraph (h) of this proposed AD is acceptable for compliance with the routing requirements of fuel quantity indicating system wire bundle W8011 in the left side of the body center fuel tank specified in paragraph (a)(2) of AD 2002–16–15.

#### Related Service Information Under 1 CFR Part 51

We reviewed Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017. This service information describes procedures for changing the water and fuel scavenge systems in the fuel tanks on each side of the airplane. The FQIS wire bundle W8011 adjustment is intended to prevent the wire bundle from rubbing with a new fuel scavenge inlet tube. Additionally, this service information describes procedures for making electrical changes in the main equipment center, including installing additional relays on the P301 and P302 panels, and making wiring changes. Also, this service information describes procedures for installing new electrical load management system 1 (ELMS1) software.

This service information is reasonably available because the interested parties

have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

#### FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

#### Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified as “RC” (required for compliance) in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures, see this service information at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0495.

#### Costs of Compliance

We estimate that this proposed AD affects 111 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

#### ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Incorporation operating limitations .....	1 work-hour × \$85 per hour = \$85 .....	\$0	\$85	\$9,435

#### ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Fuel system modification .....	207 work-hours × \$85 per hour = \$17,595 .....	\$85,572	\$103,167
P110 and P210 panel changes .....	2 work-hours × \$85 per hour = \$170 .....	0	170

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

#### Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft

Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

#### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA–2018–0495; Product Identifier 2017–NM–089–AD.

#### (a) Comments Due Date

We must receive comments by July 16, 2018.

#### (b) Affected ADs

This AD affects AD 2002–16–15, Amendment 39–12854 (67 FR 54333, August 22, 2002).

#### (c) Applicability

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017.

#### (d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

#### (e) Unsafe Condition

This AD was prompted by reports of unreliable performance of the water and fuel scavenge system; failure of the fuel scavenge function can cause trapped fuel, resulting in unavailable fuel reserves. We are issuing this AD to prevent loss of capability to scavenge fuel in the center fuel tank, which could lead to fuel exhaustion and subsequent power loss of all engines.

#### (f) Compliance

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

#### (g) Revision to Operating Limitations

Within 36 months after the effective date of this AD: Revise the operating limitations in the documents specified in paragraphs (g)(1) and (g)(2) of this AD to include the text in figure 1 to paragraph (g) of this AD.

(1) “Fuel System—Loading” section of the “Certificate Limitations” section of the FAA-approved Boeing Model 777 Airplane Flight Manual.

(2) “Loading Limitations” section of the “Fuel Loading Procedures” section of the “Fuel Management” section of the FAA-approved Boeing Model 777 Weight and Balance Control and Loading Manual.

### Figure 1 to paragraph (g) of this AD – Operating limitation

When center tank fuel is required for the mission, an additional 700 lbs. (320 kg) of reserve fuel must be added to the center tank fuel load.

#### (h) Optional Terminating Action

Modifying the fuel tank fuel and water scavenge systems, modifying the fuel jettison system, making electrical changes in the main equipment center, modifying the wiring in the ELMS P110 and 210 panels, and installing new electrical load management system 1 (ELMS1) software, by doing all applicable actions identified as “RC” (required for compliance) in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017, is an optional terminating action to the requirements of paragraph (g) of this AD.

#### (i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–28–0082, dated May 26, 2016.

#### (j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle 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 ACO branch, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled “RC Exempt,” then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator’s maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(5) For airplanes in Groups 1 through 4, and 7 through 14, as defined in Boeing Special Attention Service Bulletin 777–28–0082, Revision 1, dated May 1, 2017: Accomplishment of the engine fuel feed system modification specified in paragraph (h) of this AD is acceptable for compliance with the routing requirements of fuel quantity indicating system wire bundle W8011 in the left side of the body center fuel tank specified in paragraph (a)(2) of AD 2002–16–15, provided all provisions of AD 2002–16–15 that are not specifically



described in this paragraph remain fully applicable and are complied with accordingly.

#### (k) Related Information

(1) For more information about this AD, contact Kevin Nguyen, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3555; email: [kevin.nguyen@faa.gov](mailto:kevin.nguyen@faa.gov).

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

Issued in Des Moines, Washington, on May 23, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018-11693 Filed 5-31-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-1105; Product Identifier 2017-SW-023-AD]

**RIN 2120-AA64**

#### Airworthiness Directives; Bell Helicopter Textron Canada Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 427 helicopters. This proposed AD would require inspecting the inboard skin of the vertical fin around the four tailboom attachment points. This proposed AD is prompted by reports of cracked vertical fin skins that resulted from metal fatigue. The actions of this proposed AD are intended to prevent an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 31, 2018.

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

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- **Fax:** 202-493-2251.

- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

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

#### 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-2017-1105; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the Transport Canada AD, the economic evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437-2862 or (800) 363-8023; fax (450) 433-0272; or at <http://www.bellcustomer.com/files/>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [matthew.fuller@faa.gov](mailto:matthew.fuller@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

#### Discussion

Transport Canada, which is the aviation authority for Canada, has issued Canadian AD No. CF-2017-03, dated January 31, 2017, to correct an unsafe condition for BHTC Model 427 helicopters with vertical fin part number (P/N) 427-035-840-105 or P/N 427-035-840-109 installed. Transport Canada advises of three reports of cracked vertical fin skins that resulted from metal fatigue. If not detected, the crack may grow to a critical length, causing the fin to fail, separate from the helicopter and damage the main or tail rotor blades, leading to their in-flight failure. Loss of the fin may also adversely affect the helicopter's directional stability, leading to loss of directional control. Transport Canada advises.

Transport Canada consequently requires repetitively inspecting the vertical fins for a crack, and if a crack is detected, replacing the fin before further flight.

#### FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, Transport Canada, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

#### Related Service Information Under 14 CFR Part 51

We reviewed Bell Helicopter Alert Service Bulletin 427-15-38, Revision A, dated November 14, 2016, which specifies recurring inspections of the vertical fins every 100 hours time-in-service (TIS) once the vertical fin has accumulated 1,500 hours TIS. This inspection also was incorporated in Chapter 4 of the maintenance manual. This service information also specifies



that serial numbers be assigned to vertical fins that do not have a serial number.

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.

### Proposed AD Requirements

This proposed AD would require within 25 hours TIS or before the helicopter has accumulated 1,500 hours TIS, whichever occurs later and thereafter at intervals not to exceed 100 hours TIS:

- Removing and cleaning the vertical fin attachment area.
- Using a 10X magnifying glass, visually inspecting the inboard skin of the vertical fin around the four tailboom attachment points for a crack and replacing the fin before further flight if there is a crack.
- Assigning a serial number if the vertical fin does not have a serial number.

### Costs of Compliance

We estimate that this proposed AD would affect 27 helicopters of U.S. Registry and that labor costs average \$85 a work hour. Based on these estimates, we expect the following costs:

- Performing the visual inspection would require 2.25 work-hours and no parts for a cost of about \$191 per helicopter and \$5,157 for the U.S. fleet per inspection cycle.
- Replacing the fin would require 4 work-hours, and parts would cost \$10,000, for a cost of \$10,340 per helicopter.
- Assigning a serial number to the fin would require 0.5 work-hour for a cost of \$43 per helicopter.

### 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.

### Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Bell Helicopter Textron Canada Limited:**  
Docket No. FAA-2017-1105; Product Identifier 2017-SW-023-AD.

#### (a) Applicability

This AD applies to Bell Helicopter Textron Canada Limited Model 427 helicopters with a vertical fin part number (P/N) 427-035-840-105 or P/N 427-035-840-109 installed, certificated in any category.

#### (b) Unsafe Condition

This AD defines the unsafe condition as a crack on the vertical fin skin. This condition

could lead to structural failure of the fin, separation of the skin from the helicopter, damage to the main or tail rotor blades and loss of helicopter control.

#### (c) Comments Due Date

We must receive comments by July 31, 2018.

#### (d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

#### (e) Required Actions

Within 25 hours time-in-service (TIS) or before the helicopter has accumulated 1,500 hours TIS, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS:

(1) Remove the vertical fin and clean the vertical fin attachment area with a soap solution to remove all traces of dirt, stains, exhaust residue, and oil. Rinse the area with water and let dry.

(i) Using a 10X power magnifying glass, visually inspect the inboard skin of the vertical fin for a crack around the four tailboom attachment points as depicted in Figure 1 of Bell Helicopter Alert Service Bulletin 427-15-38, Revision A, dated November 14, 2016. Pay particular attention to the upper aft attachment point.

(ii) If there is a crack, replace the vertical fin before further flight.

(2) If the vertical fin does not have a serial number, assign a serial number using the helicopter serial number, and permanently mark the new serial number on the vertical fin data plate. Create a component history card or equivalent record and annotate the serial number.

#### (f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email [9-ASW-FTW-AMOC-Requests@faa.gov](mailto:9-ASW-FTW-AMOC-Requests@faa.gov).

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

#### (g) Additional Information

The subject of this AD is addressed in Transport Canada AD No. CF-2017-03, dated January 31, 2017. You may view the Transport Canada AD on the internet at <http://www.regulations.gov> in the AD Docket.

#### (h) Subject

Joint Aircraft Service Component (JASC) Code: 5300, Fuselage Structure (General).

Issued in Fort Worth, Texas, on May 16, 2018.

**Scott A. Horn,**

*Deputy Director for Regulatory Operations,  
Compliance & Airworthiness Division,  
Aircraft Certification Service.*

[FR Doc. 2018-11445 Filed 5-31-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2017-1138; Product Identifier 2017-NE-41-AD]

RIN 2120-AA64

#### Airworthiness Directives; Austro Engine GmbH Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Austro Engine GmbH model E4 engines and for all model E4P engines. This proposed AD was prompted by reports of considerable wear on the timing chain on these engines. This proposed AD would require replacement of the timing chain and amending certain airplane flight manuals to limit use of windmill restarts. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A-2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000-2711; internet: [www.austroengine.at](http://www.austroengine.at). You may view this service information at the FAA, Engine & Propeller Standards Branch, 1200 District

Avenue, Burlington, MA, 01803. For information on the availability of this material at the FAA, call 781-238-7759.

#### 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-2017-1138; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800-647-5527) is listed above. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7146; fax: 781-238-7199; email: [barbara.caufield@faa.gov](mailto:barbara.caufield@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2017-1138; Product Identifier 2017-NE-41-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2017-0103, dated June 14, 2017 (referred to after this as the MCAI), to correct an unsafe condition for the specified products. The MCAI states:

Considerable wear of the timing chain has been detected on some engines. This may have been caused by windmilling restarts, which are known to cause high stress to the timing chain.

This condition, if not detected and corrected, could lead to failure of the timing chain and consequent engine power loss,

possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Austro Engine included instructions in the engine maintenance manual to periodically inspect the condition of the timing chain and, depending on findings, to replace the timing chain and the chain wheel. The operation manual was updated to allow windmilling restart only as an emergency procedure.

More recently, Austro Engines published Mandatory Service Bulletin (MSB) MSB-E4-017/2, providing instructions to replace the timing chain for engines with known windmilling restarts. For the reason described above, this [EASA] AD requires replacement of the timing chain for engines with known windmilling restarts, and requires amendment of the applicable Aircraft Flight Manual (AFM).

You may obtain further information by examining the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2017-1138.

#### Related Service Information Under 14 CFR Part 51

We reviewed Austro Engine GmbH Mandatory Service Bulletin (MSB) No. MSB-E4-017/2, dated December 2, 2016. The MSB describes procedures for replacement of the timing chain. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

#### FAA's Determination

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information provided by EASA and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

#### Proposed AD Requirements

This proposed AD would require replacement of the timing chain and amending certain airplane flight manuals to limit use of windmill restarts.

#### Costs of Compliance

We estimate that this proposed AD affects 211 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

## ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Amend AFM .....	1 work hour × \$85 per hour = \$85 .....	\$0	\$85	\$17,935
Remove and replace timing chain .....	8 work-hours × \$85 per hour = \$680 .....	775	1,455	307,005

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Austro Engine GmbH Engines:** Docket No. FAA-2017-1138; Product Identifier 2017-NE-41-AD.

**(a) Comments Due Date**

We must receive comments by July 16, 2018.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Austro Engine GmbH model E4 engines with serial numbers that have a "–B" or "–C" configuration and to model E4P engines, all serial numbers.

**(d) Subject**

Joint Aircraft System Component (JASC) Code 8520, Reciprocating Engine Power Section.

**(e) Unsafe Condition**

This AD was prompted by reports of considerable wear on the timing chain on these engines. We are issuing this AD to prevent failure of the engine timing chain. The unsafe condition, if not addressed, could result in failure of the engine timing chain, loss of engine thrust control, and reduced control of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

(1) Determine whether the engine is a Group 1 or Group 2 engine as follows.

(i) A Group 1 engine is an engine equipped with a timing chain that was installed on an engine that experienced a windmill restart, or an engine in which it cannot be determined if the engine experienced any windmilling restarts.

(ii) A Group 2 engine is an engine that is equipped with a timing chain that has not experienced any windmilling restarts.

(2) For Group 1 engines: Before the affected timing chain exceeds 945 engine flight hours (EFHs) since installation on an engine, or within 110 EFHs after the effective date of this AD, whichever occurs later, replace the timing chain in accordance with the instructions in Technical Details, Paragraph 2, in Austro Engine Mandatory Service Bulletin (MSB) No. MSB-E4-017/2, dated December 2, 2016.

(3) For Group 1 and Group 2 engines: After the effective date of this AD, following each windmill restart of an engine, before the timing chain of that engine exceeds 945 EFHs since first installation on an engine, or within 110 EFHs after that windmilling restart, whichever occurs later, replace the timing chain in accordance with the instructions in Technical Details, Paragraph 2, in Austro Engine MSB No. MSB-E4-017/2, dated December 2, 2016.

(4) For Group 1 and Group 2 engines: Within 30 days after the effective date of this AD, amend the applicable Airplane Flight Manual under Emergency Procedures by adding the information in figure 1 to paragraph (g)(4) of this AD to limit the use of a windmilling restart to only an emergency procedure.

**Figure 1 to Paragraph (g)(4) of this AD – Restart In-Flight by Windmilling****Restart in-flight by windmilling**

! In case of an engine malfunction determine the root cause and only continue in case a safe restart is possible.

1. Max. demonstrated altitude for immediate restart by windmilling: 15.000ft
2. Max. demonstrated altitude for restart after 10 min. and ambient air temperature higher than ISA by windmilling: 10.000ft
3. Max. demonstrated altitude for restart after 5 min. and ambient air temperature between ISA and ISA minus 10 °C by windmilling: 10.000ft
4. Max. demonstrated altitude for restart after 2 min. and ambient air temperature below ISA minus 10 °C by windmilling: 10.000ft
5. Airspeed: see applicable Aircraft Flight Manual
6. Power Levers – “IDLE”
7. Engine Master – “ON”

! Move power lever slightly forward to a power rating assuring that the referring engine is delivering thrust, as a rotating propeller is not a guarantee for a running engine.

**(h) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ECO Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. You may email your request to: [ANE-AD-AMOC@faa.gov](mailto:ANE-AD-AMOC@faa.gov).

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

**(i) Related Information**

(1) For more information about this AD, contact Barbara Caufield, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781-238-7146; fax: 781-238-7199; email: [barbara.caufield@faa.gov](mailto:barbara.caufield@faa.gov).

(2) Refer to European Aviation Safety Agency AD 2017-0103, dated June 14, 2017, for more information. You may examine the EASA AD in the AD docket on the internet

at <http://www.regulations.gov> by searching for and locating it in Docket No. FAA-2017-1138.

(3) For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A-2700 Weiner Neustadt, Austria; phone: +43 2622 23000; fax: +43 2622 23000-2711; internet: [www.austroengine.at](http://www.austroengine.at). You may view this referenced service information at the FAA, Engine & Propeller Standards Branch, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781-238-7759.

Issued in Burlington, Massachusetts, on May 23, 2018.

**Robert J. Ganley,**

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

[FR Doc. 2018-11378 Filed 5-31-18; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2018-0491; Product Identifier 2017-NM-158-AD]

**RIN 2120-AA64**

**Airworthiness Directives; Airbus Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Airbus Model A310 series airplanes. This proposed AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to

incorporate new or more restrictive maintenance requirements and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); internet <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

#### 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-2018-0491; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206-231-3225.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No.

FAA-2018-0491; Product Identifier 2017-NM-158-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017-0206, dated October 12, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Airbus Model A310 series airplanes. The MCAI states:

The airworthiness limitations for the Airbus A310 aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A310 Airworthiness Limitations Section (ALS) documents. The Damage Tolerant Airworthiness Limitation Items are specified in the A310 ALS Part 2. These instructions have been identified as mandatory for continuing airworthiness.

Failure to accomplish these instructions could result in an unsafe condition.

EASA previously issued AD 2016-0217 [which corresponds to FAA AD 2017-21-08, Amendment 39-19079 (82 FR 48904, October 23, 2017) (“AD 2017-21-08”)] to require compliance with the maintenance requirements and associated airworthiness limitations defined in Airbus A310 ALS Part 2 Revision 01, Variation 1.1 and Variation 1.2.

Since that [EASA] AD was issued, new or more restrictive maintenance requirements and associated airworthiness limitations were approved by the EASA. Consequently, Airbus published Revision 02 of the A310 ALS Part 2, compiling all ALS Part 2 changes approved since previous Revision 01.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016-0217, which is superseded, and requires accomplishment of the actions specified in Airbus A310 ALS Part 2 Revision 02.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0491.

#### Relationship Between Proposed AD and AD 2017-21-08

This NPRM would not supersede AD 2017-21-08. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program to incorporate the new maintenance requirements and airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2017-21-08.

#### Related Service Information Under 1 CFR Part 51

Airbus has issued A310 Airworthiness Limitations Section (ALS), Part 2, “Damage Tolerant Airworthiness Limitation Items (DT-ALIs),” Revision 02, dated August 28, 2017. This service information describes airworthiness limitations applicable to the DT-ALIs. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

#### FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

## Costs of Compliance

We estimate that this proposed AD affects 6 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although we recognize that this number may vary from operator to operator. In the past, we have estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), we have determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, we estimate the total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

## Authority for This Rulemaking

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

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

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

## Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus:** Docket No. FAA-2018-0491; Product Identifier 2017-NM-158-AD.

### (a) Comments Due Date

We must receive comments by July 16, 2018.

### (b) Affected ADs

This AD affects AD 2017-21-08, Amendment 39-19079 (82 FR 48904, October 23, 2017) ("AD 2017-21-08").

### (c) Applicability

This AD applies to Airbus Model A310-203, -204, -221, -222, -304, -322, -324, and -325 airplanes, certificated in any category, all manufacturer serial numbers.

### (d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

### (e) Reason

This AD was prompted by a determination that new or more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

## (f) Compliance

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

## (g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, "Damage Tolerant Airworthiness Limitation Items (DT-ALI)," Revision 02, dated August 28, 2017. The initial compliance time for doing the tasks is at the time specified in Airbus A310 Airworthiness Limitations Section (ALS), Part 2, "Damage Tolerant Airworthiness Limitation Items (DT-ALI)," Revision 02, dated August 28, 2017, or within 90 days after the effective date of this AD, whichever occurs later.

## (h) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

## (i) Terminating Action for AD 2017-21-08

Accomplishing the actions required by this AD terminates all requirements of AD 2017-21-08.

## (j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

## (k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA

Airworthiness Directive 2017–0206, dated October 12, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0491.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3225.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); internet <http://www.airbus.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 21, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division,  
Aircraft Certification Service.*

[FR Doc. 2018–11680 Filed 5–31–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2013–0555; Product Identifier 2010–SW–047–AD]

**RIN 2120–AA64**

#### **Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters (Previously Eurocopter Deutschland GmbH)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise Airworthiness Directive (AD) 2014–05–06 for Eurocopter Deutschland GmbH Model EC135 and MBB–BK 117C–2 helicopters. AD 2014–05–06 requires repetitive inspections of the flight-control bearings, replacing any loose bearings with airworthy flight-control bearings, and installing bushings and washers. This proposed AD would retain the requirements of AD 2014–05–06 but would remove the repetitive inspections. The actions of this proposed AD are intended to correct an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 31, 2018.

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

- **Federal eRulemaking Docket:** Go to <http://www.regulations.gov>. Follow the online instructions for sending your comments electronically.

- **Fax:** 202–493–2251.

- **Mail:** Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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

#### **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–2013–0555; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at [http://www.helicopters.airbus.com/website/en/ref/Technical-Support\\_73.html](http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html). You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email [matthew.fuller@faa.gov](mailto:matthew.fuller@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket

does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

#### **Discussion**

EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2010–0058, dated March 30, 2010, for Eurocopter Deutschland GmbH (now Airbus Helicopters Deutschland GmbH) Model EC135, EC635, and MBB–BK 117C–2 helicopters. EASA advises that during an inspection of an MBB–BK117 C–2, “bearings were detected which had not been correctly fixed.” EASA advises that this condition, if not detected and corrected, may cause the affected control lever to shift in the axial direction and contact the helicopter structure, possibly resulting in reduced helicopter control. As some bearings on the EC135 and MBB–BK 117C–2 helicopter are installed with the same procedure, they are equally affected by the possibility of the unsafe condition, EASA advises.

As a result, we published AD 2014–05–06 (79 FR 13196, March 10, 2014), which requires repetitively inspecting the flight-control bearings, replacing any loose bearings with an airworthy flight-control bearing, and installing bushings and washers.

#### **Actions Since AD 2014–05–06 Was Issued**

Since we published AD 2014–05–06, EASA issued AD No. 2010–0058R1, dated April 7, 2017, to remove the repetitive inspections required by EASA AD No. 2010–0058. EASA advises that a review of data and feedback from in-service helicopters determined the Airbus Helicopters modification removes the need for repetitive inspections. We have made a similar determination and are issuing this proposed AD to remove the repetitive inspections required by AD 2014–05–06.



### FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

### Related Service Information Under 1 CFR Part 51

Eurocopter issued Alert Service Bulletin (ASB) EC135-67A-019, Revision 3, dated December 16, 2009, for Model EC135-series helicopters, and ASB MBB-BK117C-2-67A-010, Revision 3, dated February 8, 2010, for Model MBB-BK 117C-2 helicopters. This service information specifies a repetitive inspection of the affected bearings and retrofitting bushings on the levers to prevent movement of the bearings.

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.

### Other Related Service Information

We reviewed Airbus Helicopters ASB EC135-67A-019 for Model EC135-series helicopters and ASB MBB-BK117C-2-67A-010 for Model MBB-BK 117C-2 helicopters, both Revision 4 and both dated April 3, 2017. This service information removes the repetitive inspections and retains the procedures for retrofitting the bushings on the levers to prevent movement of the bearings. Revision 3 of this service information is attached as an appendix to Revision 4.

### Proposed AD Requirements

For EC135 helicopters, this proposed AD would require within 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modifying the left-hand (LH) and right-hand (RH) guidance units and cyclic shaft by installing bushings and washers to prevent shifting in the axial direction.

For MBB-BK 117C-2 helicopters, this proposed AD would require within 100 hours TIS or at the next annual inspection, whichever occurs first, modifying the LH and RH guidance units and the lateral control lever by installing bushings and washers to prevent shifting of the bearings in the axial direction.

### Differences Between This Proposed AD and the EASA AD

Differences between this AD and the EASA AD are:

- The EASA AD is applicable to EC 635-series helicopters, whereas this proposed AD would not because these model helicopters have no U.S. type certificate.
- The EASA AD requires the modification within the next 12 months after April 13, 2010. This proposed AD would require the modification within 100 hours TIS or at the next annual inspection, whichever occurs first.

### Costs of Compliance

We estimate that this AD affects 295 Model EC135-series helicopters and 117 Model MBB-BK 117C-2 helicopters of U.S. Registry and that labor costs average \$85 per work-hour. Based on these estimates, we expect the following costs:

- For EC135 helicopters, completing the required modification would require about 32 work-hours and parts would cost about \$312, for a total cost of \$3,032 per helicopter and \$894,400 for the U.S. fleet.
- For MBB-BK 117C-2 helicopters, completing the required modification would require about 32 work-hours and parts would cost about \$396, for a total cost of \$3,116 per helicopter and \$364,572 for the U.S. fleet.

### 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.

### Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national

Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2014-05-06, Amendment 39-17779 (79 FR 13196, March 10, 2014), and adding the following new AD:

**Airbus Helicopters Deutschland GmbH (Previously Eurocopter Deutschland GmbH):** Docket No. FAA-2013-0555; Product Identifier 2010-SW-047-AD.

#### (a) Applicability

This AD applies to the following Airbus Helicopters Deutschland GmbH (previously Eurocopter Deutschland GmbH) helicopters, certificated in any category:

- (1) Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters, serial number (S/N) 0005 through 00829, with a tail rotor control lever, part number (P/N) L672M2802205 or L672M1012212; cyclic control lever, P/N L671M1005250; collective control lever assembly, P/N L671M2020108; or collective control plate, P/N L671M5040207; installed, and
- (2) Model MBB-BK 117C-2 helicopters, S/N 9004 through 9310, with a tail rotor control lever assembly, P/N B672M1007101 or B672M1807101; tail rotor control lever, P/N



B672M1002202 or L672M2802205; or lateral control lever assembly, P/N B670M1008101, installed.

#### (b) Unsafe Condition

This AD defines the unsafe condition as incorrectly installed flight control bearings. This condition could cause the affected control lever to shift and contact the helicopter structure, resulting in reduced control of the helicopter.

#### (c) Comments Due Date

We must receive comments by July 31, 2018.

#### (d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

#### (e) Required Actions

(1) For Model EC135 P1, P2, P2+, T1, T2, and T2+ helicopters: Within the next 100 hours time-in-service (TIS) or at the next annual inspection, whichever occurs first, modify the left-hand (LH) and right-hand (RH) guidance units and the cyclic shaft by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(i) Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever of the LH guidance unit as depicted in Detail A of Figure 5 of Eurocopter Alert Service Bulletin EC135-67A-019, Revision 3, dated December 16, 2009 (EC135 ASB).

(ii) For helicopters without a yaw brake, remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the bearing block and the lever as depicted in Detail B of Figure 5 of EC135 ASB.

(iii) Remove and disassemble the cyclic shaft and install a washer, P/N L671M10055260, between the bearing block and the lever as depicted in Detail C of Figure 6 of EC135 ASB.

(iv) Remove the collective control rod from the bellcrank and install a washer, P/N L221M1042208, on each side of the collective control rod and bellcrank as depicted in Detail D of Figure 6 of EC135 ASB.

(2) For Model MBB-BK 117C-2 helicopters: Within the next 100 hours TIS or at the next annual inspection, whichever occurs first, modify the LH and RH guidance units and the lateral control lever by installing bushings and washers to prevent shifting of the bearings in the axial direction as follows:

(i) Remove and disassemble the RH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail B of Figure 4 of Eurocopter Alert Service Bulletin MBB BK117C-2-67A-010, Revision 3, dated February 8, 2010 (BK117 ASB). Remove and disassemble the LH guidance unit and install a bushing, P/N L672M1012260, between the lever and the bracket as depicted in Detail C of Figure 4 of BK117 ASB.

(ii) Remove the lateral control lever and install new bushings in accordance with the

Accomplishment Instructions, paragraphs 3.C(9)(a) through 3.C(9)(g) of BK117 ASB.

(iii) Identify the modified lever assembly by writing "MBB BK117C-2-67A-010" on the lever with permanent marking pen and protect with a single layer of lacquer (CM 421 or equivalent).

(iv) Apply corrosion preventive paste (CM518 or equivalent) on the shank of the screws and install airworthy parts as depicted in Figure 5 of BK117 ASB.

#### (f) Affected ADs

This AD replaces AD 2014-05-06, Amendment 39-17779 (79 FR 13196, March 10, 2014).

#### (g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Matt Fuller, Senior Aviation Safety Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email 9-ASW-FTW-AMOC-Requests@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

#### (h) Additional Information

(1) Airbus Helicopters Alert Service Bulletin EC135-67A-019, Revision 4, dated April 3, 2017, and Alert Service Bulletin MBB-BK117C-2-67A-010, Revision 4, dated April 3, 2017, which are not incorporated by reference, contain additional information about this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at [http://www.helicopters.airbus.com/website/en/ref/Technical-Support\\_73.html](http://www.helicopters.airbus.com/website/en/ref/Technical-Support_73.html). You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N-321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2010-0058R1, dated April 7, 2017. You may view the EASA AD on the internet at <http://www.regulations.gov> in the AD Docket.

#### (i) Subject

Joint Aircraft Service Component (JASC) Code: 6710, Main Rotor Control.

Issued in Fort Worth, Texas, on May 11, 2018.

**Scott A. Horn,**

*Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2018-11447 Filed 5-31-18; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2018-0496; Product Identifier 2018-NM-031-AD]

RIN 2120-AA64

#### Airworthiness Directives; Dassault Aviation Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. This proposed AD was prompted by reports of metallic debris found in the wing slat piccolo tubes; investigation revealed that the debris originated from the flow guide of the ball joint of the wing anti-ice valve. This proposed AD would require repetitive inspections for metallic debris and damage of the flow guide of the ball joint of the wing anti-ice valve, and related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201-440-6700; internet <http://www.dassaultfalcon.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

#### Examining the AD Docket

You may examine the AD docket on the internet at <http://>

[www.regulations.gov](http://www.regulations.gov) by searching for and locating Docket No. FAA–2018–0496; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2018–0496; Product Identifier 2018–NM–031–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this NPRM.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European

Union, has issued EASA Airworthiness Directive 2018–0022, dated January 29, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes. The MCAI states:

Occurrences were reported on Falcon 2000 and Falcon 2000EX aeroplanes, where metallic debris was found in slat piccolo tubes. The technical investigation revealed that debris originated from the flow guide of the ball joint located downstream of the wing anti-ice valve. It was also determined that small debris gathers at the end of the piccolo tube, but larger pieces of debris may stop before, in the distribution piping, restricting the airflow and potentially leading to undetected insufficient wing anti-ice capability.

This condition, if not detected and corrected, could lead to undetected significant ice accretion on the wing, possibly resulting in loss of control of the aeroplane.

To address this potential unsafe condition, Dassault Aviation issued Service Bulletin (SB) F2000EX–413 for Falcon 2000EX and SB F2000–441 for Falcon 2000, providing applicable instructions.

For the reasons described above, this [EASA] AD requires repetitive [detailed] inspections [for discrepancies including cracks and loss of material] of the affected ball joint and, depending on findings, accomplishment of applicable related investigative and corrective actions \* \* \*.

Related investigative actions include, for any loss of material, borescope inspections of anti-ice pipes for debris, nicks, and damage. Corrective actions include replacing any cracked or damaged ball joint, and removing debris from the flow guide. You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0496.

**Related Service Information Under 1 CFR Part 51**

Dassault Aviation has issued Service Bulletins F2000–441, dated June 20, 2017; and F2000EX–413, dated July 10, 2017. This service information describes procedures for repetitive inspections for metallic debris and damage of the flow guide of the anti-ice ball joint of the wing. The service information also describes procedures for replacing the ball joint and pipe, and performing borescope inspections of damaged wing anti-ice pipes and removal of any debris from the flow guide. These documents are distinct since they apply to different airplane models. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA’s Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

**Costs of Compliance**

We estimate that this proposed AD affects 348 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
6 work-hours × \$85 per hour = \$510 .....	\$0	\$510	\$177,480

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: “General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

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

and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

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

### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**Dassault Aviation:** Docket No. FAA–2018–0496; Product Identifier 2018–NM–031–AD.

#### (a) Comments Due Date

We must receive comments by July 16, 2018.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Dassault Aviation Model FALCON 2000 and FALCON 2000EX airplanes, certificated in any category, all serial numbers equipped with any anti-ice

pipe having part number (P/N) F2MA724561A1 or P/N F2MA724561A2, except airplanes on which Dassault Modification (mod) M5000 or Dassault mod M5001 has been embodied in production.

#### (d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

#### (e) Reason

This AD was prompted by reports of metallic debris found in the wing slat piccolo tubes; investigation revealed that the debris originated from the flow guide of the ball joint of the wing anti-ice valve. We are issuing this AD to address restricted airflow of the piccolo tubes, leading to insufficient wing anti-ice capability and significant undetected ice accretion on the wing, which could result in loss of control of the airplane.

#### (f) Compliance

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

#### (g) Repetitive Inspections and Corrective Actions

Within 25 months after the effective date of this AD: Perform a detailed inspection for discrepancies of the flow guide of the ball joint located downstream of the wing anti-ice valve, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F2000–441, dated June 20, 2017; or Dassault Aviation Service Bulletin F2000EX–413, dated July 10, 2017; as applicable. Repeat the detailed inspection thereafter at intervals not to exceed 25 months. Do all applicable corrective actions before further flight.

#### (h) No Reporting Requirement

Although the service information identified in paragraph (g) of this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

#### (i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). 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.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must

be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

#### (j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0022, dated January 29, 2018, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0496.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; internet <http://www.dassaultfalcon.com>. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 22, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–11679 Filed 5–31–18; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2018–0494; Product Identifier 2017–NM–182–AD]

**RIN 2120–AA64**

### Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede Airworthiness Directive (AD) 2006–07–26, which applies to all ATR–GIE Avions de Transport Régional Model ATR42 airplanes. AD 2006–07–26 requires a one-time inspection to detect discrepancies (*e.g.*, cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, and repair if necessary. Since we issued AD 2006–07–26, we have

received reports of cracking in these same areas on other Model ATR42 airplanes. This proposed AD would require repetitive inspections to detect discrepancies of the upper skin and rib feet of the outer wing boxes, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 16, 2018.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

- **Fax:** 202-493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact ATR-GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email [continued.airworthiness@atr-aircraft.com](mailto:continued.airworthiness@atr-aircraft.com). You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

### 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-2018-0494; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

### FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3220.

### SUPPLEMENTARY INFORMATION:

### Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2018-0494; Product Identifier 2017-NM-182-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

### Discussion

We issued AD 2006-07-26, Amendment 39-14553 (71 FR 18205, April 11, 2006) (“AD 2006-07-26”) for all ATR-GIE Avions de Transport Régional Model ATR42 airplanes. AD 2006-07-26 requires a one-time inspection to detect discrepancies (e.g., cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, and repair if necessary. AD 2006-07-26 resulted from a report of cracking on the upper skin and ribs of the outer wing box on an in-service airplane. We issued AD 2006-07-26 to detect and correct discrepancies of the upper skin and rib feet of the outer wing boxes, which could result in reduced structural integrity of the airplane.

### Actions Since AD 2006-07-26 Was Issued

Since we issued AD 2006-07-26, we have received additional reports of cracking on the upper skin and ribs of the outer wing box on other Model ATR42 airplanes.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017-0244, dated December 7, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all ATR-GIE Avions de Transport Régional Model ATR42 airplanes. The MCAI states:

Occurrence was reported of detecting cracks on the wing of one in-service ATR 42 aeroplane in 2004. The cracks were found on the upper feet of ribs and on the upper skin of the wing outer boxes.

This condition, if not detected and corrected, could adversely affect the structural integrity of the aeroplane.

To address this potential unsafe condition, ATR issued Service Bulletin (SB) ATR42-57-

0064 to provide inspection instructions and DGAC [Direction Générale de l'Aviation Civile] France issued [French] AD F-2004-191 (EASA approval 2004-12117) [which corresponds to FAA AD 2006-07-26] to require, for aeroplanes having accumulated more than 4,000 flight cycles (FC), a one-time Detailed Visual Inspection (DVI) of outer wing box upper skin and upper rib feet, on the right hand (RH) and left hand (LH) sides, from rib 24 to rib 29. After that [French] AD was issued, based on inspection results (all aeroplanes inspected, no similar case found), it was determined that these cracks were an isolated case.

More recently, three other cases were reported, indicating that this may not be an isolated case and that cracks could occur in this area of the wings on other ATR 42 aeroplanes. Consequently, ATR published SB ATR42-57-0074 (hereafter referred as ‘ATR SB’ in this [EASA] AD) to provide inspection instructions.

For the reasons described above, this [EASA] AD supersedes DGAC France AD F-2004-191 and requires repetitive DVI of the same wing areas and, depending on findings, accomplishment of a repair.

This proposed AD would also require, after each inspection, reporting the inspection findings, both positive and negative, to ATR-GIE Avions de Transport Régional.

You may examine the MCAI in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2018-0494.

### Related Service Information Under 14 CFR Part 51

ATR-GIE Avions de Transport Régional has issued ATR Service Bulletin ATR42-57-0074, dated October 19, 2017. This service information describes procedures for inspecting the upper skin and rib feet of the outer wing boxes for discrepancies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 37 airplanes of U.S. registry. We

estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection .....	6 work-hours × \$85 per hour = \$510 per inspection cycle.	\$0	\$510 per inspection cycle	\$18,870 per inspection cycle.
Reporting .....	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 .....	\$3,145 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

**Authority for This Rulemaking**

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

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

products identified in this rulemaking action.

This proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes to the Director of the System Oversight Division.

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–07–26, Amendment 39–14553 (71 FR 18205, April 11, 2006), and adding the following new AD:

**ATR–GIE Avions de Transport Régional:**  
Docket No. FAA–2018–0494; Product Identifier 2017–NM–182–AD.

**(a) Comments Due Date**

We must receive comments by July 16, 2018.

**(b) Affected ADs**

This AD replaces AD 2006–07–26, Amendment 39–14553 (71 FR 18205, April 11, 2006) ("AD 2006–07–26").

**(c) Applicability**

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category, all manufacturer serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 57, Wings.

**(e) Reason**

This AD was prompted by reports of cracking of the upper skin and rib feet of the outer wing boxes, and more recent reports of such cracking on additional Model ATR42 airplanes. We are issuing this AD to detect and correct discrepancies (e.g., cracking, loose/sheared fasteners, distortion) of the upper skin and rib feet of the outer wing boxes, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Repetitive Inspections**

Within the initial compliance time specified in table 1 to paragraph (g) of this AD, and thereafter at intervals not to exceed 48 months or 6,000 flight cycles, whichever occurs first: Do a detailed visual inspection

for discrepancies of the left-hand and right-hand wing outer wing box upper skin panels and rib upper feet between rib 24 to rib 29.

Do the inspection in accordance with the Accomplishment Instructions of ATR Service

Bulletin ATR42–57–0074, dated October 19, 2017.

**Table 1 to paragraph (g) of this AD – Initial Inspection**

Compliance Time (whichever occurs later, A or B)	
<b>A</b>	Within 48 months or 6,000 flight cycles, whichever occurs first since the airplane's first flight.
<b>B</b>	Within 12 months after the effective date of this AD.

#### (h) Corrective Actions

If any discrepancy is found during any inspection required by paragraph (g) of this AD: Before further flight, repair using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. Do the repair within the compliance time specified in the approved repair method.

#### (i) Reporting

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Report all findings (both positive and negative) of the inspections required by paragraph (g) of this AD to ATR–GIE Avions de Transport Régional, using the information in ATR Service Bulletin ATR42–57–0074, dated October 19, 2017.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

#### (j) Repair Is Not Terminating Action

Unless the repair instructions specify otherwise, repair of an airplane as required by paragraph (h) of this AD is not considered terminating action for the repetitive detailed visual inspections required by paragraph (g) of this AD.

#### (k) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the

collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

#### (l) Other FAA AD Provisions

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (m)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). 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.

(2) *Contacting the Manufacturer*: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

#### (m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2017–0244, dated December 7, 2017, for related information. This MCAI may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2018–0494.

(2) For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(3) For service information identified in this AD, contact ATR–GIE Avions de

Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email [continued.airworthiness@atr-aircraft.com](mailto:continued.airworthiness@atr-aircraft.com). You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 23, 2018.

**James Cashdollar,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2018–11692 Filed 5–31–18; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[EPA–R04–OAR–2018–0173; FRL– 9978–90—Region 4]

### Air Plan Approval and Air Quality Designation; AL; Redesignation of the Etowah County Unclassifiable Area

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

**ACTION:** Proposed rule.

**SUMMARY:** On March 22, 2018, the State of Alabama, through the Alabama Department of Environmental Management (ADEM), submitted a request for the Environmental Protection Agency (EPA) to redesignate the Etowah County, Alabama fine particulate matter (PM<sub>2.5</sub>) unclassifiable area (hereinafter referred to as the “Etowah County Area” or “Area”) to attainment for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> national ambient air quality standards (NAAQS). EPA now has sufficient data to determine that the Etowah County Area is in attainment of the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS. Therefore, EPA is proposing to approve

the State's request and redesignate the Area to unclassifiable/attainment for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS based upon valid, quality-assured, and certified ambient air monitoring data showing that the PM<sub>2.5</sub> monitor in the Area is in compliance with the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS.

**DATES:** Comments must be received on or before July 2, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2018-0173 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Sanchez, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. Ms. Sanchez can be reached by telephone at (404) 562-9644 or via electronic mail at [sanchez.madolyn@epa.gov](mailto:sanchez.madolyn@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Clean Air Act (CAA or Act) establishes a process for air quality management through the establishment and implementation of the NAAQS. After the promulgation of a new or revised NAAQS, EPA is required to designate areas, pursuant to section 107(d)(1) of the CAA, as attainment, nonattainment, or unclassifiable. On September 21, 2006, EPA revised the primary and secondary 24-hour NAAQS for PM<sub>2.5</sub> at a level of 35 micrograms per cubic meter (µg/m<sup>3</sup>), based on a 3-year

average of the annual 98th percentile of 24-hour PM<sub>2.5</sub> concentrations. *See* 71 FR 61144 (October 17, 2006). EPA established the standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to particulate matter.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d)(1) of the CAA. On October 8, 2009, EPA designated areas across the country as nonattainment, unclassifiable, or unclassifiable/attainment<sup>1</sup> for the 2006 24-hour PM<sub>2.5</sub> NAAQS based upon air quality monitoring data from these monitors for calendar years 2006–2008. *See* 74 FR 58688. The monitor in the Etowah County Area had incomplete data for the 2006–2008 timeframe. Therefore, EPA designated Etowah County as unclassifiable for the 2006 24-hour PM<sub>2.5</sub> NAAQS. *Id.*

As discussed in section III, below, the monitor in the Etowah County Area now has sufficient data to determine that the Etowah County Area is in attainment of the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS. Therefore, on March 22, 2018, Alabama submitted a request for EPA to redesignate Area to attainment for these NAAQS.<sup>2</sup>

##### **II. What are the criteria for redesignating an area from unclassifiable to unclassifiable/attainment?**

Section 107(d)(3) of the CAA provides the framework for changing the area designations for any NAAQS pollutants. Section 107(d)(3)(A) provides that the Administrator may notify the Governor of any state that the designation of an area should be revised “on the basis of air quality data, planning and control considerations, or any other air quality-

<sup>1</sup> For the initial PM area designations in 2009 (for the 2006 24-hour PM<sub>2.5</sub> NAAQS), EPA used a designation category of “unclassifiable/attainment” for areas that had monitors showing attainment of the standard and were not contributing to nearby violations and for areas that did not have monitors but for which EPA had reason to believe were likely attaining the standard and not contributing to nearby violations. EPA used the category “unclassifiable” for areas in which EPA could not determine, based upon available information, whether or not the NAAQS was being met and/or EPA had not determined the area to be contributing to nearby violations. EPA reserves the “attainment” category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

<sup>2</sup> Although Alabama requested redesignation of the Area to “attainment,” EPA is proposing to redesignate the area to “unclassifiable/attainment” because, as noted above, EPA reserves the “attainment” category for when EPA redesignates a nonattainment area that has attained the relevant NAAQS and has an approved maintenance plan.

related considerations the Administrator deems appropriate.” The Act further provides in section 107(d)(3)(D) that even if the Administrator has not notified a state Governor that a designation should be revised, the Governor of any state may, on the Governor's own motion, submit a request to revise the designation of any area, and the Administrator must approve or deny the request.

When approving or denying a request to redesignate an area, EPA bases its decision on the air quality data for the area as well as the considerations provided under section 107(d)(3)(A).<sup>3</sup> In keeping with section 107(d)(1)(A), areas that are redesignated to unclassifiable/attainment must meet the requirements for attainment areas and thus must meet the relevant NAAQS. In addition, the area must not contribute to ambient air quality in a nearby area that does not meet the NAAQS. The relevant monitoring data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS) database. The designated monitors generally should have remained at the same location for the duration of the monitoring period upon which the redesignation request is based.<sup>4</sup>

##### **III. What is EPA's rationale for proposing to redesignate the Area?**

In order to redesignate the Area from unclassifiable to unclassifiable/attainment for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS, the 3-year average of annual 98th percentile 24-hour concentration values (*i.e.*, design value) over the most recent 3-year period must be less than or equal to 35 µg/m<sup>3</sup> at all monitoring sites in the Area over the full 3-year period, as determined in accordance with 40 CFR 50.18 and Appendix N of Part 50. EPA reviewed PM<sub>2.5</sub> monitoring data from the monitoring station in the Etowah County Area for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS for the 3-year period from 2014–2016. These data have been quality-assured, certified, and recorded in AQS by Alabama, and the monitoring location has not changed during the monitoring period. As summarized in Table 1, the design value for the monitor in the Area

<sup>3</sup> While CAA section 107(d)(3)(E) also lists specific requirements for redesignations, those requirements only apply to redesignations of nonattainment areas to attainment and therefore are not applicable in the context of a redesignation of an area from unclassifiable to unclassifiable/attainment.

<sup>4</sup> *See* Memorandum from John Calcagni, Director, EPA Air Quality Management Division, entitled “Procedures for Processing Requests to Redesignate Areas to Attainment” (September 4, 1992).



for the 2014–2016 period is well below the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS.

TABLE 1—2006 24-HOUR PM<sub>2.5</sub> DESIGN VALUE FOR THE MONITOR IN THE ETOWAH COUNTY AREA FOR 2014–2016

Local site name	Monitoring site	2014–2016 design value (µg/m <sup>3</sup> )
Etowah County, AL .....	01–055–0010 .....	17

Because the 3-year design value, based on valid, quality-assured data, demonstrates that the Area meets the 2006 primary and secondary 24-hour PM<sub>2.5</sub> standards, EPA is proposing to redesignate the Etowah County Area from unclassifiable to unclassifiable/attainment for this NAAQS.

#### IV. Proposed Action

EPA is proposing to approve Alabama's March 22, 2018, redesignation request and to redesignate the Etowah County Area from unclassifiable to unclassifiable/attainment for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS. If finalized, approval of the redesignation request would change the legal designation, found at 40 CFR part 81, of Etowah County from unclassifiable to unclassifiable/attainment for the 2006 primary and secondary 24-hour PM<sub>2.5</sub> NAAQS.

#### V. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to unclassifiable/attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to unclassifiable/attainment does not create any new requirements. Accordingly, this proposed action

merely proposes to redesignate an area to unclassifiable/attainment and does not impose additional requirements. 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 redesignations 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
- Will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

This action is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian County, the action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### 40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: May 18, 2018.

**Onis “Trey” Glenn, III,**  
Regional Administrator, Region 4.

[FR Doc. 2018–11835 Filed 5–31–18; 8:45 am]

**BILLING CODE 6560–50–P**



# Notices

## Federal Register

Vol. 83, No. 106

Friday, June 1, 2018

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

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### Request for Information: Supplemental Nutrition Assistance Program (SNAP) Quality Control Integrity and Modernization

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In order to accurately estimate improper payments in the Supplemental Nutrition Assistance Program (SNAP), the Food and Nutrition Service (FNS) has undertaken significant steps to strengthen its measurement process, the SNAP Quality Control system. Improvements include new training, policy clarifications, procedural improvements, and clarification of existing documentation requirements necessary to substantiate case findings. FNS has also implemented new policies to improve accountability and eliminate the potential for bias in the reporting system. FNS is considering proposals for a regulatory reform of its SNAP's Quality Control system in order to align the regulations with new policy and procedural requirements. FNS's intent is to achieve three objectives from reforming the Quality Control system: (1) Strengthen the integrity and accountability of the Quality Control system, (2) increase transparency in the process, and (3) use technology to improve improper payment estimates. Thus, FNS is issuing this Request for Information in order to obtain State government and other stakeholder perspectives as the Agency considers how to best to proceed with reforming the SNAP Quality Control system.

**DATES:** Written comments must be received on or before July 31, 2018.

**ADDRESSES:** Comments may be sent to Stephanie Proska, Chief, Quality Control Branch, Program Accountability and Administration Division, Food and

Nutrition Service (FNS), U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. Comments may also be emailed to [SNAPHQ-WEB@fns.usda.gov](mailto:SNAPHQ-WEB@fns.usda.gov). Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All comments submitted in response to this notice will be included in the record and will be made available to the public at [www.regulations.gov](http://www.regulations.gov). Please be advised that the substance of the comments and the identity of the individuals or entities commenting will be subject to public disclosure.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this request for information should be directed to Stephanie Proska at (703) 305-2437.

**SUPPLEMENTARY INFORMATION:** The purpose of SNAP's Quality Control system is to measure improper payments consistent with Federal law. In addition to QC requirements in the Food and Nutrition Act of 2008, as amended, SNAP must comply with requirements in The Improper Payments Information Act of 2002 (IPIA), as amended by the Improper Payments Elimination and Recovery Act of 2010 (IPERA) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (IPERIA). This legislation requires federal agencies to estimate the annual amount of improper payments. Federal law further directs the Office of Management and Budget (OMB) to establish guidance requiring federal agencies to classify errors. OMB defines error types as: Documentation and administrative errors—errors caused by the absence of supporting documentation necessary to verify the accuracy of a payment; authentication—errors caused by an inability to authenticate eligibility criteria through third-party databases or other resources because no databases or other resources exist; and verification errors—errors caused by the failure or inability to verify recipient information.

All suggestions received in response to this notice shall be considered in the development of proposed rulemaking, particularly those that articulate how the reform will improve adherence to Federal laws and OMB guidance, as well as contribute to improved accuracy

and reduction of bias in the case review or measurement process.

With these general interests in mind, FNS is seeking information from stakeholders on the following particular questions:

1. What regulatory changes should FNS consider to further enhance the integrity of the quality control system necessary to ensure the accuracy of improper payment estimates?

2. In January 2016, FNS published a study evaluating how to enhance SNAP Quality Control completion rates. The study made a number of recommendations regarding how to improve case completion rates. What benefits, implementation challenges, or administrative factors, including cost implications, should FNS consider when evaluating the following recommendations:

a. Require more contact attempts to reach clients?

b. Require a greater variety of contact methods to be used?

c. Revise procedures for scheduling and conducting interviews?

d. Require client education of the QC process and a client's responsibility to cooperate with QC reviews at the point of application and recertification in order to raise awareness for recipients?

3. SNAP currently requires field QC investigations to include a personal interview, almost exclusively performed in person. SNAP allows for a State option to conduct phone interviews for QC cases where households receive \$100 or less in monthly benefits. SNAP also allows for a State option to conduct video conferences in lieu of an in person interview. What factors should FNS consider and what are the cost implications of allowing for an expanded use of telephone or video interviews in lieu of in-person interviews? What measures should a SNAP State agency take to ensure the accuracy of the case and thoroughness of verifications if telephone interviews were allowed for all QC case reviews?

4. What electronic databases do State quality control reviewers currently have access to in order to verify information? Do you recommend FNS consider expanding Federal and State reviewer access to electronic databases and, if so, what factors or challenges would you anticipate?

5. Should FNS consider revising staffing standards, per 7 CFR 275.2(b), to

ensure there are a sufficient number of State quality control reviewers staffed in order to complete cases within prescribed time periods?

6. Federal regulations at 7 CFR 275.23(b)(iii) require FNS to adjust a State agency's regressed error rate for failing to complete 98 percent of its required sample size. FNS is considering a proposal to increase the adjustment as the current formula may not effectively deter mitigation strategies that encourage error prone cases to be dropped. What factors should FNS consider in adjusting a State agency's regressed error rate for incomplete cases?

7. In both OIG's review of SNAP's QC system and FNS' own QC integrity reviews it was found that one tactic used to minimize the reporting of errors was to drop cases that were subject to QC review. What policies or procedures should FNS consider to ensure that only cases that cannot be verified are dropped while also discouraging the over-use of dropping cases?

8. FNS uses a two-step process in order to determine a case's final payment error amount, referred to as Comparison I and Comparison II. In an audit, USDA's Office of Inspector General expressed concerns that the existing two-step process does not conform to regulatory requirements and that it does not accurately measure errors because Comparison II is not applied to all cases. This inconsistency raises concerns of underreporting payment errors. What recommendations should FNS consider in revising the use of Comparison I and Comparison II to reflect a more accurate account of a sampled case's payment error amount?

9. FNS is interested in recommendations that incentivize quality control reviewers to accurately report case results. Performance requirements that focus exclusively on timeliness of the case reviews without any qualitative measure may inadvertently lead to inaccurate case results. What factors should FNS consider in establishing qualitative metrics for quality control case reviews?

10. What concerns or barriers, if any, would exist if FNS were to mandate the use of the SNAP Quality Control System (SNAPQCS) as a means of reporting case results and documentation to FNS for all QC Worksheets? This is based on an assumption that a State would retain the option to maintain its own internal quality control system, provided that case results were reported to SNAPQCS.

11. Are there any data elements that FNS should consider collecting through the quality control system as part of the FNS form 380-1 in order to better understand SNAP case record information and/or patterns over time or across States? This includes information that would further FNS's knowledge of potential bias in the payment error rates.

12. Are there additional recommendations FNS should consider to encourage a greater use of technology to enhance the accuracy of case reviews in QC?

13. FNS is interested in improving the transparency of the QC process. What factors should FNS consider if FNS were to require all State QC procedures be in writing and submitted to FNS as part of an annual state plan?

14. What factors should FNS consider in revising the current corrective action planning requirement as a result of payment errors, incomplete cases, or negative case actions?

To get a quick overview of the referenced Financial Reporting Requirements set by OMB, visit [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A136/a136\\_revised\\_2013.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A136/a136_revised_2013.pdf) and [http://comptroller.defense.gov/Portals/45/documents/micp\\_docs/Authoritative\\_Laws\\_and\\_Regulations/OMB\\_Circular\\_A-123\\_Appendix\\_C.pdf](http://comptroller.defense.gov/Portals/45/documents/micp_docs/Authoritative_Laws_and_Regulations/OMB_Circular_A-123_Appendix_C.pdf). For an overview of the SNAP QC Completion Rate study, visit <https://fns-prod.azureedge.net/sites/default/files/ops/SNAPQCCompletion.pdf> and for an overview of USDA's OIG audit of SNAP's Quality Control Process for SNAP Error Rates, visit <https://www.usda.gov/oig/webdocs/27601-0002-41.pdf>. FNS has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Dated: May 24, 2018.

**Brandon Lipps,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2018-11849 Filed 5-31-18; 8:45 am]

**BILLING CODE 3410-30-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Alabama Advisory Committee To Discuss the Memorandum on Access to Voting in the State of Alabama

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

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Alabama Advisory Committee (Committee) will hold a meeting on Friday, June 1, 2018, at 2:30 p.m. (Central) for the purpose discussing the Memorandum on Access to Voting in Alabama.

**DATES:** The meeting will be held on Friday, June 1, 2018, at 2:30 p.m. (Central).

Public Call Information: Dial: 888-256-1027, Conference ID: 7521876.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, DFO, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or 312-353-8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888-256-1027, conference ID: 7521876. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S. Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353-8324 or emailed to David Barreras at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov). Persons who desire additional information may contact the Midwestern Regional Office at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Alabama Advisory Committee link (<http://www.facadatabase.gov/committee/committee.aspx?cid=233&aid=17>). Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Midwestern Regional Office at the above email or street address.

### Agenda

Welcome and Roll Call  
Discussion of the Memorandum  
Next Steps  
Public Comment  
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 that this project will inform the Commission's FY2018 statutory enforcement report on voting rights and is therefore under a very tight timeline.

Dated: May 25, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–11741 Filed 5–31–18; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Louisiana Advisory Committee To Discuss the Barriers to Voting Report

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

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Louisiana Advisory Committee (Committee) will hold a meeting on Friday, June 1, 2018, at 10:00:00 a.m. Central for a discussion on the Barriers to Voting in Louisiana report.

**DATES:** The meeting will be held on Friday, June 1, 2018, at 10:00 a.m. Central.

**Public Call Information:** Dial: 888–481–2845, Conference ID: 8259781.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, DFO, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the

discussion. This meeting is available to the public through the following toll-free call-in number: 888–481–2845, Conference ID: 8259781. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn Street, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov). Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Louisiana Advisory Committee link (<http://www.facadatabase.gov/committee/committee.aspx?cid=251&aid=17>). Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Midwestern Regional Office at the above email or street address.

### Agenda

Welcome and Roll Call  
Discussion of Barriers to Voting Report  
Next Steps  
Public Comment  
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 that this project will inform the Commission's FY2018 statutory enforcement report on voting rights and is therefore under a very tight timeline.

Dated: May 25, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018–11742 Filed 5–31–18; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Wisconsin Advisory Committee for a Meeting To Discuss Civil Rights Concerns in the State

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

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Wisconsin Advisory Committee (Committee) will hold a meeting on Wednesday, July 11, 2018, at 12:00 p.m. CST for the purpose of discussing civil rights concerns in the state.

**DATES:** The meeting will be held on Wednesday, July 11, 2018 at 12:00 p.m. CST. Public Call Information: Dial: 888–287–5536, Conference ID: 2600188.

**FOR FURTHER INFORMATION CONTACT:**

Carolyn Allen at [callen@usccr.gov](mailto:callen@usccr.gov) or 312–353–8311.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–287–5536, conference ID: 2600188. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and

providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Program Unit Office, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353-8324, or emailed to Carolyn Allen at [callen@usccr.gov](mailto:callen@usccr.gov). Persons who desire additional information may contact the Midwestern Regional Office at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Wisconsin Advisory Committee link (<http://www.facadatabase.gov/committee/meetings.aspx?cid=282>). Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Midwestern Regional Office at the above email or street address.

#### Agenda

Welcome and Roll Call  
Discuss Civil Rights Concerns and  
Future Activities in the State  
Public Comment  
Adjournment

Dated: May 29, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018-11803 Filed 5-31-18; 8:45 am]

**BILLING CODE P**

#### COMMISSION ON CIVIL RIGHTS

##### Notice of Public Meeting of the South Carolina Advisory Committee

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

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the South Carolina Advisory Committee will hold a meeting on Friday, June 15, 2018, for the purpose of beginning work on its project regarding civil rights issues and policing in the state.

**DATES:** The meeting will be held on Friday, June 15, 2018 at 12:00 p.m. EST.

**ADDRESSES:** The meeting will be by teleconference. Toll-free call-in number: 1-888-663-2254, conference ID: 8893520.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hinton, DFO, at [jhinton@usccr.gov](mailto:jhinton@usccr.gov) or 404-562-7006.

**SUPPLEMENTARY INFORMATION:** Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353-8324, or emailed to Regional Director, Jeffrey Hinton at [jhinton@usccr.gov](mailto:jhinton@usccr.gov). Persons who desire additional information may contact the Regional Program Unit Office at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Program Unit, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, South Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Southern Regional Office at the above email or street address.

#### Agenda

Welcome and Introductions  
Discussion on Policing Project  
Open Comment  
Adjournment

Dated: May 29, 2018.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2018-11804 Filed 5-31-18; 8:45 am]

**BILLING CODE 6335-01-P**

#### DEPARTMENT OF COMMERCE

##### Foreign-Trade Zones Board

[S-53-2018]

##### Approval of Subzone Status, AGCO Corporation, Jackson and Round Lake, Minnesota

On April 5, 2018, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, requesting subzone status subject to the existing activation limit of FTZ 119, on behalf of AGCO Corporation, in Jackson and Round Lake, Minnesota.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (83 FR 15358-15359, April 10, 2018). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 119M was approved on May 29, 2018, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 119's 2,000-acre activation limit.

Dated: May 29, 2018.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2018-11818 Filed 5-31-18; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### Foreign-Trade Zones Board

[B-35-2018]

##### Foreign-Trade Zone (FTZ) 126—Reno, Nevada; Notification of Proposed Production Activity; Tesla, Inc. (Lithium-Ion Batteries, Electric Motors, and Stationary Energy Storage Systems); Sparks and McCarran, Nevada

Tesla, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities in Sparks and McCarran, Nevada. The notification conforming to the requirements of the

regulations of the FTZ Board (15 CFR 400.22) was received on May 23, 2018.

Tesla, Inc. already has authority to produce lithium-ion batteries, electric motors, and stationary energy storage systems within Subzone 126D. The current request would add three foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Tesla, Inc. from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Tesla, Inc. would be able to choose the duty rates during customs entry procedures that apply to lithium-ion batteries, electric motors, and stationary energy storage systems (duty rate ranges from 2.8 to 3.4%). Tesla, Inc. would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include lithium carbonate, silicon composite material, and acrylic copolymer (duty rate ranges from 3.7% to 6.3%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 11, 2018.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230-0002, and in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Juanita Chen at [juanita.chen@trade.gov](mailto:juanita.chen@trade.gov) or 202-482-1378.

Dated: May 29, 2018.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2018-11819 Filed 5-31-18; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482-4735.

#### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

#### Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be "collapsed" (*i.e.*, treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.*, investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

#### Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

*Opportunity to Request A Review:* Not later than the last day of June 2018,<sup>1</sup> interested parties may request

administrative review of the following orders, findings, or suspended

investigations, with anniversary dates in June for the following periods:

	Period of review
<b>Antidumping Duty Proceedings</b>	
JAPAN: Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4 1/2 Inches), A-588-850 .....	6/1/17-5/31/18
JAPAN: Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4 1/2 Inches), A-588-851 .....	6/1/17-5/31/18
MEXICO: Prestressed Concrete Steel Rail Tie Wire, A-201-843 .....	6/1/17-5/31/18
SPAIN: Chlorinated Isocyanurates, A-469-814 .....	6/1/17-5/31/18
SPAIN: Finished Carbon Steel Flanges, A-469-815 .....	2/8/17-5/31/18
TAIWAN: Helical Spring Lock Washers, A-583-820 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Artist Canvas, A-570-899 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, A-570-898 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Furfuryl Alcohol, A-570-835 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, A-570-977 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Prestressed Concrete Steel Wire Strand, A-570-945 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Prestressed Concrete Steel Rail Tie Wire, A-570-990 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Staple Fiber, A-570-905 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Silicon Metal, A-570-806 .....	6/1/17-5/31/18
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A-570-601 .....	6/1/17-5/31/18
<b>Countervailing Duty Proceedings</b>	
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, C-570-978 .....	1/1/17-12/31/17

### Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's

location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.<sup>2</sup>

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.<sup>3</sup> Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of

the NME entity.<sup>4</sup> In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at <http://access.trade.gov>.<sup>5</sup> Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on the petitioner and

<sup>1</sup> Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Commerce is closed.

<sup>2</sup> See also the Enforcement and Compliance website at <http://trade.gov/enforcement/>.

<sup>3</sup> See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent*

*Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

<sup>4</sup> In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to

the extent possible, include the names of such exporters in their request.

<sup>5</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

each exporter or producer specified in the request.

Commerce will publish in the **Federal Register** a notice of “Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation” for requests received by the last day of June 2018. If Commerce does not receive, by the last day of June 2018, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures “gap” period of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 16, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018-11814 Filed 5-31-18; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[Docket No. 180507461-8461-01]

RIN 0625-XC039

### Revisions and Clarifications to User Fees for Export and Investment Promotion Services/Events

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of revised user fees.

**SUMMARY:** The International Trade Administration (ITA) recently implemented new user fees for its export and investment promotion services/events in light of an independent cost study, which concluded that ITA was not fully

covering its costs for providing services under the prior fee structure. Federal agencies are directed by Office of Management and Budget (OMB) Circular A-25 to ensure they recoup their costs when providing certain services. ITA is announcing revisions to its export and investment promotion User Fee Schedule, published on July 10, 2017.

**DATES:** This user fee schedule will be effective on July 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Carter, International Trade Administration, Global Markets, Office of Strategic Planning, 1400 Constitution Avenue NW, Rm. 21022, Washington, DC 20230, Phone: (202) 482-2484.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 6 of OMB Circular A-25 directs agencies to assess a user fee “when a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public.” A “user fee” is the amount paid by a recipient of a special benefit beyond those benefits accruing to the general public. A “special benefit” may accrue and a user fee should be imposed when a government service: (a) Enables the beneficiary to obtain more immediate or substantial gains or values than those that accrue to the general public; (b) is performed at the request or for the convenience of the recipient, and is beyond the services regularly received by members of the same industry or group or by the general public; or (c) provides business stability or contributes to public confidence in the business activity of the beneficiary.

ITA offers export and investment promotion services/events to U.S. businesses that consist of Standardized Fee Services/Events and Non-Standardized Fee Services/Events. For each of these services/events, fees are collected according to the User Fee Schedule that is made available on the <http://2016.export.gov/csuserfees/> website and agency publications. The “Standardized Fee Services/Events” listed in the User Fee Schedule are services/events that are performed in the same general manner by all field units. Other “Non-Standardized Fee Services/Events” entail substantive variation of the scope of work with fees based on the estimated level of effort required and all direct costs incurred. ITA is revising the user fees and offerings for both Standardized Fee Services/Events and Non-Standardized Fee Services/Events based on questions and concerns raised by ITA clients and partners since the current fee schedule

was published on July 10, 2017 (82 FR 31752) that announced updates to the ITA user fee schedule for export and investment promotion services/events. The revised User Fee Schedule below lists the fee for each Standardized and Non-Standardized Fee export and investment promotion service/event. Fees listed in the revised User Fee Schedule are for ITA staff time only and do not include other direct costs (*i.e.*, transportation, venue rental, catering/food, etc.), which will incur an additional user fee to cover the full cost.

#### Summary of Revisions

The following services/events, which were previously considered “Other Customized Services/Events,” have been added to the User Fee Schedule to provide more clarity about ITA service/event offerings (please see the descriptions of these services/events in the section below):

- Conference: Non-Standardized Fee
- Customized Market Research: Non-Standardized Fee
- Foreign Buyer Delegation: Non-Standardized Fee
- Official Letter: Standardized Fee
- Seminar: Non-Standardized Fee
- Seminar (Investment Promotion): Non-Standardized Fee
- Trade Event: Non-Standardized Fee
- Trade Event (Investment Promotion): Non-Standardized Fee
- Virtual Fair: Non-Standardized Fee
- Virtual Introduction: Standardized Fee

The following services/events have been renamed:

- Certified Trade Mission: previously listed as “Certified Trade/Investment Mission”
- Contact List: previously listed as “Verified Contact List”
- Facilitated Investment Mission: previously listed as “Certified Trade/Investment Mission”
- Other Services/Events: previously listed as “Other Customized Services/Events”

The following services/events have been removed:

- Investment Promotion—Gold Key Service: this fee was inadvertently listed

In addition, the following clarifications have been made to the fees previously listed in GM’s User Fee Schedule:

- *Certified Trade Mission:* Converted to a Non-Standardized Fee Service/Event, except for any Gold Key Service or Initial Market Check provided to participants, given substantial variations in the scope of activities performed that



were raised to ITA attention by clients and partners.

- *Facilitated Investment Mission:* When the full package service is not requested, converted to a Non-Standardized Fee Service/Event given substantial variations in the scope of activities often performed that were raised to ITA attention by clients and partners.
- *Featured U.S. Exporters:* Additional Standardized Fee options have been included to account for standardized variations of the activities performed for this service.
- *Gold Key Service:* Additional Standardized Fee options have been included to account for standardized variations of the activities performed for this service.
- *International Company Profile—Partial:* Revised the standardized fees based on revisions to the scope of work for this service and updated information collected on the level of effort required to perform it.
- *International Partner Search:* Fee corrected to the appropriate level of effort due to a calculation error.
- *International Partner Search Plus Virtual Introductions:* Fee corrected to the appropriate level of effort due to a calculation error; additional Standardized Fee options have been included to account for standardized variations of the activities performed for this service.
- *Single Company/Location Promotion:* Converted to a Non-Standardized Fee Service/Event given substantial variations in activities performed that were raised to ITA attention by clients, partners and staff.
- *Foreign Companies:* A column has been added to the User Fee schedule denoting the fees that will be charged to all foreign companies regardless of their size to provide assistance connecting them to U.S. exporters.

#### **Description of the Services/Events Listed in the Revised User Fee Schedule**

The services/events included in the revised User Fee Schedule are described below with the revisions *italicized* for emphasis.

1. *Business Service Provider:* A listing of U.S. and foreign business service providers that offer export/investment assistance, such as consultants, lawyers, freight forwarders, etc. The fee is paid for by the business service provider to be listed on ITA websites.
2. *Certified Trade Mission (previously listed as Certified Trade/Investment Mission):* Provides a group of U.S. companies or economic development organizations with a market briefing, networking reception, Gold Key Service

*and/or other services* in-country as part of a mission organized by a private sector entity. These missions are different from Department of Commerce *Executive-led Missions*, which are organized by Industry and Analysis/Trade Promotion Programs.

3. *Conference (not previously listed):* Provides export/investment knowledge and/or market intelligence at a conference.

4. *Contact List (previously listed as a Verified Contact List):* Provides U.S. companies with a basic contact list of up to five to 10 agents, distributors and partners in a foreign market. The information included in the contact list will have been reviewed and verified for accuracy only and no information will be provided on the level of interest in the client's products/services.

5. *Customized Market Research (not previously listed):* Provides U.S. companies with answers to questions specific to the client's products/services in a market; including market structure, trends and size, customary distribution and promotion practices and key competitors and agents, distributors, or strategic partners in the market.

6. *Facilitated Investment Mission (previously listed as Certified Trade/Investment Mission):* Provides a group of U.S. economic development organizations with a market briefing, networking reception and matchmaking services in-country.

7. *Featured U.S. Exporter:* Provides U.S. companies with an opportunity to enhance their international marketing efforts through improved search engine optimization via .gov link-backs to their company's website. The service entails listing their goods/services overseas on a trusted U.S. government website with a brief description and contact information.

8. *Foreign Buyer Delegation (not previously listed):* Support provided to foreign buyer delegates to assist them in identifying and connecting with U.S. exporters at trade shows/events and on trade missions. Typically, this support is covered by the fees paid by trade show/event/mission organizers and/or U.S. company participants. However, in some circumstances fees need to be charged to the foreign buyer delegates to cover the costs incurred by ITA.

9. *Gold Key Service:* Provides U.S. companies with matchmaking appointments with up to five interested partners in a foreign market. The full service includes identification and outreach to potential matching firms, sending client's information to identified matching firms, preparing a profile of interested firms, attending the appointments and providing a report

with the profile and contact information for interested firms.

10. *Initial Market Check:* Provides U.S. firms with an initial assessment of the market potential of their product or service in a targeted market. The service gauges the potential of a specific product or service in a market by gathering feedback from up to five industry participants and provides written recommendations on whether to pursue the target market. The service does not guarantee interest by the contacted industry participants.

11. *International Company Profile—Full Report:* Provides U.S. companies and economic development organizations with a comprehensive background report on a specific foreign company, including: general business information, background and product information, key officials, references contacted by ITA, financial data/creditworthiness information, reputational information, a site visit and interviews with principals; information sources consulted in preparing the report; and analysis of information collected.

12. *International Company Profile—Partial Report:* Provides U.S. companies and economic development organizations with a general background report on a specific foreign company based on publicly available information; including general business information, background and product information, key officials, financial data/creditworthiness information (only when publicly available) and reputational information; information sources used in preparing the report; and brief analysis of information collected.

13. *International Partner Search:* Provides U.S. companies with a list of up to five partners/distributors that have expressed an interest in the client's goods/services. The service includes identification and outreach to potential matching firms, sending client's information to identified matching firms, preparing a profile of interested firms, and providing a report with the profile and contact information for interested firms.

14. *International Partner Search Plus Virtual Introductions:* Provides the same as the International Partner Search service listed above, but also includes virtual introductions via conference calls with up to five of the contacts identified. Additional fees apply if more than 5 introductions are arranged with the identified partners.

15. *Official Letter (not previously listed):* A letter provided by ITA to help U.S. companies comply with local regulatory requirements that must be



followed to conduct business in certain foreign countries (i.e. Colombia, Philippines, and Thailand). The letters can address reciprocity, appropriateness of documents and other issues specific to a foreign market.

16. *Other Services/Events* (previously listed as *Other Customized Services/Events*): Includes all other services/events not listed.

17. *Seminar* (not previously listed): Provides U.S. companies and economic development organizations with export/investment knowledge and/or market intelligence from ITA and public/private sector experts via an in-person seminar.

18. *Single Company or Location Promotion*: Provides a U.S. firm or locality with a promotional event (such as a technical seminar, press conference, luncheon, dinner, cocktail reception, etc.) to help increase awareness of their locality or existing/new products/services in a specific market, including organizing the event logistics/venue; conducting a targeted direct mail or email campaigns; managing the promotional campaign and event-related logistics; providing logistical and promotional support on-site during the event; and providing a post-event debriefing to discuss next steps.

19. *Trade Event* (not previously listed): Provides services to U.S. companies to connect them with foreign

buyers and partners at trade events in order to help U.S. companies navigate the increasingly complex international marketplace. Services may also be provided to foreign companies attending these trade events to connect them with U.S. companies exporting goods and services. The services and fees for these trade events are separate from the International Buyer Program and Trade Fair Certification, which are administered by the ITA Industry and Analysis unit.

20. *Trade Show Representation*: Provides U.S. companies and economic development organizations with the ability to increase their marketing exposure at an overseas trade show when they are unable to attend in-person. The service entails conducting pre-trade show promotions via internet/social media/email campaign, representing the client at the overseas trade show, displaying the client's promotional materials at the overseas trade show, and conducting outreach to foreign buyers/distributors in attendance at the trade show.

21. *Virtual Fair* (not previously listed): Provides a group of U.S. entities with an opportunity to promote their products/services to potential partners in a foreign market live via a webinar platform.

22. *Virtual Introduction* (not previously listed): Provides U.S. companies with a virtual introduction via conference call or email to a foreign buyer/partner that they have pre-identified. The U.S. exporter independently identifies the foreign company and contact information and requests an introduction. The U.S. Government is not allowed to and does not endorse or vouch for specific U.S. companies or their products or services.

23. *Webinar*: Provides U.S. firms and economic development organizations with export knowledge and/or market intelligence from experts located around the globe via an online webinar. The webinars are often archived on export.gov.

24. *Website Globalization*: Provides U.S. companies with services to enhance the strength of their website for attracting foreign partners/business.

#### Revisions to the User Fee Schedule

The fees for the export and investment promotion services/events listed in the revised User Fee Schedule below were set based on the same methodology as described in the **Federal Register** Notice published on July 10, 2017 (82 FR 31752). The revisions to the User Fee Schedule are italicized for emphasis.

#### REVISED USER FEE SCHEDULE FOR EXPORT PROMOTION SERVICES/EVENTS

Service/event	Fee for commercial service staff time <sup>1</sup> (Does not include other direct costs, when applicable, such as transportation, use of contractors, venue rental, promotional materials, catering, etc.)			
	U.S. small company <sup>2</sup>	U.S. medium company <sup>3</sup>	U.S. large company	All foreign companies <sup>4</sup>
Business Service Provider	\$150 ..... +\$50 per language for translation if needed. +\$30 for additional category listing. Annual renewal: \$75 .....	\$250 ..... +\$50 per language for translation if needed. +\$50 for additional category listing. Annual renewal: \$125 .....	\$350 ..... +\$50 per language for translation if needed. +\$70 for additional category listing. Annual renewal: \$175 .....	\$350. +\$50 per language for translation if needed. +\$70 for additional category listing. Annual renewal: \$175.
Conference .....	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs.
Contact List .....	\$150 .....	\$350 .....	\$450 .....	N/A.
Customized Market Research.	\$30 per staff hour .....	\$70 per staff hour .....	\$90 per staff hour .....	N/A.
Certified Trade Mission <sup>5</sup> ...	\$30 per staff hour ..... + \$950 per participant if a Gold Key Service is included. + any direct costs .....	\$70 per staff hour ..... + \$2,300 per participant if a Gold Key Service is included. + any direct costs .....	\$90 per staff hour ..... + \$3,400 per participant if a Gold Key Service is included. + any direct costs .....	N/A.

<sup>1</sup> Other direct costs not included in the service description must be assumed by the client. Types of other direct costs include translation, transportation, use of contractors, venue rental, catering, etc. Please note that any transportation for ITA staff beyond 80 kilometers or more than 2 hours from an ITA office will be charged an additional user fee to cover the cost.

<sup>2</sup> Must qualify as a "small business" under the Small Business Administration's size standards, which vary by North American Industry

Classification System (NAICS) Code: <https://www.sba.gov/document/support-table-size-standards>. Fees listed also apply to U.S. Economic Development Organizations (EDO) and Non-profit Educational Institutions that purchase ITA services for their own use. For example, when an EDO requests a Gold Key Service (GKS) to promote itself as a tourist destination, it will be charged the small company fee. If, however, an EDO requests a (GKS) to promote a U.S. company's goods/services, the size of the company will be used to determine the fee.

<sup>3</sup> Must have less than \$1B in annual revenue (including affiliates: Parent, child, subsidiaries, divisions, etc.) to qualify.

<sup>4</sup> Fees listed apply to all Foreign Companies regardless of their size.

<sup>5</sup> Full package includes a market briefing, networking event/reception, and Gold Key Service.

<sup>6</sup> Fee to be charged for services/events provided to foreign buyer delegates seeking U.S. suppliers of goods/services.

## REVISED USER FEE SCHEDULE FOR EXPORT PROMOTION SERVICES/EVENTS—Continued

Service/event	Fee for commercial service staff time <sup>1</sup> (Does not include other direct costs, when applicable, such as transportation, use of contractors, venue rental, promotional materials, catering, etc.)			
	U.S. small company <sup>2</sup>	U.S. medium company <sup>3</sup>	U.S. large company	All foreign companies <sup>4</sup>
Featured U.S. Exporter listing.	\$150 ..... (\$30 per market) ..... + \$50 per language for translation if needed.	\$350 ..... (\$70 per market) ..... + \$50 per language for translation if needed.	\$500 ..... (\$100 per market) ..... + \$50 per language for translation if needed.	N/A.
Annual renewal: \$75 ..... (\$15 per market) .....	Annual renewal: \$75 ..... (\$15 per market) .....	Annual renewal: \$175 ..... (\$35 per market) .....	Annual renewal: \$250 ..... (\$50 per market) .....	
Foreign Buyer Delegation	N/A .....	N/A .....	N/A .....	\$90 per staff hour <sup>6</sup> + any direct costs.
Gold Key Service ..... (matchmaking appointments).	Identify, Arrange & Attend: \$950.  + \$350 for > than 5 appointments or if > than 8 hours is required to attend. Identify & Arrange Appointments: \$800. Arrange & Attend Appointments: \$125 per appointment. Arrange Appointments: \$75 per appointment. + any direct costs .....	Identify, Arrange & Attend: \$2,300.  + \$1,000 for > than 5 appointments or if > than 8 hours is required to attend. Identify & Arrange Appointments: \$1,850. Arrange & Attend Appointments: \$280 per appointment. Arrange Appointments: \$175 per appointment. + any direct costs .....	Identify, Arrange & Attend: \$3,400.  + \$1,200 for > than 5 appointments or if > than 8 hours is required to attend. Identify & Arrange Appointments: \$2,400. Arrange & Attend Appointments: \$360 per appointment. Arrange Appointments: \$225 per appointment. + any direct costs .....	N/A.
Initial Market Check .....	\$350 .....	\$900 .....	\$1,300 .....	N/A.
International Company Profile Full.	\$700 .....	\$1,200 .....	\$2,000 .....	N/A.
International Company Profile Partial.	\$150 .....	\$350 .....	\$450 .....	N/A.
International Partner Search.	\$750 .....	\$1,750 .....	\$2,250 .....	N/A.
International Partner Search Plus Virtual Introductions.	\$900 .....	\$2,100 .....	\$2,700 .....	N/A.
	+ \$30 per introduction beyond 5.	+ \$70 per introduction beyond 5.	+ \$90 per introduction beyond 5.	
Official Letter .....	Colombia Official Letter: \$100. Philippines Letter on Reciprocity: \$100. Philippines Letter on Appropriateness: \$150. Thailand: Letter for Treaty of Amity, Defense, Equipment and Medical Device: Standard: \$100 ..... Overnight: \$125 ..... Same Day: \$150 ..... Other Letters Specific to a Market: \$30 per hour.	Colombia Official Letter: \$200. Philippines Letter on Reciprocity: \$250. Philippines Letter on Appropriateness: \$350. Thailand: Letter for Treaty of Amity, Defense, Equipment and Medical Device: Standard: \$200 ..... Overnight: \$250 ..... Same Day: \$275 ..... Other Letters Specific to a Market: \$70 per hour.	Colombia Official Letter: \$300. Philippines Letter on Reciprocity: \$350. Philippines Letter on Appropriateness: \$450. Thailand: Letter for Treaty of Amity, Defense, Equipment and Medical Device: Standard: \$300 ..... Overnight: \$375 ..... Same Day: \$400 ..... Other Letters Specific to a Market: \$90 per hour.	
Other Services/Events .....	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	\$90 per staff hour. + any direct costs.
Seminar .....	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	\$90 per staff hour. + any direct costs.
Single Company Promotion	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	N/A.
Trade Event .....	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	\$90 per staff hour. + any direct costs.
Trade Show Representation.	\$400 .....	\$950 .....	\$1,350 .....	N/A.
	+ any direct costs .....	+ any direct costs .....	+ any direct costs .....	
Virtual Introduction .....	\$30 per introduction .....	\$70 per introduction .....	\$90 per introduction .....	N/A.
Virtual Fair .....	\$30 per staff hour ..... + any direct costs .....	\$70 per staff hour ..... + any direct costs .....	\$90 per staff hour ..... + any direct costs .....	N/A.
Webinar .....	\$25 per webinar hour .....	\$25 per webinar hour .....	\$25 per webinar hour .....	\$25 per webinar hour.
Website Globalization .....	\$100 .....	\$300 .....	\$400 .....	N/A.

## REVISED USER FEE SCHEDULE FOR INVESTMENT PROMOTION SERVICES/ EVENTS

Service	Fee for commercial service staff time for U.S. economic development organizations <sup>7</sup> (Does not include other direct costs, when applicable, such as transportation, use of contractors, venue rental, promotional materials, catering, etc.)
Facilitated Investment Mission <sup>8</sup> .	Full package: \$1,200 per stop; or \$30 per staff hour if not Full Package. + any direct costs.
International Company Profile—Full.	\$700.
International Company Profile—Partial.	\$150.
Other Services/Events.	\$30 per staff hour. + any direct costs.
Seminar .....	\$30 per staff hour. + any direct costs.
Single Location Promotion.	\$30 per staff hour. + any direct costs.
Trade Event ...	\$30 per staff hour. + any direct costs.

## Notes:

- *All Events: All ITA staff time required to support an event is to be assessed a user fee at the hourly rates listed. When the size and number of the participants for an event is unknown, the estimated number of participants by company size will be used to apply the approved hourly rates.*
- *All Services: When requested by one entity on behalf of another entity(s), a user fee for ITA staff time will be assessed based on the company size of the end client(s)/ultimate beneficiary(ies) and not based on the size of the requesting entity.*
- *All Standardized Fee Services/Events: When ITA uses an alternative service provider/contractor (ASP) to complete some or all of the standardized tasks included in the statement of work for a standardized fee service/event, if the cost billed to ITA by the ASP plus the cost for any ITA staff time and other direct costs incurred is more than the ITA standardized fees, then an additional fee must be collected to recover the difference. However, if the cost billed to ITA by the ASP plus the cost for any ITA staff time and other direct costs incurred required to perform the service is less than the ITA*

standardized fees, then no additional fee will be collected.

- *Fee Reductions for Follow-on Services: The table below lists the standardized fees to be charged if the follow-on service is provided after the initial service. The fee has been reduced for the follow-on service because the level of effort required is reduced by performing the initial service. However, if an Alternative Service Provider (ASP) is used to deliver the follow-on service, the cost billed to GM by the ASP and all other direct costs, must be fully recovered from the client in the form of additional fees. Payment for the follow-on service must be received within the deadline specified in the table below to be eligible for the reduced fee listed.*

Initial service	Follow-on service and reduced fee	Deadline to purchase follow-on service
Initial Market Check .....	International Partner Search: \$550 for a Small Company; \$1,300 for a Medium Company; and \$1,650 for a Large Company. International Partner Search Plus Virtual Introductions: \$700 for a Small Company; \$1,650 for a Medium Company; and \$2,100 for a Large Company. Gold Key Service: \$750 for a Small Company; \$1,850 for a Medium Company; and \$2,800 for a Large Company.	180 days.
International Partner Search .....	International Partner Search Plus Virtual Introductions: \$150 for a Small Company; \$350 for a Medium Company; and \$450 for a Large Company. Gold Key Service = \$625 for a Small Company; \$1,400 for a Medium Company; and \$1,800 for a Large Company.	60 days.
International Company Profile—Partial.	International Company Profile—Full: \$550 for a Small Company; \$850 for a Medium Company; and \$1,550 for a Large Company.	30 days.

• **Business Service Provider:** Individual category fee. To be listed in more than one category, there is an additional fee per category of \$30 for small companies, \$50 for medium companies and \$70 for large companies. The annual renewal fee is \$75 for small companies, \$125 for medium companies and \$175 for large companies.

• **Certified Trade Mission:** The fee is assessed per Post/city. Applicants will be charged a fee for an Initial Market Check if staff is uncertain about their market potential. The fee paid by the

applicant is then applied to their Certified Trade Mission fee if they participate in the mission.

- **Featured U.S. Exporter:** Listings are typically provided for up to 5 markets. An individual market listing can be provided for \$30 for small companies, \$50 for medium companies, and \$70 for large companies. The annual renewal fee for 5 listings is \$75 for small companies, \$175 for medium companies, and \$250 for large companies. An individual market listing can be renewed for \$15 for small

companies, \$25 for medium companies, and \$35 for large companies. Fee for translation is per language and will be charged for the initial listing and for adjustments requested.

- **Initial Market Check:** Is a required precursor for more time intensive services if staff is uncertain about a client's market potential. Fees paid for the Initial Market Check will then be applied to one follow-on service if the results are positive.

- **Webinars:** Will be provided at a standard fee of \$25 per participant per

<sup>7</sup> Other direct costs not included in the service description must be covered by the client in the form of additional user fees. Types of other direct

costs include translation, transportation, use of contractors, venue rental, catering, etc.

<sup>8</sup> Full package includes a market briefing, networking event/reception, and matchmaking.

webinar hour. No charge for webinar participation will be assessed by ITA when the purpose is to promote/recruit for an ITA or other USG agency hosted event or when serving only as a guest speaker for a webinar organized by a third party.

### Conclusion

Based on the information provided above, ITA believes its revised fee schedules are more consistent with the mission to promote “exports of goods and services from the United States, particularly by small businesses and medium businesses,” and better achieve the objective of OMB Circular A–25 to “promote efficient allocation of the nation’s resources by establishing charges for special benefits provided to the recipient that are at least as great as the cost to the U.S. Government of providing the special benefits.” ITA will

reassess this fee schedule after its first year of implementation and, in accordance with OMB Circular A–25, at least every two years thereafter.

Dated: May 29, 2018.

**Aditi Palli,**

*Program Analyst, Global Markets,  
International Trade Administration.*

[FR Doc. 2018–11812 Filed 5–31–18; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury (*i.e.*, a Sunset Review).

### Upcoming Sunset Reviews for July 2018

Pursuant to section 751(c) of the Act, the following Sunset Review is scheduled for initiation in July 2018 and will appear in that month’s *Notice of Initiation of Five-Year* (Sunset) Review.

	Department contact
<p><b>Antidumping Duty Proceedings</b></p> <p>No Sunset Review of antidumping duty orders is scheduled for initiation in July 2018.</p> <p><b>Countervailing Duty Proceedings</b></p> <p>No Sunset Review of countervailing duty orders is scheduled for initiation in July 2018.</p> <p><b>Suspended Investigations</b></p> <p>Lemon Juice from Argentina (A–822–804) (4th Review) .....</p>	Matthew Renkey, (202) 482–2312.

Commerce’s procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in a Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 16, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for  
Antidumping and Countervailing Duty  
Operations performing the duties of Deputy  
Assistant Secretary for Antidumping and  
Countervailing Duty Operations.*

[FR Doc. 2018–11813 Filed 5–31–18; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Five-Year (Sunset) Reviews

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

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping and countervailing duty (AD/CVD) order(s) listed below. The International Trade Commission (the Commission) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s).

**DATES:** Applicable (June 1, 2018).

### FOR FURTHER INFORMATION CONTACT:

Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

### SUPPLEMENTARY INFORMATION:

#### Background

Commerce’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce’s conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are

initiating the Sunset Reviews of the following antidumping and countervailing duty order(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-822-804 ....	731-TA-873 ..	Belarus .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-570-860 ....	731-TA-874 ..	China .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-570-908 ....	731-TA-1110	China .....	Sodium Hexametaphosphate (2nd Review) ..	Matthew Renkey, (202) 482-2312.
A-570-985 ....	731-TA-1203	China .....	Xanthan Gum (1st Review) .....	Matthew Renkey, (202) 482-2312.
A-560-811 ....	731-TA-875 ..	Indonesia .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-449-804 ....	731-TA-878 ..	Latvia .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-841-804 ....	731-TA-879 ..	Moldova .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-455-803 ....	731-TA-880 ..	Poland .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.
A-823-809 ....	731-TA-882 ..	Ukraine .....	Steel Concrete Reinforcing Bars (3rd Review).	James Terpstra, (202) 482-3965.

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <http://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS), can be found at 19 CFR 351.303.<sup>1</sup>

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.<sup>2</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>3</sup> Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

<sup>1</sup> See also *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011).

<sup>2</sup> See section 782(b) of the Act.

<sup>3</sup> See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

On April 10, 2013, Commerce modified two regulations related to AD/CVD proceedings: The definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301).<sup>4</sup> Parties are advised to review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt>, prior to submitting factual information in these segments. To the extent that other regulations govern the submission of factual information in a segment (such as 19 CFR 351.218), these time limits will continue to be applied. Parties are also advised to review the final rule concerning the extension of time limits for submissions in AD/CVD proceedings, available at <http://enforcement.trade.gov/frn/2013/1309frn/2013-22853.txt>, prior to submitting factual information in these segments.<sup>5</sup>

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation.

<sup>4</sup> See *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013).

<sup>5</sup> See *Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.<sup>6</sup>

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive

<sup>6</sup> See 19 CFR 351.218(d)(1)(iii).

response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that

Commerce's information requirements are distinct from the Commission's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: May 16, 2018.

**James Maeder,**

*Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the duties of Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2018-11815 Filed 5-31-18; 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 June 20, 2018, from 12:00 p.m. to 3:00 p.m., and June 21, 2018, from 9:00 a.m. to 4:00 p.m., Eastern Standard Time (EST).

**ADDRESSES:** The meetings on June 20 and 21 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](mailto: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 and 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/acsc/>.

*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/acsc/>, 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](mailto: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](mailto: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 June 12, 2018. Comments received after June 12, 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: May 25, 2018.

**Maureen Smith,**

*Director, Office of Supply Chain.*

[FR Doc. 2018-11737 Filed 5-31-18; 8:45 am]

**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XF985**

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Coast Boulevard Improvements Project, La Jolla, California

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

**ACTION:** Notice; issuance of incidental harassment authorization (IHA).

**SUMMARY:** NMFS has received a request from the City of San Diego (the City) for an incidental harassment authorization (IHA) to take three species of marine mammals, by Level B harassment only, incidental to Coast Boulevard improvements in La Jolla, California. The project has been delayed, such that none of the work covered in the identical IHA issued in 2017 was initiated and, therefore, the City requested that an identical IHA be issued to cover the same work in 2018. NMFS is, therefore, issuing a second IHA to cover the incidental take analyzed and authorized in the initial IHA. The scope of the activities and anticipated effects remain the same, authorized take numbers would not change, and the required mitigation, monitoring, and reporting would remain the same as authorized in the 2017 IHA referenced above. NMFS is therefore notifying the public about the issuance of an IHA to the City to incidentally take marine mammals, by Level B harassment only, during the City's Coast Boulevard improvements.

**DATES:** Valid June 1, 2018 through May 31, 2019.

**ADDRESSES:** An electronic copy of the final 2017 IHA previously issued to the City, the City's application, and the **Federal Register** notices proposing and issuing the 2017 IHA may be obtained by visiting <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:**

Amy Fowler, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:****Background**

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (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.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

**National Environmental Policy Act**

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 with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

**History of Request**

NMFS received a request from the City for authorization to take marine mammals incidental to Coast Boulevard improvements in La Jolla, California on December 16, 2016. On March 1, 2017, we deemed the City’s application for authorization to be adequate and complete. We published a notice of a proposed IHA and request for comments on April 26, 2017 (82 FR 19221), and subsequently issued an IHA to the City on May 31, 2017, and published final notice of our issuance of the IHA on June 29, 2017 (82 FR 29511).

On October 19, 2017, the City informed NMFS that while some structural integrity testing of the existing concrete at the project location had occurred over 4 days in July, none of the work identified in the IHA that was expected to result in the take of marine mammals (*i.e.*, construction or demolition work) had occurred and no take of any marine mammals had occurred.

On January 4, 2018, the City submitted a formal request for a new identical IHA that would be effective from June 1, 2018 through December 14, 2018, in order to conduct the construction and demolition work that was analyzed and authorized through the previously issued IHA.

The planned activities are the same as those proposed in the previous IHA application and the potential incidental take the same as that authorized through the previously issued IHA, and include improvements to an existing public parking lot, sidewalk, and landscaping areas located on the bluff tops above Children’s Pool, a public beach located in La Jolla, California. Species that are expected to be taken by the planned activity include harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*). The City’s request was for harassment only and NMFS concurs that mortality is not expected to result from this activity. Therefore, an IHA is appropriate.

**Description of Proposed Activity and Anticipated Impacts**

The 2017 IHA covered improvements to an existing public parking lot, sidewalk, and landscaping areas located on the bluff tops above Children’s Pool to upgrade public access and safety. Planned demolition activities included the removal of existing parking lot paving; concrete curb, gutter, and sidewalk; and the removal of existing irrigation and plant materials. Planned construction activities included subgrade preparation, asphalt paving, and marking of parking stalls; pouring of concrete curb, gutter, and sidewalk; construction of rock walls, installation of fencing, placement of landscape boulders, installation of landscaping and irrigation; and finishing and clean up. The 2017 IHA authorized the Level B harassment of 1,620 harbor seals, 36 California sea lions and 14 northern elephant seals. The City did not conduct any demolition or construction activities, and no takes of marine mammals occurred, and now requests that this second IHA cover all demolition and construction activities as those proposed in the 2017 IHA application and authorized via the 2017 IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the 2017 IHA for the City’s construction and demolition work (82 FR 29511), the City’s application, the **Federal Register** notice of the proposed IHA (82 FR 19221), and all associated references and documents.

**Detailed Description of the Action**—A detailed description of the proposed demolition and construction activities is found in these previous documents. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

**Description of Marine Mammals**—A description of the marine mammals in the area of the activities is found in these previous documents, which remains applicable to this IHA as well. In addition, NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the current IHA. Since issuing the 2017 IHA, NMFS published draft Stock Assessment Reports (SARs) (82 FR 60181; 19 December 2017). The abundance estimates reported in the draft SARs did not change for any of

three species proposed to be taken in this authorization.

**Potential Effects on Marine Mammals**—A description of the potential effects of the specified activities on marine mammals and their habitat is found in these previous documents, which remains applicable to this IHA. There is no new information on potential effects.

**Estimated Take**—A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in these previous documents. The methods of estimating take are identical to those used in the previous IHA, as is the density of marine mammals. The number of takes authorized is the same as the number of takes authorized via the previous IHA. Level A incidental take is not expected to occur for the same reasons discussed in the previous documents and none is authorized.

**Description of Mitigation, Monitoring and Reporting Measures**—A description of mitigation, monitoring, and reporting measures is found in the previous documents, which are identical in this IHA. In summary, mitigation will include limiting construction to outside of the harbor seal pupping season (December 15 to May 15), limiting construction to daylight hours only, using the loudest equipment only between 8:30 a.m. and 3:30 p.m., and monitoring both airborne noise and marine mammals. One trained protected species observer will monitor the proposed activities to collect information of responses of marine mammals to the activities.

On October 19, 2017, the City submitted a monitoring report for the minimal work that had been completed on the existing concrete under the 2017 IHA (work that was not expected to result in take of marine mammals, but which was part of the overarching activity). The City complied with all mitigation, monitoring, and reporting protocols. No marine mammal takes were expected, authorized, or recorded. The monitoring report can be viewed on NMFS's website: [www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities](http://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities).

#### Determinations

The City will conduct activities identical to those analyzed in the previous 2017 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards

and authorized under the 2017 IHA. This 2018 IHA includes identical required mitigation, monitoring, and reporting measures as the 2017 IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) the City's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

#### 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 IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

However, no incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

#### Authorization

NMFS has issued an IHA to the City of San Diego for Coast Boulevard improvements in La Jolla, CA from June 1, 2018 through May 31, 2019. All previously described mitigation, monitoring, and reporting requirements from the 2017–2018 IHA are incorporated.

Dated: May 25, 2018.

**Donna S. Wieting,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2018–11785 Filed 5–31–18; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XG257**

#### Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

**ACTION:** Notice of open public meeting.

**SUMMARY:** This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

**DATES:** The meeting will be held June 19, 2018, from 8 a.m. to 5 p.m. and on June 20, 2018, from 8 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Columbia Gorge Hotel, 4000 West Cliff Drive, Hood River, OR 97031; 541–386–5566.

#### FOR FURTHER INFORMATION CONTACT:

Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: [Katherine.Cheney@noaa.gov](mailto:Katherine.Cheney@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter and summaries of prior MAFAC meetings are located online at <https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee>. The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: [http://www.westcoast.fisheries.noaa.gov/columbia\\_river/index.html](http://www.westcoast.fisheries.noaa.gov/columbia_river/index.html).

#### Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics to be discussed include draft qualitative and quantitative goals for the Columbia Basin species, approaches to integrate



the information towards developing basin-wide goals, and the outline and components of the report. The meeting is open to the public as observers, and public input will be accepted on June 20, 2018, from 1:15 to 1:45 p.m., limited to the time available.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Katherine Cheney, 503-231-6730, by June 8, 2018.

Dated: May 29, 2018.

Jennifer L. Lukens,

*Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.*

[FR Doc. 2018-11800 Filed 5-31-18; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[Docket ID USAF-2018-HQ-0003]

### Proposed Collection; Comment Request

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Information collection notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Department of the Air Force Judge Advocate General announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) 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 July 31, 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 Chief Management Officer,

Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, 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.

**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 Judge Advocate General, Headquarters, United States Air Force, 1420 Air Force Pentagon, Washington, DC 20330-1420 or call 1-800-524-8723.

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Web-based Legal Information Online System (WebLIONS); OMB Control Number 0701-XXXX.

*Needs and Uses:* Requesting authorization to collect information on individuals who seek assistance from the Air Force in resolving their personal legal issues. Air Force personnel use WebLIONS to create and maintain records on these individuals in order to perform their official duties and to manage the legal assistance program. The system allows personnel to review and track cases, as well as perform conflict checks. It is also consulted by attorneys and paralegals when they are generating legal documents for their clients.

*Affected Public:* Individuals or Households.

*Annual Burden Hours:* 9,550.

*Number of Respondents:* 191,000.

*Responses per Respondent:* 1.

*Annual Responses:* 191,000.

*Average Burden per Response:* 3 minutes.

*Frequency:* On Occasion.

Public respondents to WebLIONS include retired military personnel and dependents of active duty and retired military personnel. The completed online questionnaires are used during the intake process to determine an individual's eligibility for legal assistance, as well as assisting attorneys in performing their official duties while providing services to their clients. WebLIONS also acts as a database to review and track cases as well as assist in conflicts checks. This information is

vital to the sustainability and viability of continued Air Force support to legal assistance activities.

Dated: May 25, 2018.

Shelly E. Finke,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11763 Filed 5-31-18; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Department of the Army

[Docket ID: USA-2018-HQ-0003]

### Submission for OMB Review; Comment Request

**AGENCY:** Department of the Army, 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 July 2, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at [aira\\_submission@omb.eop.gov](mailto:aira_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, 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](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Army Survivor Advisory Working Group (SAWG); OMB Control Number 0702-XXXX.

*Type of Request:* New collection.

### Applicants

*Number of Respondents:* 150.

*Responses per Respondent:* 1.

*Annual Responses:* 150.

*Average Burden per Response:* 2 Hours.

*Annual Burden Hours:* 300.

### Nominees

*Number of Respondents:* 25.

*Responses per Respondent:* 1.

*Annual Responses:* 25.

*Average Burden per Response:* 15 Minutes.

*Annual Burden Hours:* 6.25.

*Needs and Uses:* The information collection requirement is necessary to obtain applications from individuals

who may provide advice and recommendations regarding vital Total Army (Active Component, Army National Guard, and U.S. Army Reserve) Survivor quality of life issues. From those applications, nominees will be selected to advance in the selection process. Once selected, advisors assess how current Survivor programs and initiatives may affect the Survivor community.

*Affected Public:* Individuals or Households.

*Frequency:* Annually.

*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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: May 29, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11790 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Charter Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Board of Advisors to the Presidents of the Naval Postgraduate School and the Naval War College ("the Board").

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee

Management Officer for the Department of Defense, 703-692-5952.

**SUPPLEMENTARY INFORMATION:** This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102-3.50(d). The charter and contact information for the Designated Federal Officer (DFO) can be obtained at <http://www.facadatabase.gov/>. The Board provides independent advice on matters relating to the Naval Postgraduate School and the Naval War College. The Board shall be composed of no more than 10 members who are eminent authorities in the fields of academia, business, national defense and security, the defense industry, and research and analysis. Members of the Board who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members of the Board who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102-3.130(a) to serve as regular government employee members. Each Board member is appointed to provide advice on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Board-related travel and per diem, Board members serve without compensation. The DoD, as necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Board, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Board and must report all recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Board's DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Board/subcommittee meeting. The public or interested organizations may submit written statements to the Board membership about the Board's mission

and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Board meetings. All written statements must be submitted to the Board's DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: May 25, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11762 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Notice of Intent To Prepare an Environmental Impact Statement for Construction and Operation of a Homeland Defense Radar in Hawaii

**AGENCY:** Missile Defense Agency, Department of Defense.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Missile Defense Agency (MDA) announces its intention to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA. MDA is proposing to construct and operate a Homeland Defense Radar-Hawaii or HDR-H (a radar to identify, track, and classify long-range ballistic missile threats in mid-course flight), an In-Flight Interceptor Communication System Data Terminal or IDT (a facility that provides communication (incorporating data provided by HDR-H) between the Ground-Based Midcourse Defense fire control system and the interceptor that are both stationed elsewhere), and associated support facilities and infrastructure on the island of Oahu, Hawaii. The purpose of the Proposed Action is to support the United States (U.S.) ballistic missile defense system and enhance homeland defense capabilities in the Pacific region including Hawaii. The 2017 National Defense Authorization Act requires the MDA to develop a plan to procure and field a "discrimination radar" to improve the defense of Hawaii from ballistic missile threats. MDA is preparing the EIS to evaluate the potential environmental impacts that could result from the construction and operation of the HDR-H. The Department of Defense has not made a decision concerning the location of

where to construct and operate the HDR-H, but has initially evaluated the potential alternatives from a mission requirements standpoint.

**DATES:** The MDA invites public comments on the scope of the HDR-H EIS during a 45-day public scoping period beginning with publication of this notice in the **Federal Register**. Comments will be accepted on or before July 16, 2018.

**ADDRESSES:** Written comments, statements, and/or concerns regarding the scope of the EIS or requests to be added to the EIS distribution list should be addressed to MDA HDR-H EIS and sent by email to [MDA.HDRH.EIS@kfs-llc.com](mailto:MDA.HDRH.EIS@kfs-llc.com), by facsimile at 256-713-1617, or by U.S. Postal Service to: KFS, LLC, Attn: MDA HDR-H EIS, 303 Williams Ave., Suite 116, Huntsville, AL 35801. Electronic or facsimile comments are preferred. If sending comments by U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. All comments, including names and addresses, will be included in the administrative record.

**FOR FURTHER INFORMATION CONTACT:** MDA Public Affairs at 256-450-1599 or 571-231-8210, or by email: [MDAPressOperations@mda.mil](mailto:MDAPressOperations@mda.mil). Additional information can be found at MDA's website: [https://www.mda.mil/news/nepa\\_documents.html](https://www.mda.mil/news/nepa_documents.html).

**SUPPLEMENTARY INFORMATION:** In accordance with 40 Code of Federal Regulations (CFR) 1501.6, the U.S. Air Force, U.S. Army, and U.S. Navy will be cooperating agencies in preparing the EIS. Other cooperating agencies may be identified during the scoping process. Deployment of the HDR-H at a candidate location on Oahu would be within an approximate 160-acre notional boundary, as much as topography and environmental conditions allow, that would be cleared of vegetation, grubbed, and graded. The new facility site would include radar equipment, the Homeland Defense Radar Equipment Shelter, Mission Control Facility, IDT, Radar Cooling Shelter, Military Satellite Communications, Power Plant, and Bulk Diesel Fuel Storage. These mission critical facilities would be within a restricted fenced area. Located within or outside of the restricted area would be other mission support facilities that include an Entry Control Facility, Maintenance Facility, Water Supply and Treatment Buildings, Electrical Substation, and a remote Fuel Fill Station. Additional site utilities and roadway improvements, including communications, electrical connections, water supply, sewer, stormwater

drainage, fire protection, sidewalks, and parking would be located within and outside the restricted area.

In addition to the No Action Alternative, the EIS will analyze alternative sites for the proposed radar facility at: (1) Kuaokala Ridge on State land adjacent to Kaena Point Satellite Tracking Station and (2) Kahuku Training Area on the island of Oahu, Hawaii. If deployed at Kuaokala Ridge, the use of approximately 160 acres of State land within the Agricultural District (for the facility footprint, buffer, and construction laydown areas), as well as the right of access to the site, would be required. At each alternative location, impacts will be assessed for the following resource topics: Air quality, airspace management, biological resources, coastal zone management, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, infrastructure and transportation, land use and recreation, noise, socioeconomic and environmental justice, water resources, and visual resources.

In addition to satisfying compliance requirements under NEPA, the EIS will also comply with the provisions of the Hawaii Environmental Policy Act (HEPA). MDA encourages all interested members of the public, as well as federal, state, and local agencies to participate in the scoping process for the preparation of this EIS. The scoping process assists in determining the scope of issues to be addressed, other alternatives that should be considered, and helps identify significant environmental issues to be analyzed in depth in the EIS.

Public scoping meetings will be held in the communities of Haleiwa, Waianae, and Honolulu on Oahu, Hawaii, within 30 days from the publication of this Notice of Intent. The meetings will be in an open house format, which provides attendees the opportunity to speak with and ask questions of representatives from the MDA, U.S. Air Force, and U.S. Army. The meetings will have the same format and content at all locations. Notification of the public scoping meeting locations, dates, and times will be published and announced in local news media prior to the meetings.

Dated: May 25, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11733 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2016-OS-0078]

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, 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 July 31, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, 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](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Joint Personnel Adjudication System (JPAS); OMB Control Number 0704-0496.

*Type of Request:* Reinstatement, with change.

*Number of Respondents:* 22,225.

*Responses per Respondent:* 45.

*Annual Responses:* 1,000,125.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 333,375 hours.

*Needs and Uses:* This information collection is necessary as the JPAS system requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Sehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: May 29, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11791 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

**AGENCY:** Thursday, May 31, 2018 Under Secretary of Defense for Personnel and Readiness, Department of Defense.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services (DACOWITS) will take place.

**DATES:** Day 1—Open to the public Tuesday, June 19, 2018 from 8:30 a.m. to 11:45 a.m. Day 2—Open to the public Wednesday, June 20, 2018 from 8:30 a.m. to 11:45 a.m.

**ADDRESSES:** The address of the open meeting is the Sheraton Pentagon City, 900 S Orme St., Arlington, VA 22204.

**FOR FURTHER INFORMATION CONTACT:** Colonel Toya Davis (703) 697-2122 (Voice), 703-614-6233 (Facsimile), [osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil](mailto:osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil) (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25-01,

Alexandria, VA 22350. Website: <http://dacowits.defense.gov>. The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.140 and 102-3.150.

*Purpose of the Meeting:* The purpose of the meeting is for the DACOWITS to receive briefings and updates relating to their current work. The meeting will open with the Designated Federal Officer (DFO) giving a status update on the DACOWITS' requests for information. This will be followed with a briefing from the military Services and DACOWITS' discussion on personal protective equipment/gear for women. There will then be a public comment period. Day one will end with an awards ceremony for departing DACOWITS members. The second day of the meeting will open with a briefing from Office of the Secretary of Defense Public Affairs on the "This is Your Military" DoD initiative. This will be followed by an overview briefing by representative of the National Guard and DACOWITS discussion on the National Guard. Lastly the DACOWITS will receive an update briefing from the Office of Under Secretary of Defense (Personnel and Readiness), Office of the Diversity Management and Equal Opportunity, on Gender Discrimination and Sexual Harassment and DACOWITS discussion.

*Agenda:* Tuesday, June 19, 2018, from 8:30 a.m. to 11:45 a.m.—Welcome, Introductions, and Announcements; Request for Information Status Update; Briefings and DACOWITS discussion on: Personal Protective Equipment/Gear for Women; Public Comment Period; Awards Ceremony. Wednesday, June 20, 2018, from 8:30 a.m. to 11:45 a.m.—Welcome and Announcements; Briefing and DACOWITS discussion on: "This is Your Military" DoD Initiative; National Guard Overview; and Gender Discrimination and Sexual Harassment Update.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165, this meeting is open to the public, subject to the availability of space.

*Written Statements:* Pursuant to 41 CFR 102-3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their

statement to Mr. Robert Bowling (703) 697-2122 (Voice), 703-614-6233 (Facsimile), [robert.d.bowling1.civ@mail.mil](mailto:robert.d.bowling1.civ@mail.mil) (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25-01, Alexandria, VA 22350 no later than 5:00 p.m., Thursday June 14, 2018. If a written statement is not received by Thursday, June 14, 2018, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DACOWITS until its next open meeting. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee. If members of the public are interested in making an oral statement, a written statement should be submitted. After reviewing the written comments, the Chair and the DFO will determine if the requesting persons is permitted to make an oral presentation of their issue during an open portion of this meeting or at a future meeting. Pursuant to 41 CFR 102-3.140(d), determination of who will be making an oral presentation is at the sole discretion of the Committee Chair and the DFO, and will depend on time available and if the topics are relevant to the Committee's activities. Five minutes will be allotted to persons desiring to make an oral presentation. Oral presentations by members of the public will be permitted only on Tuesday, June 19, 2018 from 10:00 a.m. to 10:30 a.m. in front of the full Committee. The number of oral presentations to be made will depend on the number of requests received from members of the public.

Dated: May 29, 2018.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11808 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD-2018-OS-0006]

#### Submission for OMB Review; Comment Request

**AGENCY:** Defense Finance and Accounting Service, 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 July 2, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, 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](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Waiver/Remission of Indebtedness Application; DD Form 2789; OMB Number 0730-0009.

*Type of Request:* Reinstatement.

*Number of Respondents:* 4,500.

*Responses per Respondent:* 1.

*Annual Responses:* 4,500.

*Average Burden per Response:* 1.33 hours.

*Annual Burden Hours:* 6,000.

*Needs and Uses:* The information collection requirement is necessary for current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission. Remissions apply only to active duty military members, and thus are not covered under the Paperwork Reduction Act of 1995.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jasmeet Sehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: May 25, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11760 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2018-OS-0014]

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, 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 July 2, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, 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](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

**SUPPLEMENTARY INFORMATION:**

*Title; Associated Form; and OMB Number:* Defense Information System for Security (DISS); OMB Control Number 0704-XXXX.

*Type of Request:* New collection.

*Number of Respondents:* 22,225.

*Responses per Respondent:* 45.

*Annual Responses:* 1,000,125.

*Average Burden per Response:* 20 minutes.

*Annual Burden Hours:* 333,375 hours.

*Needs and Uses:* This information collection is necessary as the DISS system requires personal data collection to facilitate the initiation, investigation and adjudication of information relevant to DoD security clearances and

employment suitability determinations for active duty military, civilian employees and contractors requiring such credentials. As a Personnel Security System it is the authoritative source for clearance information resulting in accesses determinations to sensitive/classified information and facilities.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jasmeet Sehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: May 29, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11792 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Renewal of Department of Defense Federal Advisory Committees

**AGENCY:** Department of Defense.

**ACTION:** Renewal of Federal Advisory Committee.

**SUMMARY:** The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Advisory Committee on Arlington National Cemetery ("the Committee").

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee

Management Officer for the Department of Defense, 703-692-5952.

**SUPPLEMENTARY INFORMATION:** This committee's charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102-3.50(a). The Committee's charter and contact information for the Committee's Designated Federal Officer (DFO) can be obtained at <http://www.facadatabase.gov/>. The Committee makes periodic reports and recommendations to the Secretary of the Army with respect to the administration of Arlington National Cemetery, the erection of memorials at the cemetery, and master planning for the cemetery. The Committee will be composed of no more than nine members who are eminent authorities in their respective fields of interest or expertise, specifically bereavement practices and administrative oversight, the erection of memorials, and master planning for extending the life of a cemetery. Members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. Members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102-3.130(a) to serve as regular government employee members. All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, members serve without compensation. The DoD, as necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee, and all subcommittees must operate under the provisions of FACA and the Government in the Sunshine Act. Subcommittees will not work independently of the Committee and must report all their recommendations and advice solely to the Committee for full deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees. The Committee's DFO, pursuant to DoD policy, must be a full-

time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Committee/subcommittee meeting. The public or interested organizations may submit written statements to the Committee membership about the Committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Committee. All written statements shall be submitted to the DFO for the Committee, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: May 29, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2018-11810 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID DoD-2018-OS-0011]

#### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, 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 July 2, 2018.

**ADDRESSES:** Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Sehra, DoD Desk Officer, at [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please identify the proposed information collection by DoD Desk Officer, 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](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

#### SUPPLEMENTARY INFORMATION:

*Title; Associated Form; and OMB Number:* Department of Defense New Hire Forms; DD X735, DD X739, DDX741; OMB Control Number 0704-XXXX.

*Type of Request:* Existing collection.  
*Number of Respondents:* 82,000.  
*Responses per Respondent:* 1.

*Annual Responses:* 82,000.  
*Average Burden per Response:* 5 minutes.  
*Annual Burden Hours:* 6,833.35 hours.

*Needs and Uses:* The information collection requirement is necessary to ensure that all new hires across the Department of Defense meet the basic requirements of civil service. The New Hire Forms, DD X735, "Release/Consent Statement;" DD X739, "Civilian Employee's Military Reserve, Guard, or Retiree Data;" and DD X741, "Term Employment Statement of Understanding," supplant and standardize the paperwork used throughout the Department of Defense to verify the eligibility of onboarding employees.

*Affected Public:* Individuals or Households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.  
*OMB Desk Officer:* Ms. Jasmeet Sehra.

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.

Requests for copies of the information collection proposal should be sent to Mr. Licari at [whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil](mailto:whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil).

Dated: May 29, 2018.

**Shelly E. Finke,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 2018-11788 Filed 5-31-18; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF EDUCATION

[Docket ID ED-2018-FSA-00151]

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Student Aid, Department of Education.

**ACTION:** Notice of a new matching program.

**SUMMARY:** Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendments of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of computer matching programs, notice is hereby given of the renewal of the computer matching program between the Department of Education (ED) (recipient agency) and the Department of Justice (DOJ) (source agency).

**DATES:** Submit your comments on the proposed matching program on or before July 2, 2018.

The matching program will go into effect at the later of the following two dates: June 20, 2018 or 30 days after the publication of this notice, on June 1, 2018, unless comments have been received from interested members of the public requiring modification and republication of the notice.

The matching program will continue for 18 months after the effective date of the computer matching agreement (CMA) and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the “help” tab.

- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about this new CMA, address them to: Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202)377–3385.

*Privacy Note:* ED’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only

information that they wish to make publicly available.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street NE, Washington, DC 20202–5454. Telephone: (202)377–3385.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of Federal benefits. Section 421 of the Controlled Substances Act, which was originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, and which was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647 (hereinafter referred to as “section 5301”), authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA)) to individuals convicted of drug trafficking or possession of a controlled substance.

In order to ensure that HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, DOJ and ED implemented a computer matching program. The 18-month CMA was recertified for an additional 12 months on June 20, 2017. The 12-month recertification of the CMA will automatically expire on June 19, 2018.

For the purpose of ensuring that HEA student financial assistance is not awarded to individuals denied benefits by court orders issued under the Denial of Federal Benefits Program, ED must continue to obtain from DOJ identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued

operation of the computer matching program and to provide certain required information concerning the computer matching program.

#### **PARTICIPATING AGENCIES**

The Department of Education (ED) and the Department of Justice (DOJ).

#### **AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:**

Under section 5301, ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under the HEA is a Federal benefit and under section 5301, ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

While DOJ provides information under section 5301 about individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA’s List of Parties Excluded from Federal Procurement and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ database is more efficient and effective than matching against the GSA List. The DOJ database has specific information about the HEA programs for which individuals are ineligible, as well as the expiration of the debarment period, making the DOJ database more complete than the GSA List. Both of these elements are essential for a successful match.

#### **PURPOSE(S):**

The purpose of this matching program is to ensure that the requirements of section 421 of the Controlled Substances Act (originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, Public Law 100–690, 21 U.S.C. 853a, which was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Public Law 101–647) (hereinafter referred to as “section 5301”) are met.

DOJ is the lead contact agency for information related to section 5301 violations and, as such, provides this data to ED. ED seeks access to the information contained in the Denial of Federal Benefits and Defense Procurement Fraud Debarment Clearinghouse program (DFB/DPFD) database (formerly known as DEBARS) that is authorized under section 5301 for the purpose of ensuring that HEA student financial assistance is not awarded to individuals subject to denial



of benefits under court orders issued pursuant to the Denial of Federal Benefits Program.

#### CATEGORIES OF INDIVIDUALS:

The individuals whose records are included in this matching program are individuals who are the subject of section 5301 denial of benefits court orders, and all students who complete a Free Application for Federal Student Aid. ED receives data from the DOJ DFB/DPFD system that is used to match title IV, HEA applicant data in ED's Central Processing System (Federal Student Aid Application File (18–11–01)).

#### CATEGORIES OF RECORDS:

ED will use the Social Security number (SSN), date of birth, and the first two letters of an applicant's last name for the match. These data elements are contained in ED's Central Processing System. The DOJ DFB/DPFD system contains the names, SSNs, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance that have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the title IV, HEA programs.

#### SYSTEM(S) OF RECORDS:

DOJ system of records: DFB/DPFD (The most recent full DFB/DPFD system of records notice was published in the **Federal Register** on May 10, 1999, 64 FR 25071.) ED system of records: Federal Student Aid Application File (18–11–01). (The most recent ED system of records notice was published in the **Federal Register** on August 3, 2011, 76 FR 46774.) (Note: The ED Central Processing System [CPS] is the ED information system that processes data from the Federal Student Aid Application File.)

**Accessible Format:** Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) by contacting the contact person listed in the preceding paragraph.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the

Code of Federal Regulations via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of ED published in the **Federal Register** by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by ED.

**Authority:** 5 U.S.C. 552a; 21 U.S.C. 862(a)(1).

Dated: May 29, 2018.

**James F. Manning,**

*Acting Chief Operating Officer Federal Student Aid.*

[FR Doc. 2018–11856 Filed 5–31–18; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

[Case Number 2017–014]

### Notice of Decision and Order Granting a Waiver to Huawei From the Department of Energy External Power Supply Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of decision and order.

**SUMMARY:** This notice announces a Decision and Order granting Huawei Technologies, Co. Ltd. (“Huawei”) a waiver from specified portions of the DOE test procedure for determining the energy efficiency of specified external power supply (“EPS”) basic models. Huawei is required to test and rate the specified basic models of its EPS in accordance with the alternate test procedure described in the Decision and Order.

**DATES:** The Decision and Order is effective on June 1, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1604. E-mail: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov).

Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW,

Washington, DC 20585–0103. Telephone: (202) 586–8145. Email: [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On December 1, 2017, Huawei filed a petition for waiver and an application for interim waiver from the applicable EPS test procedure set forth in 10 CFR part 430, subpart B, appendix Z. On March 23, 2018, DOE published a notice announcing its receipt of the petition for waiver and its granting Huawei an interim waiver. 83 FR 12737. In that notice, DOE also solicited comments from interested parties on all aspects of the petition and specified an alternate test procedure that must be followed for testing and certifying the specific basic models for which Huawei requested a waiver. *Id.* On June 1, 2018, DOE publishes this notice announcing a Decision and Order granting a waiver to Huawei. This notice includes a copy of the Decision and Order DOE issued to Huawei.

Issued in Washington, DC, on May 23, 2018.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

#### Case #2017–014

#### Decision and Order

#### I. Background and Authority

The Energy Policy and Conservation Act of 1975 (“EPCA” or “the Act”),<sup>1</sup> Public Law 94–163 (42 U.S.C. 6291–6317, as codified), among other things, authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and industrial equipment. Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program that includes EPSs, which are the subject of this Order. (42 U.S.C. 6291(36); 42 U.S.C. 6295(u)) Under EPCA, DOE's energy conservation program consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures.

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the EPS Improvement Act of 2017, Public Law 115–115 (January 12, 2018).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.



U.S.C. 6295(s)), and (2) making representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for EPSs is contained in the Code of Federal Regulations (“CFR”) at 10 CFR part 430, subpart B, appendix Z, *Uniform Test Method for Measuring the Energy Consumption of External Power Supplies* (“Appendix Z”).

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE’s test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

## II. Petition for Waiver: Assertions and Determinations

By e-mail with attachment dated December 1, 2017, Huawei filed a petition for waiver from the DOE test procedure for EPSs under 10 CFR 430.27 for several basic models of adaptive EPSs<sup>3</sup> that meet the provisions of the International Electrotechnical Commission’s “Universal serial bus interfaces for data and power—Part 1–2: Common components—USB Power Delivery” (“IEC 62680–1–2:2017”)

<sup>3</sup> The specific basic models for which the petition applies are EPS basic models HW–200200UPX, HW–200300UPX, HW–200325UPX, and HW–200500UPX. These basic model names were provided by Huawei in its December 1, 2017 petition.

specification.<sup>4</sup> The purpose behind this specification is to help provide a standardized approach for power supply and peripheral developers to ensure backward compatibility while retaining product design and marketing flexibility. See generally, IEC 62680–1–2:2017 (Abstract) (describing the standard’s general provisions and purpose).

In Huawei’s view, applying the DOE test procedure to the adaptive EPSs specified in its petitions would yield results that would be unrepresentative of the active-mode efficiency of those products. The DOE test procedure requires that the average active-mode efficiency for adaptive EPSs be measured by testing the unit twice—once at the highest achievable output voltage (“V”) and once at the lowest. The test procedure requires that active-mode efficiency be measured at four loading conditions relative to the nameplate output current of the EPS. See 10 CFR 430.23(bb) and Appendix Z. The lowest achievable output voltage supported by the IEC 62680–1–2:2017 specification is 5V and the nameplate current at this voltage output is 3 amps (“A”), resulting in a power output of 15 W. Huawei contends that while the IEC 62680–1–2:2017 specification requires the tested EPS to support this power output, the 15W at 5V condition will be rarely used and only for brief periods of time, and that adaptive EPSs operating at 5V do not exceed 10W for almost all usage conditions.

Huawei contended that, when charging a product that is sold or intended to be used with the adaptive EPS, the EPS charges at 5 volts only with a dead battery or fully charged battery (and then at 0.5A or less). At other times when more power is needed, the adaptive EPS will use a higher voltage rail (greater than 5V). (A “voltage rail” refers to a single voltage provided by the relevant power supply unit through a dedicated circuit/wire used for that voltage.) Huawei further stated that when using an adaptive EPS that supports the IEC 62680–1–2:2017 specification to charge an end-use product of a manufacturer different from the one who manufactured the EPS, it is likely that the product would charge at less than 10W at 5V, or may even be capable of exploiting the ability of an adaptive EPS to provide higher voltages for faster charging.

Accordingly, Huawei asserted that the DOE test procedure’s measurement of

efficiency at the prescribed power level (i.e., 5V, 3A) is unrepresentative of the true energy consumption of these EPSs. Consequently, it sought a waiver from DOE to permit it to use an alternate test procedure to measure the energy efficiency of the specified adaptive EPSs that support the IEC 62680–1–2:2017 specification by testing these devices at the lowest voltage, 5V, and at an output power at 10W instead of 15W.

On March 23, 2018, DOE published a notice announcing its receipt of the petition for waiver, and granting Huawei an interim waiver. 83 FR 12737. In the notice of petition for waiver, DOE reviewed the alternate test procedure suggested by Huawei and granted the interim waiver. DOE found that the alternate test procedure would allow for the accurate measurement of efficiency of these EPSs, while alleviating the testing problems associated with Huawei’s implementation of EPS testing for the basic models specified in its petition. DOE also solicited comments from interested parties on all aspects of the petition and specified an alternate test procedure that must be followed for testing and certifying the specific basic models for which Huawei’s requested a waiver. *Id.* DOE received no relevant comments in response to the notice of petition for waiver.<sup>5</sup>

Based on the information provided by Huawei, DOE has determined that the current test procedure at Appendix Z would evaluate the specified EPS basic models in a manner so unrepresentative of their true energy consumption characteristics as to provide materially inaccurate comparative data. Therefore, in the Decision and Order, DOE is requiring that Huawei test and rate the EPS basic models for which it has requested a waiver according to the alternate test procedure specified in the Decision and Order, which is identical to the procedure provided in the interim waiver.<sup>6</sup>

In its petition Huawei sought a test procedure waiver for certain basic models. The Decision and Order is applicable only to the basic models listed within it and does not extend to any other basic models.

Manufacturers not currently distributing such a product in

<sup>5</sup> DOE received seven anonymous comments regarding issues unrelated to the waiver petition. See the docket for this notice at <http://www.regulations.gov/docket?D=EERE-2017-BT-WAV-0061>.

<sup>6</sup> The alternate test procedure specified in this Decision and Order is also identical to the alternate test procedure in the Decision and Order issuing individual waivers to Apple, Inc., Microsoft Corporation, Poin2 Lab, and Hefei Bitland Information Technology Co. Ltd. 83 FR 11738 (March 16, 2018).

<sup>4</sup> International Electrotechnical Commission Universal serial bus interfaces for data and power—Part 1–2: Common components—USB Power Delivery specification, <https://webstore.iec.ch/publication/26174/>

commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of that product in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

### III. Consultations with Other Agencies

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission ("FTC") staff concerning the Huawei petition for waiver. The FTC staff did not have any objections to granting a waiver to Huawei.

### IV. Order

After careful consideration of all the material that was submitted by Huawei in this matter, DOE grants a waiver regarding the below specified basic models. Therefore, in accordance with 10 CFR 430.27, it is **ORDERED** that:

(1) Huawei must test and rate Huawei brand EPS basic models HW-200200UPX, HW-200300UPX, HW-200325UPX, HW-200500UPX in accordance with the alternate test procedure as set forth in paragraph (2) of this section.

(2) The alternate test procedure for the Huawei basic models listed in paragraph (1) of this section of this Order is the test procedure for EPSs prescribed by DOE at Appendix Z, except that under section 4(a)(i)(E) and Table 1 of Appendix Z, the adaptive EPSs must be tested such that when testing at the lowest achievable output voltage (*i.e.*, 5V), the Nameplate Output Current shall be 2A (which corresponds to an output power of 10W at the 100% loading condition). The 75%, 50%, and 25% loading conditions shall be scaled accordingly and the nameplate output power of such an EPS, at the lowest output voltage, shall be equal to 10W.

(3) *Representations.* Huawei must make representations about the efficiency of the basic models identified in paragraph (1) of this section for compliance, marketing, or other purposes only to the extent that the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with Appendix Z and 10 CFR 429.37.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27. This Decision and Order will terminate on the compliance date of any future updates to the test procedure for EPSs located in Appendix Z that address the issue presented in the waiver. At such time, testing to demonstrate compliance with standards,

and any other representations of energy use, will require manufacturers to use the relevant test procedure for these products.

(5) This waiver is issued on the condition that the statements, representations, and documentation provided by Huawei are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, Huawei may request that DOE rescind or modify the waiver if Huawei discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) Granting of this waiver does not release Huawei from the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on May 23, 2018.

Kathleen B. Hogan,  
Deputy Assistant Secretary for Energy  
Efficiency, Energy Efficiency and Renewable  
Energy.

[FR Doc. 2018-11793 Filed 5-31-18; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** National Nuclear Security Administration, U.S. Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB).

**DATES:** Comments regarding this proposed information collection must be received on or before July 31, 2018. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Written comments may be sent by email to [part810@nnsa.doe.gov](mailto:part810@nnsa.doe.gov). Include "Paperwork Reduction Act" in the subject line. Comments can also be sent by fax at (202) 586-6789 or by mail to Katie Strangis, Policy Advisor, Office

of Nonproliferation and Arms Control, NA-24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Room 7F-075, Washington, DC 20585. Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

### FOR FURTHER INFORMATION CONTACT:

Additional information on DOE's regulation of assistance to foreign atomic energy activities pursuant to 10 CFR part 810 is available at <https://www.energy.gov/nnsa/10-cfr-part-810>. For other questions, contact Katie Strangis, Policy Advisor, Office of Nonproliferation and Arms Control, NA-24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW, Room 7F-075, Washington, DC 20585, telephone (202) 586-8623.

**SUPPLEMENTARY INFORMATION:** This information collection request contains:

(1) OMB No. A1901-0263; (2) *Information Collection Request Title:* Assistance to Foreign Atomic Energy Activities; (3) *Type of Review:* Extension; (4) *Purpose:* This collection of information is necessary in order to provide the Secretary of Energy with the appropriate information needed to make informed determinations regarding requests to directly or indirectly engage or participate in the development or production of special nuclear material outside the United States; (5) *Annual Estimated Number of Respondents:* 89; (6) *Annual Estimated Number of Total Responses:* 596; (7) *Annual Estimated Number of Burden Hours:* 1,788; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* \$178,600. Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and 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.

*Statutory Authority:* Section 57 b.(2) of the Atomic Energy Act (AEA) of 1954 and Section 161(c) of the AEA.

Issued in Washington, DC, on May 25, 2018.

**Sean Oehlbert,**

*Acting Policy Director, Office of  
Nonproliferation and Arms Control,  
Department of Energy's National Nuclear  
Security Administration.*

[FR Doc. 2018-11787 Filed 5-31-18; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9978-77-ORD]

### Ambient Air Monitoring Reference and Equivalent Methods; Designation of One New Reference Method

**AGENCY:** Office of Research and  
Development; Environmental Protection  
Agency.

**ACTION:** Notice of the designation of a  
new reference method for monitoring  
ambient air quality.

**SUMMARY:** Notice is hereby given that  
the Environmental Protection Agency  
(EPA) has designated one new reference  
method for measuring concentrations of  
nitrogen dioxide (NO<sub>2</sub>) in ambient air.

**FOR FURTHER INFORMATION CONTACT:**  
Robert Vanderpool, Exposure Methods  
and Measurement Division (MD-D205-  
03), National Exposure Research  
Laboratory, U.S. EPA, Research Triangle  
Park, North Carolina 27711. Phone:  
919-541-7877. Email:  
[Vanderpool.Robert@epa.gov](mailto:Vanderpool.Robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** In  
accordance with regulations at 40 CFR  
part 53, the EPA evaluates various  
methods for monitoring the  
concentrations of those ambient air  
pollutants for which EPA has  
established National Ambient Air  
Quality Standards (NAAQS) as set forth  
in 40 CFR part 50. Monitoring methods  
that are determined to meet specific  
requirements for adequacy are  
designated by the EPA as either  
reference or equivalent methods (as  
applicable), thereby permitting their use  
under 40 CFR part 58 by States and  
other agencies for determining  
compliance with the NAAQS. A list of  
all reference or equivalent methods that  
have been previously designated by EPA  
may be found at <http://www.epa.gov/ttn/amtic/criteria.html>.

The EPA hereby announces the  
designation of one new reference  
method for measuring concentrations of  
NO<sub>2</sub> in ambient air. This designation is  
made under the provisions of 40 CFR  
part 53, as amended on October 26,  
2015 (80 FR 65291-65468).

The new reference method for NO<sub>2</sub> is  
an automated method (analyzer)

utilizing the measurement principle  
based on gas phase chemiluminescence.  
This newly designated reference method  
is identified as follows:

RFNA-0418-250, "Sabio Model 6040  
Ambient NO/NO<sub>2</sub>/NO<sub>x</sub> Analyzer",  
operated in the measurement range of  
0-0.5 PPM, an any ambient temperature  
in the range of 5-40 °C, within a line  
voltage range determined by the  
selected optional pump [115 VAC  
external pump: 105-125 VAC (60 Hz);  
230 VAC external pump: 210-250 VAC  
(50-60 Hz); 24 VDC internal pump: 90-  
260 VAC (50-60 Hz)], at any sample  
flow rate in the range of 0.50-0.75 L/  
min, in accordance with the "Sabio  
Model 6040 Ambient NO/NO<sub>2</sub>/NO<sub>x</sub>  
Analyzer Instruction Manual", with or  
without optional zero/span ports for  
external calibration, and with or  
without an optional inlet filter.

This application for a reference  
method determination for this NO<sub>2</sub>  
method was received by the Office of  
Research and Development on March  
28, 2018. This analyzer is commercially  
available from the applicant, Sutron  
Corporation, 21 Cypress Blvd., Suite  
1130, Round Rock, TX 78665.

A representative test analyzer was  
tested in accordance with the applicable  
test procedures specified in 40 CFR part  
53, as amended on October 26, 2015.  
After reviewing the results of those tests  
and other information submitted by the  
applicant, EPA has determined, in  
accordance with part 53, that this  
method should be designated as a  
reference method.

As a designated reference method,  
this method is acceptable for use by  
states and other air monitoring agencies  
under the requirements of 40 CFR part  
58, Ambient Air Quality Surveillance.  
For such purposes, this method must be  
used in strict accordance with the  
operation or instruction manual  
associated with the method and subject  
to any specifications and limitations  
(e.g., configuration or operational  
settings) specified in the designated  
method description (see the  
identification of the method above).

Use of the method also should be in  
general accordance with the guidance  
and recommendations of applicable  
sections of the "Quality Assurance  
Handbook for Air Pollution  
Measurement Systems, Volume I,"  
EPA/600/R-94/038a and "Quality  
Assurance Handbook for Air Pollution  
Measurement Systems, Volume II,  
Ambient Air Quality Monitoring  
Program," EPA-454/B-13-003, (both  
available at <http://www.epa.gov/ttn/amtic/qalist.html>). Provisions  
concerning modification of such  
methods by users are specified under

Section 2.8 (Modifications of Methods  
by Users) of Appendix C to 40 CFR part  
58.

Consistent or repeated noncompliance  
with any of these conditions should be  
reported to: Director, Exposure Methods  
and Measurement Division (MD-E205-  
01), National Exposure Research  
Laboratory, U.S. Environmental  
Protection Agency, Research Triangle  
Park, North Carolina 27711.

Designation of this reference method  
is intended to assist the States in  
establishing and operating their air  
quality surveillance systems under 40  
CFR part 58. Questions concerning the  
commercial availability or technical  
aspects of the method should be  
directed to the applicant.

Dated: May 21, 2018.

**Timothy Watkins,**

*Director, National Exposure Research  
Laboratory.*

[FR Doc. 2018-11832 Filed 5-31-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9039-6]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal  
Activities, General Information (202)  
564-7156 or <https://www2.epa.gov/nepa/>.

Weekly receipt of Environmental Impact  
Statements

Filed 05/21/2018 Through 05/25/2018  
Pursuant to 40 CFR 1506.9.

### Notice

Section 309(a) of the Clean Air Act  
requires that EPA make public its  
comments on EISs issued by other  
Federal agencies. EPA's comment letters  
on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

EIS No. 20180111, Draft, NMFS, NAT,  
Draft Environmental Impact  
Statement for Issuing Annual Catch  
Limits to the Alaska Eskimo Whaling  
Commission for a Subsistence Hunt  
on Bowhead Whales for the Years  
2019 and Beyond, Comment Period  
Ends: 07/24/2018, Contact: John  
Henderschedt, 301-427-8385.

EIS No. 20180112, Draft, FHWA, NY,  
Hunts Point Interstate Access  
Improvement Project, Comment  
Period Ends: 07/16/2018, Contact:  
Erik Koester, 718-482-4683.

EIS No. 20180113, Draft, CBP, ID, Bog  
Creek Road Project, Comment Period

Ends: 07/16/2018, Contact: Paul Enriquez 949-643-6365.

EIS No. 20180114, Final Supplement, USACE, LA, Integrated General Reevaluation Report & Supplement III to the Final Environmental Impact Statement, Mississippi River Ship Channel, Baton Rouge to the Gulf, Louisiana Project, Review Period Ends: 07/02/2018, Contact: Steve Roberts 504-862-2517.

EIS No. 20180115, Draft, USFS, WA, Sunrise Vegetation and Fuels Management, Comment Period Ends: 07/16/2018, Contact: Johnny Collin 509-843-4643.

EIS No. 20180116, Draft Supplement, FHWA, WI, WIS 23 Fond du Lac to Plymouth, 2018 Limited Scope Supplemental Draft Environmental Impact Statement, Comment Period Ends: 07/31/2018, Contact: Michael Davies 608-829-7500.

EIS No. 20180117, Draft, NJDEP, NJ, Rebuild by Design (RBD) Meadowlands Flood Protection Project, Comment Period Ends: 07/16/2018, Contact: Dennis Reinknecht 609-777-4152.

EIS No. 20180118, Final, USDA, TX, Cattle Fever Tick Eradication Program—Tick Control Barrier, Review Period Ends: 07/02/2018, Contact: Dr. Denise Bonilla 970-494-7317.

Dated: May 29, 2018.

**Rob Tomiak,**

*Director, Office of Federal Activities.*

[FR Doc. 2018-11773 Filed 5-31-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0440; FRL-9978-73-OEI]

### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): “Plant-Incorporated Protectants; CBI Substantiation and Adverse Effects Reporting” (EPA ICR No. 1693.09, OMB

Control No. 2070-0142). This is a request to renew the approval of an existing ICR, which is currently approved through May 31, 2018. EPA did not receive any public comments in response to the previously provided public review opportunity issued in the **Federal Register** of September 13, 2017. With this submission to OMB, EPA is providing an additional 30 days for public review and comment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Additional comments may be submitted on or before July 2, 2018.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OPP-2017-0440, to both EPA and OMB as follows:

- To EPA online using <http://www.regulations.gov> (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and

- To OMB via email to [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Address comments to the OMB Desk Officer for EPA.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

#### FOR FURTHER INFORMATION CONTACT:

Ryne Yarger, Field and External Affairs Division, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703-605-1193; fax number: 703-305-5884; email address: [yarger.ryne@epa.gov](mailto:yarger.ryne@epa.gov).

#### SUPPLEMENTARY INFORMATION:

**Docket:** Supporting documents, including the ICR that explains in detail the information collection activities and the related burden and cost estimates that are summarized in this document, are available in the docket for this ICR. The docket can be viewed online at <http://www.regulations.gov> or in person at the EPA Docket Center, West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is (202) 566-1744. For additional information about EPA’s public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** This ICR addresses the two information collection requirements

contained in the regulations codified in 40 CFR part 174 pertaining to pesticidal substances that are produced by plants (plant-incorporated protectants, or PIPs). A PIP is defined as “the pesticidal substance that is intended to be produced and used in a living plant and the genetic material necessary for the production of such a substance.” Many, but not all, PIPs are exempt from registration requirements under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

CBI is protected by FIFRA and generally cannot be released to the public. For most pesticide registration applications, the current CBI regulations at 40 CFR part 2 require that claimants substantiate their CBI claims for their own records when the claim is made, and subsequently provide the substantiation to EPA only if requested. However, under 40 CFR part 174, whenever a registrant claims that information submitted to EPA in support of a PIP registration application contains CBI, the registrant must substantiate such claims to EPA when they are made. In addition, 40 CFR part 174 also requires manufacturers of PIPs that are otherwise exempted from registration requirements to report any adverse effects of the PIP to the Agency within 30 days of when the information is first obtained. Such reporting will allow the Agency to determine whether further action is needed to prevent unreasonable adverse effects to human health or the environment.

**Form Numbers:** None.

**Respondents/affected entities:** Entities potentially affected by this ICR include producers and importers of PIPs. The North American Industrial Classification System (NAICS) codes for respondents under this ICR include: 325320 (Pesticide and other Agricultural Chemical Manufacturing), 325414 (Biological Products (except Diagnostic) Manufacturing), 422910 (Farm Supplies Wholesalers), 422930 (Flower, Nursery Stock, and Florist’s Suppliers), 541710 (Research and Development in the Physical, Engineering, and Life Sciences), and 611310 (Colleges, Universities, and Professional Schools).

**Respondent’s obligation to respond:** Mandatory.

**Estimated number of respondents:** 24 (total).

**Frequency of response:** On occasion.

**Total estimated burden:** 518 hours (per year). Burden is defined at 5 CFR 1320.03(b).

**Total estimated cost:** \$41,892 (per year), includes \$0 annualized capital or operation and maintenance costs.

**Changes in the Estimates:** There is an increase of 86 hours in the total

estimated respondent burden compared with the ICR currently approved by OMB. This increase reflects EPA's updating of burden estimates for this collection based upon historical information on the number of CBI substantiations per year. Based upon revised estimates, the number of CBI substantiations per year has increased from 20 to 24, with a corresponding increase in the associated burden. This change is an adjustment.

**Courtney Kerwin,**

*Director, Collection Strategies Division.*

[FR Doc. 2018-11802 Filed 5-31-18; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0467; FRL-9976-98]

### Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an October 3, 2017 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend

to terminate uses of these product registrations. In the October 3, 2017 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received 5 anonymous public comments on the notice but none merited its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations and amendments are applicable June 1, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 347-0367; email address: [green.christopher@epa.gov](mailto:green.christopher@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

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

This action is directed to the public in general, and may be of interest to a

wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0467, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

##### II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a).

These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredient
53883-370 .....	53883	Quali-Pro Oxadiazon 50 WSB .....	Oxadiazon.
CA-130009 .....	91606	Aspergillus Flavus AF36 .....	Aspergillus flavus strain AF36.
WY-080010 .....	8033	Assail 70WP Insecticide .....	Acetamiprid.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
2724-404 .....	2724	Zoecon RF-322 Ovicidal Pump Spray.	MGK 264; Piperonyl butoxide; Pyrethrins; & S-Methoprene.	Use on horses.
49620-2 .....	49620	EKA SC-R .....	Sodium chlorate .....	Defoliants/desiccants applied to: Agricultural drainage systems, beans (dried type), corn, cotton, fallow land, flax, guar, peas (Southern), peppers (chili type), potatoes, rice, safflower, sorghum, soybeans, sunflowers, wheat; and as an herbicide applied to nonagricultural settings (commercial, industrial, and residential).

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES—Continued

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
49620–6 .....	49620	EKA SC–R Aqueous .....	Sodium chlorate .....	Defoliants/desiccants applied to: Agricultural drainage systems, beans (dried type), corn, cotton, fallow land, flax, guar, peas (Southern), peppers (chili type), potatoes, rice, safflower, sorghum, soybeans, sunflowers, wheat; and as an herbicide applied to nonagricultural settings (commercial, industrial, and residential).

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Table 1

and Table 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA

registration numbers of the products listed in Table 1 and Table 2 of this unit.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
2724 .....	Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
8033 .....	Nippon Soda Co., Ltd., Agent Name: Nisso America, Inc., 88 Pine Street, 14th Floor, New York, NY 10005.
49620 .....	Akzo Nobel Pulp and Performance Chemicals, Inc., Agent Name: Keller and Heckman, LLP, 1001 G Street NW, Suite 500 West, Washington, DC 20001.
53883 .....	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
91606 .....	California Cattlemen's Association Feeder Council, 1221 H Street, Sacramento, CA 95814.

### III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided EPA received 5 anonymous public comments. The Agency does not believe that the comments submitted during the comment period merits further review or the denial of the requests for the voluntary cancellations of products listed in Table 1 of Unit II or the requests for the amendments to terminate uses in Table 2 of Unit II.

### IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is June 1, 2018. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

### V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time

request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of October 3, 2017 (82 FR 46050) (FRL–9966–87). The comment period closed on April 2, 2018.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

#### A. For Product 53883–370

The registrant has requested to the Agency via letter to distribute existing stocks for an 18-month period for products 53883–370.

For all other voluntary product cancellations identified in Table 1 of Unit II, registrants will be permitted to sell and distribute existing stocks of voluntarily canceled products for 1 year after the effective date of the cancellation, which will be the date of publication of the cancellation order in the **Federal Register**. Thereafter,

registrants will be prohibited from selling or distributing the products identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses for the products listed in Table 2 of Unit II, registrants are permitted to sell or distribute the products listed in Table 2 of Unit II, under the previously approved labeling until December 2, 2019, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: May 3, 2018.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. 2018–11755 Filed 5–31–18; 8:45 am]

**BILLING CODE 6560–50–P**

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****Agency Information Collection****Activities: Extension Without Change of an Existing Collection; Submission for OMB Review**

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations.

**DATES:** Written comments on this notice must be submitted on or before July 2, 2018.

**ADDRESSES:** Comments on this notice must be submitted to Joseph B. Nye, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, email [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov). Commenters are also encouraged to send comments to the EEOC online at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on the website for submitting comments. In addition, the EEOC's Executive Secretariat will accept comments in hard copy. Hard copy comments should be sent to Bernadette Wilson, Executive Officer, EEOC, 131 M Street NE, Washington, DC 20507. Finally, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile ("fax") machine before the same deadline at (202) 663-4114. (This is not a toll-free number.) Receipt of fax transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll-free telephone numbers.) The EEOC will post online at <http://www.regulations.gov> all comments submitted via this website, in hard copy, or by fax to the Executive Secretariat. These comments will be posted without change, including any personal information you provide. However, the EEOC reserves the right to refrain from posting comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or

endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment, contact EEOC Library staff at (202) 663-4630 (voice) or (202) 663-4641 (TTY). (These are not toll-free numbers.)

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Oram, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, (202) 663-4681 (voice) or (202) 663-4494 (TTY), or Erin Norris, Senior Attorney, Office of Legal Counsel, Equal Employment Opportunity Commission, 129 W Trade Street, Charlotte, NC 28202, (704) 954-6491 (voice). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY).

**SUPPLEMENTARY INFORMATION:** The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 (Title VII), Title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of Title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary or appropriate. EEOC has promulgated recordkeeping regulations under those authorities that are contained in 29 CFR part 1602 *et seq.* Those regulations do not require the creation of any particular records but generally require employers to preserve any personnel and employment records they make or keep for a period of one year. The EEOC seeks extension of the recordkeeping requirement in these regulations without change.

A notice that EEOC would be submitting this request was published in the **Federal Register** on February 20, 2018, allowing for a 60-day public comment period. Three comments were received from the public; however, none of these comments addressed the EEOC's recordkeeping requirements. Accordingly, no changes have been

made to the requirements based upon the unresponsive comments.

**Overview of Current Information Collection**

*Collection Title:* Recordkeeping under Title VII, the ADA, and GINA.

*OMB Number:* 3046-0040.

*Description of Affected Public:*

Employers with 15 or more employees are subject to Title VII, the ADA, and GINA.

*Number of Respondents:* 961,709.

*Number of Reports Submitted:* 0.

*Estimated Burden Hours:* 37,264 hours.

*Cost to Respondents:* \$0.

*Federal Cost:* None.

*Number of Forms:* None.

*Abstract:* Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), section 107(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff-6(a), require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination in employment requirements. This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of Title VII which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

*Burden Statement:* The estimated number of respondents subject to this recordkeeping requirement is 961,709 employers. An employer subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records made or kept by that employer for one year, and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one year. This recordkeeping requirement does not require reports or the creation of new documents, but merely requires retention of documents that an employer has already made or kept in the normal course of its business operations. Thus, existing employers bear no burden under this analysis, because their systems for retaining personnel and employment records are already in place. Newly formed firms may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC's recordkeeping requirements. We assume some effort and time must be



expended by employers to familiarize themselves with the Title VII, ADA, and GINA recordkeeping requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using 2015 data from the Small Business Administration, we estimate that there are 74,528 firms that would incur this start-up burden.<sup>1</sup> Assuming a 30-minute burden per firm, the total annual hour burden is 37,264 hours (.5 hour × 74,528 = 37,264).

For the Commission.

Dated: May 25, 2018.

**Victoria A. Lipnic,**  
Acting Chair.

[FR Doc. 2018-11798 Filed 5-31-18; 8:45 am]

**BILLING CODE 6570-01-P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**TIME AND DATE:** June 6, 2018; 10:00 a.m.

**PLACE:** 800 N Capitol Street NW, First Floor Hearing Room, Washington, DC.

**STATUS:** This meeting will be open to the public and will be streamed live at <https://bit.ly/2IZBIkY>.

#### MATTER TO BE CONSIDERED:

#### Open Session

1. Staff Briefing on Monitoring of Ocean Carrier and Marine Terminal Operator Agreements
2. Docket No. 17-10: NVOCC Negotiated Rate Arrangements (NRAs) and NVOCC Service Arrangements (NSAs)

**CONTACT PERSON FOR MORE INFORMATION:**  
Rachel Dickon, Secretary, (202) 523-5725.

**Rachel Dickon,**  
Secretary.

[FR Doc. 2018-11881 Filed 5-30-18; 11:15 am]

**BILLING CODE 6731-AA-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12

CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 14, 2018.

*A. Federal Reserve Bank of Atlanta* (Kathryn Haney, Director of Applications) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to [Applications.Comments@atl.frb.org](mailto:Applications.Comments@atl.frb.org):

1. *Gaylon M. Lawrence, Jr., Memphis, Tennessee*; to acquire outstanding shares of Volunteer State Bancshares, Inc., and thereby acquire shares of Volunteer State Bank, both of Portland, Tennessee.

Board of Governors of the Federal Reserve System, May 25, 2018.

**Ann Misback,**  
Secretary of the Board.

[FR Doc. 2018-11744 Filed 5-31-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0048; Docket 2018-0003; Sequence No. 9]

#### Information Collection; Authorized Negotiators

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

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding Authorized Negotiators.

**DATES:** Submit comments on or before July 31, 2018.

**ADDRESSES:** Submit comments identified by Information Collection 9000-0048, Authorized Negotiators, by any of the following methods:

- **Regulations.gov:** <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0048, Authorized Negotiators". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0048, Authorized Negotiators" on your attached document.

- **Mail:** General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000-0048, Authorized Negotiators.

**Instructions:** Please submit comments only and cite Information Collection 9000-0048, Authorized Negotiators, in all correspondence related to this collection. Comments received generally will be posted without change to [regulations.gov](http://www.regulations.gov), including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [regulations.gov](http://www.regulations.gov), approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202-208-4949, or via email to [michael.o.jackson@gsa.gov](mailto:michael.o.jackson@gsa.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

Per FAR 52.215-1(c)(2)(iv), firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

##### B. Annual Reporting Burden

*Respondents:* 15,524.

*Responses per Respondent:* 8.

*Total Responses:* 124,192.

*Hours per Response:* .017.

*Total Burden Hours:* 2111.

<sup>1</sup> Source: U.S. Small Business Administration: Statistics of U.S. Business, Release Date 1/2017. (<https://www.sba.gov/advocacy/firm-size-data>). Select U.S. Static Data, U.S. Data and combines estimates from private employment, public sector, colleges and universities, and referral unions.



### C. Public Comments

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

#### *Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0048, Authorized Negotiators, in all correspondence.

Dated: May 23, 2018.

**Lorin S. Curit,**

*Director, Federal Acquisition Policy Division,  
Office of Governmentwide Acquisition Policy,  
Office of Acquisition Policy, Office of  
Governmentwide Policy.*

[FR Doc. 2018-11778 Filed 5-31-18; 8:45 am]

**BILLING CODE 6820-EP-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0067; Docket No. 2018-0003; Sequence No. 10]

#### Information Collection; Incentive Contracts

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

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

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning incentive contracts.

**DATES:** Submit comments on or before July 31, 2018.

**ADDRESSES:** Submit comments identified by Information Collection 9000-0067, Incentive Contracts, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0067, Incentive Contracts". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0067, Incentive Contracts" on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000-0067, Incentive Contracts.

*Instructions:* Please submit comments only and cite Information Collection 9000-0067, Incentive Contracts, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov*, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael O. Jackson, Procurement Analyst, Office of Acquisition Policy, GSA 202-208-4949 or via email [michael.o.jackson@gsa.gov](mailto:michael.o.jackson@gsa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Purpose**

In accordance with FAR 16.4, incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor, such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for

which final prices have not been established, is needed to negotiate the final prices of incentive-related items and services. Contractors are required to submit the information in accordance with several incentive fee FAR clauses: FAR 52.216-16, Incentive Price Revision—Firm Target; FAR 52.216-17, Incentive Price Revision—Successive Targets; and FAR 52.216-10, Incentive Fee.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

### **B. Annual Reporting Burden**

*Respondents:* 181.

*Responses per Respondent:* 2.

*Annual Responses:* 362.

*Hours per Response:* 1.5.

*Total Burden Hours:* 543.

### **C. Public Comments**

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

#### *Obtaining Copies of Proposals:*

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202-501-4755. Please cite OMB Control No. 9000-0067, Incentive Contracts, in all correspondence.

Dated: May 23, 2018.

**Lorin S. Curit,**

*Director, Federal Acquisition Policy Division,  
Office of Governmentwide Acquisition Policy,  
Office of Acquisition Policy, Office of  
Governmentwide Policy.*

[FR Doc. 2018-11779 Filed 5-31-18; 8:45 am]

**BILLING CODE 6820-EP-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000–0076; Docket No. 2018–0003; Sequence No. 13]

**Information Collection; Novation/  
Change of Name Requirements**

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

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

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Novation/Change of Name Requirements.

**DATES:** Submit comments on or before July 31, 2018.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0076, Novation/Change of Name Requirements, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link “Submit a Comment” that corresponds with “Information Collection 9000–0076, Novation/Change of Name Requirements”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “Information Collection 9000–0076, Novation/Change of Name Requirements” on your attached document.

- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0076, Novation/Change of Name Requirements.

**Instructions:** Please submit comments only and cite Information Collection 9000–0076, Novation/Change of Name Requirements, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov*, including any personal and/or business confidential information provided. To

confirm receipt of your comment(s), please check *regulations.gov*, approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–208–4949 or via email [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Federal Acquisition Regulation 42.1203 and 42.1204 provide requirements for contractors to request novation/change of name agreements and supporting documents when a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

Estimates are based on data available in the Federal Procurement Data System for fiscal years 2015 through 2017, which accounts for the decrease from 1,178 estimated respondents to 547 estimated respondents. This has resulted in the public burden hours being reduced to 1,094 from 2,356 for the information collection.

**B. Annual Reporting Burden**

*Respondents:* 547.  
*Responses per Respondent:* 1.  
*Annual Responses:* 547.  
*Hours per Response:* 2.0.  
*Total Burden Hours:* 1,094.

**C. Public Comments**

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

**Obtaining Copies of Proposals:** Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: May 23, 2018.

**Lorin S. Curit,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2018–11780 Filed 5–31–18; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES****Centers for Disease Control and  
Prevention**

[60Day–18–18UC; Docket No. CDC–2018–0029]

**Proposed Data Collection Submitted  
for Public Comment and  
Recommendations**

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled *Evaluation of the Sodium Reduction in Communities Program (SRCP)* to estimate the costs to SRCP partners of implementing sodium reduction strategies. The proposed data collection aims to understand the costs to SRCP partner of implementing sodium reduction strategies.

**DATES:** CDC must receive written comments on or before July 31, 2018.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2018–0029 by any of the following methods:

- *Federal eRulemaking Portal:* *Regulations.gov*. Follow the instructions for submitting comments.

- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–D74, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

**Please note:** Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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.
5. Assess information collection costs.

#### Proposed Project

*Evaluation of the Sodium Reduction in Communities Program*—New Collection—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The CDC, Division for Heart Disease and Stroke Prevention (DHSP),

requests a one-year Office of Management and Budget (OMB) approval for a new information collection project titled *Evaluation of the Sodium Reduction in Communities Program*.

The CDC is the primary Federal agency for protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. CDC is committed to programs that reduce the health and economic consequences of the leading causes of death and disability, thereby ensuring a long, productive, healthy life for all people.

Sodium reduction is a public health imperative. Although the 2015–2020 Dietary Guidelines for Americans recommends no more than 2,300 mg/day of sodium for adults, U.S. adults consume an average of more than 3,500 mg/day. CDC National Health and Nutrition Examination Survey (NHANES) data from 2013–2014 indicate that men over the age of 20 consume an average of 4,099 mg/day of sodium. The significant gap between recommended intake and average intake poses a serious public health risk; high sodium intake can lead to hypertension, a common and costly health risk in the United States. Researchers indicate that the number of American adults with hypertension, estimated at 77.9 million, continues to grow. The increasing prevalence of hypertension is especially troubling because high blood pressure can lead to serious health issues, including cardiovascular disease (CVD), stroke, and kidney disease. One study projected that the real direct medical costs of CVD will triple between 2010 and 2030, from \$273 billion to \$818 billion. Recent studies have shown that even modest population-level sodium reductions can lead to significant decreases in blood pressure and to potentially enormous savings—in lives and in dollars.

Reducing sodium levels presents a special set of challenges for public health programs because high sodium intake is largely the result of sodium found in processed foods and foods prepared in restaurants. Commonly used to enhance flavor, texture, and viscosity or to preserve foods, salt is often hidden and difficult for consumers to recognize. Past sodium reduction initiatives that focused on consumer outreach and education succeeded in creating awareness of the link between sodium and hypertension, but failed to make a significant impact on consumption levels. Although consumer outreach and education should be a part of any sodium reduction strategy, these strategies are independently

insufficient. As such, multiple reports by the Institute of Medicine and the Food and Drug Administration have asserted the need for large-scale, population-based efforts to decrease sodium consumption.

Recognizing the importance of population-based approaches, CDC launched the first round of the SRCP in 2010 to reduce sodium intake by helping to create healthier food environments and a second round in 2013 to reduce sodium intake in food environments through population-based sodium reduction strategies. SRCP's project goals include increasing access to and availability of lower-sodium food options. The long-term goal of the initiative is to reduce sodium intake within the recommended levels in the Dietary Guidelines for Americans.

The 2010 SRCP awardees implemented strategies in a variety of venues, including worksites, schools, independent restaurants, grocery and convenience stores, hospitals, and venues serving meals for older adults (e.g., senior and congregate meal sites). RTI International led the cross-site evaluation for these communities and found that achievements at the community level have the potential to bolster ongoing efforts at the individual, organizational, and national levels, and vice versa. Thus, community-based sodium reduction strategies play an important role in supporting broader changes and individual behavior changes. RTI is currently wrapping up the evaluation of the second round of SRCP, and preliminary findings demonstrate a strong impact of the program on availability, accessibility, and purchase of lower sodium options.

CDC funded eight SRCP communities in 2016 to continue improving community and environmental supports for sodium reduction and to build practice-based evidence around effective population-based strategies to reduce sodium consumption. These communities are partnering with organizations to implement sodium reduction strategies in their food service venues. By creating a healthier environment, CDC seeks to decrease the population-wide burden of sodium intake.

CDC and RTI International propose to collect information from all partners of SRCP grantees that are willing to participate in order to estimate the costs to SRCP partners of implementing sodium reduction strategies. Partner organizations are those that work to implement the sodium reduction strategies in their food services and can include worksites, schools, universities, hospitals, senior meal programs, food

banks, and restaurants. The information collection will occur via a cost data collection survey, in which respondents will be asked about a key set of sodium reduction activities that were developed during the evaluation of SRCP round two based on interviews with SRCP partners. Respondents are asked to report on all costs since beginning work on sodium reduction strategies as part of SRCP. While grantees began work on SRCP in 2016, partners began work at different times, so the time period of costs will vary by partner. Therefore, we

also ask how long they have been working on sodium reduction. For each activity, respondents will be asked the number and types of staff that worked on the activity, the average monthly number of hours worked on that activity for each staff member, the number of months worked by each staff member, and how long the activity will continue. Additionally, for each activity, respondents will be asked to report any non-labor expenditures on materials or supplies. RTI will work with CDC and grantees to reach out to partners and

request their participation in the survey. We will request participation from all SRCP partners via email.

The insights to be gained from this data collection will be critical to understanding the full costs of implementing SRCP at all levels of implementation for a set of key sodium reduction activities, which is an important factor in program planning and maintaining program longevity and sustainability. The estimated annual burden hours are 88.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Partner Program Manager .....	Cost Survey .....	88	1	1	88
Total .....	.....	.....	.....	.....	88

**Jeffrey M. Zirger,**

*Acting Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2018-11789 Filed 5-31-18; 8:45 am]

**BILLING CODE 4163-18-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Centers for Medicare & Medicaid Services

[Document Identifier CMS-10249]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and

utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by July 2, 2018.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-5806 OR, Email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov).

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov).
3. Call the Reports Clearance Office at (410) 786-1326.

**FOR FURTHER INFORMATION CONTACT:** Reports Clearance Office at (410) 786-1326.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection;  
*Title of Information Collection:* Administrative Requirements for Section 6071 of the Deficit Reduction Act; *Use:* State Operational Protocols should provide enough information such that: The CMS Project Officer and other federal officials may use it to understand the operation of the demonstration, prepare for potential site visits without needing additional information, or both; the State Project Director can use it as the manual for program implementation; and external

stakeholders may use it to understand the operation of the demonstration. The financial information collection is used in our financial statements and shared with the auditors who validate CMS' financial position. The Money Follows the Person Rebalancing Demonstration (MFP) Finders File, MFP Program Participation Data file, and MFP Services File are used by the national evaluation contractor to assess program outcomes while we use the information to monitor program implementation. The MFP Quality of Life data is used by the national evaluation contractor to assess program outcomes. The evaluation is used to determine how participants' quality of life changes after transitioning to the community. The semi-annual progress report is used by the national evaluation contractor and CMS to monitor program implementation at the grantee level. *Form Number:* CMS-10249 (OMB control number: 0938-1053); *Frequency:* Yearly, quarterly, and semi-annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 45; *Total Annual Responses:* 28,590; *Total Annual Hours:* 14,225. (For policy questions regarding this collection contact Effie George at 410-786-8639.)

Dated: May 29, 2018.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2018-11823 Filed 5-31-18; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-7050-N]

### Medicare & Medicaid Programs, and Other Program Initiatives, and Priorities; Meeting of the Advisory Panel on Outreach and Education (APOE), June 20, 2018

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the next meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the

effectiveness of consumer education strategies concerning CMS programs, initiatives and priorities. This meeting is open to the public.

#### DATES:

*Meeting Date:* Wednesday, June 20, 2018 8:30 a.m. to 4:00 p.m. eastern daylight time (e.d.t.).

*Deadline for Meeting Registration, Presentations, Special Accommodations and Comments:* Wednesday, June 6, 2018, 5:00 p.m., e.d.t.

#### ADDRESSES:

*Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Room 505A, Conference Room, Washington, DC 20201.

*Presentations and Written Comments:* Presentations and written comments should be submitted to: Lynne Johnson, Acting Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1-05-06, Baltimore, MD 21244-1850 or via email at [Lynne.Johnson@cms.hhs.gov](mailto:Lynne.Johnson@cms.hhs.gov).

*Registration:* The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the website <https://www.regonline.com/apoejun2018meeting> or by contacting the Acting DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the Acting DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

#### FOR FURTHER INFORMATION CONTACT:

Lynne Johnson, Acting Designated Federal Official, Office of Communications, CMS, 7500 Security Boulevard, Mail Stop S1-05-06, Baltimore, MD 21244-1850, 410-786-0090, email [Lynne.Johnson@cms.hhs.gov](mailto:Lynne.Johnson@cms.hhs.gov). Additional information about the APOE is available on the internet at: <http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html>. Press inquiries are handled through the CMS Press Office at (202) 690-6145.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of Federal Advisory Committee Act (FACA) (Pub. L. 92-463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal

advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education<sup>1</sup> (the predecessor to the APOE) on January 21, 1999 (64 FR 7899, February 17, 1999) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105-33).

The Medicare Modernization Act of 2003 (MMA) (Pub. L. 108-173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. We have had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Affordable Care Act (Patient Protection and Affordable Care Act, Pub. L. 111-148, and Health Care and Education Reconciliation Act of 2010, Pub. L. 111-152) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and the Children's Health Insurance Program (CHIP). Qualified

<sup>1</sup> We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace<sup>SM</sup>, or Marketplace<sup>SM</sup>). In order to effectively implement and administer these changes, we must provide information to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace<sup>SM</sup>. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2017, and will terminate on January 19, 2019 unless renewed by appropriate action.

Under the current charter, the APOE will advise the Secretary and the Administrator on optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), or coverage available through the Health Insurance Marketplace<sup>SM</sup>, and other CMS programs.
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace<sup>SM</sup>, Medicare, Medicaid, and CHIP consumers, issuers, providers, and stakeholders, through education and outreach programs, on issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities,

in the context of Health Insurance Marketplace<sup>SM</sup>, Medicare, Medicaid, and CHIP education programs, and other CMS programs.

- Assembling and sharing an information base of "best practices" for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel are: Kellan Baker, Associate Director, Center for American Progress; Robert Blancato, President, National Association of Nutrition and Aging Services Programs; Deborah Britt, Executive Director of Community & Public Relations, Piedmont Fayette Hospital; Deena Chisolm, Associate Professor of Pediatrics & Public Health, The Ohio State University, Nationwide Children's Hospital; Robert Espinoza, Vice President of Policy, Paraprofessional Healthcare Institute; Louise Scherer Knight, Director, The Sidney Kimmel Comprehensive Cancer Center at Johns Hopkins; Roanne Osborne-Gaskin, M.D., Senior Medical Director, MDWise, Inc.; Cathy Phan, Outreach and Education Coordinator, Asian American Health Coalition DBA HOPE Clinic; Kamilah Pickett, Litigation Support, Independent Contractor; Alvia Siddiqi, Medicaid Managed Care Community Network (MCCN) Medical Director, Advocate Physician Partners, Carla Smith, Executive Vice President, Healthcare Information and Management Systems Society (HIMSS); Tobin Van Ostern, Vice President and Co-Founder, Young Invincibles Advisors; and Paula Villescay, Senior Consultant, Assembly Health Committee, California State Legislature.

## II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the June 20, 2018 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (March 21, 2018 and September 13, 2017) meetings
- CMS programs, initiatives, and priorities
- An opportunity for public comment

- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

## III. Security, Building, and Parking Guidelines

The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at the number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held in a federal government building, the Hubert H. Humphrey (HHH) Building; therefore, federal security measures are applicable.

The REAL ID Act of 2005 (Pub. L. 109-13) establishes minimum standards for the issuance of state-issued driver's licenses and identification (ID) cards. It prohibits federal agencies from accepting an official driver's license or ID card from a state for any official purpose unless the Secretary of the Department of Homeland Security determines that the state meets these standards. Beginning October 2015, photo IDs (such as a valid driver's license) issued by a state or territory not in compliance with the Real ID Act will not be accepted as identification to enter federal buildings. Visitors from these states/territories will need to provide alternative proof of identification (such as a valid passport) to gain entrance into federal buildings. The current list of states from which a federal agency may accept driver's licenses for an official purpose is found at <http://www.dhs.gov/real-id-enforcement-brief>.

We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of a government-issued photographic identification to the Federal Protective Service or Guard Service personnel.

• Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into HHH Building, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

#### IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and

Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Authority:** Sec. 1114(f) of the Social Security Act (42 U.S.C. 1314(f)), sec. 222 of the Public Health Service Act (42 U.S.C. 217a), and sec. 10(a) of Pub. L. 92-463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102-3).

Dated: May 16, 2018.

**Seema Verma,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2018-11837 Filed 5-31-18; 8:45 am]

**BILLING CODE 4120-01-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration for Children and Families

##### Submission for OMB Review; Comment Request

**Title:** Immediate Disaster Case Management Intake Assessment.

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Immediate Disaster Case Management Intake Assessment .....	1,000,000	1	1	1,000,000

*Estimated Total Annual Burden Hours:* 1,000,000.

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

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

Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2018-11805 Filed 5-31-18; 8:45 am]

**BILLING CODE P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration for Children and Families

**[CFDA Number: 93.568]**

##### Reallotment of Fiscal Year 2017 Funds for the Low Income Home Energy Assistance Program (LIHEAP)

**AGENCY:** Division of Energy Assistance, Office of Community Services (OCS), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

**ACTION:** Notice of public comment on the determination concerning funds available for reallotment.

**SUMMARY:** Notice is hereby given of a preliminary determination that funds from the fiscal year (FY) 2017 Low Income Home Energy Assistance

**OMB No.:** 0970-0461.

**Description:** This Federal Register Notice (FRN) is a request for a decision to approve the following proposed information collection: Immediate Disaster Case Management (IDCM) Intake Assessment.

The IDCM Intake Assessment is intended to allow Immediate Disaster Case Management workers the ability to collect specific information, which includes demographics, and disaster caused unmet needs, from disaster survivors in order to create an in depth profile within the Electronic Case Management Record System (ECMRS.) This profile will provide a basis for the IDCM worker to generate and make available specific and customized plans of emergency assistance, and provide connections and referrals for disaster affected victims to Federal, state, local resources, which is critical to developing an overall recovery plan for each disaster survivor.

**Respondents:** Disaster Survivors

Program (LIHEAP) are available for reallotment to States, Territories, Tribes, and Tribal Organizations that received FY 2018 direct LIHEAP grants. No subgrantees or other entities may apply for these funds.

Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act), (42 U.S.C. 8626(b)(1)) requires that, if the Secretary of HHS determines that, as of September 1 of any fiscal year, an amount in excess of 10 percent of the amount awarded to a grantee for that fiscal year (excluding Leveraging and REACH funds) will not be used by the grantee during that fiscal year, then the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to LIHEAP grantees during the following fiscal year. If reallotted, the LIHEAP block grant allocation formula will be used to distribute the funds. No funds may be allotted to entities that are not direct LIHEAP grantees during FY 2018.

**DATES:** Submit comments on or before July 2, 2018.

**ADDRESSES:** Comments may be submitted to: J. Janelle George, Acting Director, Office of Community Services, Administration for Children and



Families, U.S. Department of Health and Human Services, 330 C Street SW, 5th Floor, Mail Room 5425, Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:**

Lauren Christopher, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services, 330 C Street SW, 5th Floor, Mail Room 5425, Washington, DC 20201. Telephone: (202) 401-4870. Email: [lauren.christopher@acf.hhs.gov](mailto:lauren.christopher@acf.hhs.gov).

**SUPPLEMENTARY INFORMATION:** It has been determined that \$536,595 in LIHEAP funds may be available for reallocation during FY 2018. This determination is based on FY 2017 Carryover and Reallocation Reports which showed that fifteen grantees reported reallocation funds. These grantees were State of Alaska, Aniak Traditional Council, Association of Village Council Presidents, Bristol Bay Native Association, Colorado River Indian Tribes, Hoh Indian Tribe, Jicarilla Apache Nation, Kalispel Tribe of Indians, Little River Band of Ottawa Indians, Miami Tribe of Oklahoma, Navajo Nation, Sac and Fox Nation of Oklahoma, Samish Indian Nation, Three Affiliated Tribes, and Tyme Maidu Tribe Berry Creek Rancheria. Grantees submitted the FY 2017 Carryover and Reallocation Reports to the OCS, as required by regulations applicable to LIHEAP at 45 CFR 96.81(b).

The LIHEAP statute allows grantees who have funds unobligated at the end of the federal fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their full-year allotments to the next federal fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallocation under section 2607(b)(1) of the Act (42 U.S.C. 8626(b)(1)). The amount described in this notice was reported by grantees as unobligated FY 2017 funds in excess of the amount that these grantees could carry over to FY 2018.

In accordance with section 2607(b)(3) of the Act (42 U.S.C. 8626(b)(3)), comments will be accepted for a period of 30 days from the date of publication of this notice.

After considering any comments submitted, all current LIHEAP grantees will be notified of the final reallocation amount redistributed to them for obligation in FY 2018. This decision will be published in a Dear Colleague Letter that gets posted to ACF's website.

If funds are reallocated, they will be allocated in accordance with section 2604 of the Act (42 U.S.C. 8623) and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 2018. As FY 2018 funds, they will be subject to all requirements of the Act, including section 2607(b)(2) (42 U.S.C. 8626(b)(2)), which requires that a grantee obligate at least 90 percent of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 2018.

**ESTIMATED REALLOTMENT AMOUNTS OF FY 2017 LIHEAP FUNDS**

Grantee name	Reallocation amount
State of Alaska .....	\$10,552
Aniak Traditional Council .....	840
Association of Village Council Presidents .....	164,654
Bristol Bay Native Association .....	13,605
Colorado River Indian Tribes .....	3,878
Navajo Nation .....	28,901
Tyme Maidu Tribe Berry Creek Rancheria .....	3
Little River Band of Ottawa Indians .....	62,871
Jicarilla Apache Nation .....	9,317
Three Affiliated Tribes .....	194,213
Miami Tribe of Oklahoma .....	77
Sac and Fox Nation of Oklahoma .....	35,967
Hoh Indian Tribe .....	4,034
Kalispel Tribe of Indians .....	1,211
Samish Indian Nation .....	6,472
<b>Total .....</b>	<b>536,595</b>

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ADR .....	275	1	1	275

*Estimated Total Annual Burden Hours: 275.*

In compliance with the requirements of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chap 35), the Administration for Children and

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing

**Statutory Authority:** 42 U.S.C. 8626.

**Elizabeth Leo,**

*Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2018-11820 Filed 5-31-18; 8:45 am]

**BILLING CODE 4184-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

*Title:* Administration for Native Americans Annual Data Report.

*OMB No.* 0970-0475: Renewal.

*Description:* The Administration for Native Americans is seeking renewal of the Annual Data Report (ADR). The ADR is an annual report to be completed at the end of every budget period of an ANA discretionary grant. The purpose of this information collection is to annually collect grantee data on outcome indicators, youth and elder engagement, partnerships, community participation, benefits and lessons learned. At the end of the project period, ANA will also collect data on beneficiaries, the overall achievement of the project goal, and project sustainability.

This information collection will be housed in the On-Line Data Collection (OLDC) with in *GrantSolutions.gov*.

*Respondents:* Tribal Government, Native non-profit organizations, Tribal Colleges & Universities receiving ANA discretionary funding.

to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). All



requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert A. Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2018-11796 Filed 5-31-18; 8:45 am]

BILLING CODE 4184-34-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2018-D-1043]

#### **Waivers of the Single, Shared System Risk Evaluation and Mitigation Strategy Requirement; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled "Waivers of the Single, Shared System REMS Requirement." This guidance describes how FDA intends to consider granting a waiver of the requirement in the Federal Food, Drug, and Cosmetic Act (FD&C Act) that the applicant for an abbreviated new drug application (ANDA) and its reference listed drug (RLD) use a single, shared system (SSS) for a required risk evaluation and mitigation strategy (REMS) with elements to assure safe use (ETASU).

**DATES:** Submit either electronic or written comments on the draft guidance by August 30, 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 on any guidance at any time 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-2018-D-1043 for "Waivers of the Single, Shared System Risk Evaluation and Mitigation Strategy Requirement; Draft Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the 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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993-0002, or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, 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 that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

#### **FOR FURTHER INFORMATION CONTACT:**

Elaine Lippmann, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6238, Silver Spring, MD 20993, 301-796-

3600, Elaine.Lippmann@fda.hhs.gov; or Stephen Ripley, 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 guidance for industry entitled "Waivers of the Single, Shared System REMS Requirement." This guidance describes how the Agency intends to consider granting a waiver of the requirement in section 505-1(i) of the FD&C Act (21 U.S.C. 355-1(i)) that the applicant for an ANDA and its RLD use a SSS for a required REMS with ETASU.

Section 505-1(i)(1)(B) of the FD&C Act requires that a holder of an ANDA under section 505(j) use a "single, shared system" with the RLD for any ETASU, unless FDA waives this requirement. The statute permits a waiver of the SSS requirement if FDA finds that (1) "the burden of creating a [SSS] outweighs the benefit of a single, system, taking into consideration the impact on health care providers, patients, the applicant for the [ANDA], and the holder of the reference drug product," or (2) an aspect of the ETASU for the applicable listed drug is claimed by an unexpired patent or trade secret and the ANDA applicant certifies that it sought a license for use of the aspect, but was unable to obtain one. If a waiver of the SSS requirement is granted, the ANDA may use "a different, comparable aspect of the [ETASU]," instead of participating in a SSS with the RLD.

This guidance is intended to explain the factors FDA will consider in evaluating a request for waiver of the SSS requirement and provide recommendations to ANDA applicants regarding the submission and content of waiver requests. The guidance also addresses FDA's interpretation of what constitutes a different, comparable aspect of the ETASU as described in section 505-1(i)(1)(B).

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 "Waivers of the Single, Shared System REMS Requirement." 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 collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520). The preparation and submission of waiver requests (as described in 21 CFR 314.90 for new drug application applicants and 314.99(b) for ANDA applicants) has been approved under OMB control number 0910-0001. In accordance with the PRA, before publication of the final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to previously approved collections of information found in FDA regulations.

##### III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either <https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.regulations.gov>.

Dated: May 24, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018-11784 Filed 5-31-18; 8:45 am]

BILLING CODE 4164-01-P

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Food and Drug Administration

[Docket No. FDA-2011-N-0920]

##### Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information,

including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements associated with current good manufacturing practice, hazard analysis, and risk-based preventive controls for human food.

**DATES:** Submit either electronic or written comments on the collection of information by July 31, 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 July 31, 2018. The <https://www.regulations.gov> electronic filing system will accept comments until midnight Eastern Time at the end of July 31, 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–2011–N–0920 for “Agency Information Collection Activities; Proposed Collection; Comment Request; Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals.” 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](https://www.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:**

Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Current Good Manufacturing Practice and Hazard Analysis, and Risk-Based Preventive Controls for Human Food—21 CFR Part 117**

*OMB Control Number 0910–0751—Extension*

This information collection supports FDA regulations. As amended by the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353), the Federal Food, Drug, and Cosmetic Act (FD&C Act) enables the Agency to better protect the public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role industry plays in ensuring the safety of the food supply, including the adoption of modern systems of preventive controls in food production. Specifically, section 418 of the FD&C Act (21 U.S.C. 350g) sets forth requirements for hazard analysis and risk-based preventive controls for facilities that produce food for human consumption. To implement these provisions, regulations were codified under 21 CFR part 117—Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food. The regulations establish requirements for a written food safety plan; hazard analysis preventive controls; monitoring; corrective actions and corrections; verification; supply-chain program; recall plan; and associated records, and became effective November 16, 2015. Currently, we continue to evaluate burden associated with the information collection requirements; however, for purposes of extending the information collection we retain the currently approved figures as shown below.

Our estimate of the burden for the information collection is as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
117.201(e); qualified facility .....	37,134	0.5	18,567	0.5 (30 minutes) ....	9,284

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
117.126(c) and 117.170(d); food safety plan and re-analysis.	46,685	1	46,685	110 .....	5,135,350
117.136; assurance records .....	16,285	1	16,285	0.25 (15 minutes) ..	4,071
117.145(c); monitoring records .....	8,143	730	5,944,390	0.05 (3 minutes) ....	297,220
117.150(d); corrective actions and corrections records.	16,285	2	32,570	1 .....	32,570
117.155(b); verification records .....	8,143	244	1,986,892	0.05 (3 minutes) ....	99,345
117.160; validation records .....	3,677	6	22,062	0.25 (15 minutes) ..	5,515
117.475(c)(7)-(9); supplier records .....	16,285	10	162,850	4 .....	651,400
117.180(d); training records for preventive controls qualified individual.	46,685	1	46,685	0.25 (15 minutes) ..	11,671
<b>Total</b> .....	.....	.....	.....	.....	6,237,142

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN <sup>1</sup>

21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
117.201(e); disclosure of food manufacturing facility address.	37,134	1	37,134	0.25 (15 minutes) ..	9,284

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

These figures are based on our regulatory impact analysis in support of the final rule on preventive controls for human food, which published in the **Federal Register** of September 17, 2015 (80 FR 55908). Using Agency data, we estimated the number of food facilities that we believe are subject to the regulations. We base our estimate of the time necessary for the individual reporting, recordkeeping, and third-party disclosure activities on our experience with similar information collections.

Dated: May 25, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018-11801 Filed 5-31-18; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2018-D-1041]

#### Development of a Shared System Risk Evaluation and Mitigation Strategy; Draft Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is

announcing the availability of a draft guidance for industry entitled “Development of a Shared System REMS.” This draft guidance provides recommendations on the development of a shared system risk evaluation and mitigation strategy (REMS) for multiple prescription drug (including biological) products. This guidance describes some of the possible benefits of a shared system REMS, and provides general principles and recommendations to assist industry with the development of these programs.

**DATES:** Submit either electronic or written comments on the draft guidance by July 31, 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 on any guidance at any time 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-2018-D-1041 for “Development of a Shared System REMS; Draft Guidance for Industry; Availability.” Received comments will be placed in the docket and, except for those submitted as

“Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the 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 Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Lubna Merchant, Center for Drug

Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4418, Silver Spring, MD 20993–0002, 301–796–5162, email: [Lubna.Merchant@fda.hhs.gov](mailto:Lubna.Merchant@fda.hhs.gov); or Stephen Ripley, 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 guidance for industry entitled “Development of a Shared System REMS.” This guidance describes some of the possible benefits of shared system REMS, and provides general principles and recommendations to assist industry with the development of these programs.

Section 505–l(i)(1)(B) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1(i)(1)(B)) requires that a holder of an abbreviated new drug application (ANDA) approved under section 505(j) use a “single, shared system” with the reference listed drug (RLD) for any REMS with elements to assure safe use (ETASU) unless FDA waives this requirement.

The requirement under section 505–1(i)(1)(B) regarding a “single, shared system” only applies to ANDAs. However, FDA recognizes that it may be in the interest of public health to have a shared system REMS in other cases because it may increase efficiencies for applicants and stakeholders. A shared system REMS can encompass multiple prescription drug products and can be developed and implemented jointly by two or more applicants. It can be a program shared by a drug that is the subject of an ANDA and the listed drug, as required in section 505–1(i)(1)(B) (described above). It can also involve multiple new drug applications, ANDAs, or biologics license applications, approved under section 505(b)(1), (b)(2), or (j) of the FD&C Act (21 U.S.C. 355(b)(1), (b)(2) or (j)) or section 351(a) or (k) of the PHS Act (42 U.S.C. 262(a) or (k)), respectively, that form a shared system voluntarily.

Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidance entitled “Waivers of the Single, Shared System REMS Requirement.” Among other things, that guidance describes how FDA will consider granting a waiver of the requirement in section 505–1(i) of the FD&C Act that the applicant for an ANDA and its RLD use a single, shared system for REMS with ETASU.

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 “Development of a Shared System REMS.” 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 collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The preparation and submission of a drug master file (as described in 21 CFR 314.420) by applicants for their shared system REMS submissions has been approved under OMB control number 0910–0001. In accordance with the PRA, before publication of the final guidance document, FDA intends to solicit public comment and obtain OMB approval for any information collections recommended in this guidance that are new or that would represent material modifications to previously approved collections of information found in FDA regulations.

##### **III. Electronic Access**

Persons with access to the internet may obtain the draft guidance at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, <https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm>, or <https://www.regulations.gov>.

Dated: May 24, 2018.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2018–11783 Filed 5–31–18; 8:45 am]

**BILLING CODE 4164–01–P**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **Meeting of the Pain Management Best Practices Inter-Agency Task Force; Amendment**

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

**ACTION:** Notice; amendment.

**SUMMARY:** A notice was published in the **Federal Register** on Thursday, May 3, 2018, to announce the inaugural meeting of the Pain Management Best Practices Inter-Agency Task Force (Task Force) and to invite the public to provide public comments. The period for written comments is currently scheduled to end close of business on May 25, 2018. The notice is being amended to extend the written public comment period for two weeks to allow more time for interested individuals to submit comments.

**DATES:** The written public comment period has been extended. All written comments are due to be submitted on or before June 15, 2018.

**ADDRESSES:** Individuals submitting written comments should submit their comments through the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Alicia Richmond Scott, Designated Federal Official, Pain Management Best Practices Inter-Agency Task Force, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, 200 Independence Avenue SW, Room 736E, Washington, DC 20201. Email: [paintaskforce@hhs.gov](mailto:paintaskforce@hhs.gov). Telephone: (240) 453-2816.

Dated: May 24, 2018.

**Vanila M. Singh,**

*Chief Medical Officer, HHS Office of the Assistant Secretary for Health.*

[FR Doc. 2018-11747 Filed 5-31-18; 8:45 am]

**BILLING CODE 4150-28-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register**

during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <http://www.samhsa.gov/workplace>.

#### FOR FURTHER INFORMATION CONTACT:

Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240-276-2600 (voice).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. The "Mandatory Guidelines for Federal Workplace Drug Testing Programs," as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

#### HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190, (Formerly: Gamma-Dynacare Medical Laboratories)

#### HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844-486-9226

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I-30, Little Rock, AR 72209-7056, 501-202-2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890

Dynacare,\* 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-

\* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

679–1630, (Formerly: Gamma-Dynacare Medical Laboratories)  
 ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609  
 Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387  
 Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)  
 Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc.; CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)  
 Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)  
 LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)  
 MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244  
 Legacy Laboratory Services—MetroLab, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295  
 Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only  
 National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515  
 One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch,

Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)  
 Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)  
 Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7  
 Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840  
 Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)  
 Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)  
 Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159  
 STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438  
 U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

Dated: May 29, 2018.

**Carlos Castillo,**  
*Committee Management Officer, SAMHSA.*  
 [FR Doc. 2018–11809 Filed 5–31–18; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Accreditation and Approval of NMK Resources, INC., (Thorofare, NJ), as a Commercial Laboratory and Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of NMK Resources, Inc., as a commercial laboratory and gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that NMK Resources, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 7, 2017.

**DATES:** The accreditation and approval of NMK Resources, Inc., as commercial laboratory and gauger became effective on July 7, 2017. The next triennial inspection date will be scheduled for July 2020.

**FOR FURTHER INFORMATION CONTACT:** Melanie A. Glass, Science Officer, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that NMK Resources, Inc., 650 Grove Road, Suite #111, Thorofare, NJ 08086, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. NMK Resources, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
3 .....	Tank gauging.
7 .....	Temperature determination.
8 .....	Sampling.
11 .....	Physical Properties Data.
12 .....	Calculations.
17 .....	Maritime measurement.

NMK Resources, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–04 .....	ASTM D 95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–11 .....	ASTM D 445	Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (the Calculation of Dynamic Viscosity).
27–13 .....	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–48 .....	ASTM D 4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.



Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. [http://www.cbp.gov/sites/default/files/documents/gaulist\\_3.pdf](http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf).

Dated: May 1, 2018.

**Dave Fluty,**

*Executive Director, Laboratories and Scientific Services, Operations Support.*

[FR Doc. 2018-11850 Filed 5-31-18; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Notice of Availability of the Bog Creek Road Project Draft Environmental Impact Statement

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security and U.S. Forest Service, Department of Agriculture.

**ACTION:** Notice of availability of Draft Environmental Impact Statement concerning the repair and maintenance of Bog Creek Road and closure of certain roads within the Blue-Grass Bear Management Unit in the Selkirk Mountains in Boundary County, Idaho; request for comments.

**SUMMARY:** U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests (IPNF) announce the availability of the Bog Creek Road Project Draft Environmental Impact Statement (EIS) for public review. The Draft EIS identifies and assesses potential impacts upon the environment of: Repairing and maintaining an approximately 5.6-mile section of the existing Bog Creek Road, which is located in the Selkirk Mountains in Boundary County, Idaho, within approximately two miles of the

Canadian border, on land within the Blue-Grass Bear Management Unit (BMU) that is managed by the Forest Service; and closing for motorized use additional roads within the Blue-Grass BMU to comply with the *Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones* and to reduce road density in the Blue-Grass BMU. This notice initiates the public review process for the Draft EIS. This process is conducted pursuant to the National Environmental Policy Act of 1969 (NEPA) and the President's Council on Environmental Quality regulations for Implementing the NEPA, and CBP and Forest Service NEPA guidelines. The purpose of the public review process is to solicit public comments regarding the Draft EIS. Additionally, this notice, in accordance with the National Historic Preservation Act, will allow members of the general public to provide comments to CBP and the Forest Service regarding whether the Proposed Action may have any potential impacts on any historic resources.

#### DATES:

*For Comments:* To ensure consideration, comments must be received by July 16, 2018. Comments may be submitted as set forth in the **ADDRESSES** section of this document.

*For Public Open Houses:* Public open houses will be held at the following times:

- *Priest Lake, Idaho:* June 19, 2018, 5:30 to 7:30 p.m.
- *Sandpoint, Idaho:* June 20, 2018, 5:30 to 7:30 p.m.
- *Bonniers Ferry, Idaho:* June 21, 2018, 5:30 to 7:30 p.m.

#### ADDRESSES:

*For Obtaining Copies of the Draft EIS:* Electronic copies of the Draft EIS are available at <https://www.fs.usda.gov/project/?project=41296> and <https://www.cbp.gov/document/environmental-assessments/bog-creek-road-project-environmental-impact-statement>.

CD-ROM and print copies are available by sending a request to Paul Enriquez at [Paul.Enriquez@cbp.dhs.gov](mailto:Paul.Enriquez@cbp.dhs.gov) or 949-643-6365 or at the following Forest Service locations:

- The IPNF Supervisors Office, 3815 Schreiber Way, Coeur d'Alene, Idaho;
- Sandpoint Ranger District, 1602 Ontario Street, Sandpoint, Idaho;
- Bonners Ferry Ranger District, 6286 Main Street, Bonners Ferry, Idaho; and
- Priest Lake Ranger District, 32203 Highway 57, Priest River, Idaho.

*For Submitting Comments:* You may submit written comments on the Draft EIS during the 45-day comment period by mail or email, or by attending a

public open house. See **SUPPLEMENTARY INFORMATION** for information on the public comment process. Please submit your written comments using one of the following methods:

- *Mail:* Bog Creek Road EIS, P.O. Box 643, Flagstaff, Arizona 86002-0643;
- *Email:* [SPWBogCreekEIS@cbp.dhs.gov](mailto:SPWBogCreekEIS@cbp.dhs.gov);
- Hand delivered to any of the Forest Service locations where CD-ROM and print copies of the Draft EIS are available; or
- *FAX:* 208-765-7426.

*For Public Open Houses:* Public open houses will be held at the following locations:

- *Priest Lake, Idaho:* Priest Lake Ranger District—32203 Highway 57, Priest River, Idaho;
- *Sandpoint, Idaho:* Sandpoint Ranger District—1602 Ontario Street, Sandpoint, Idaho;
- *Bonniers Ferry, Idaho:* Bonners Ferry Ranger District—6286 Main Street, Bonners Ferry, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Paul Enriquez, CBP, Border Patrol and Air and Marine Program Management Office, by telephone at 949-643-6365, or email at [Paul.Enriquez@cbp.dhs.gov](mailto:Paul.Enriquez@cbp.dhs.gov). Persons who require assistance accessing information, please contact the U.S. Department of Agriculture's (USDA) Target Center at 202-720-2600 (voice and TDD) or contact USDA through the Federal Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Proposed Action

U.S. Customs and Border Protection (CBP) and the U.S. Forest Service (Forest Service) Idaho Panhandle National Forests (IPNF) (collectively the Agencies) are proposing a road repair, maintenance, and motorized closure project in the Continental Mountain area of the Idaho Panhandle National Forests within the Bonners Ferry and Priest Lake Ranger Districts. The project has two objectives: (1) To provide safe east-west access for administrative use (as explained below) to this section of the U.S.-Canada border across the Selkirk Mountains, and (2) to meet grizzly bear motorized access standards within the Blue-Grass BMU of the Selkirk Grizzly Bear Recovery Zone in order to comply with the *Forest Plan Amendments for Motorized Access Management within the Selkirk and Cabinet-Yaak Grizzly Bear Recovery Zones* (Access Amendment).

The Bog Creek Road Project Draft EIS has been prepared to identify and assess potential impacts from the Proposed Action on the environment. The



Proposed Action was developed through collaborative efforts between CBP, the Forest Service, and the public, and was designed to meet the goals and objectives established for the project while meeting as many other resource needs as possible. The Proposed Action consists of three components: (1) Road repair and maintenance of Bog Creek Road and change in motorized use designation; (2) change in motorized use designation for Blue Joe Creek Road; and (3) motorized closure of selected seasonally restricted Forest Service roads. The Proposed Action is described below.

The first component is the repair and maintenance of an approximately 5.6-mile section of Bog Creek Road (Forest Service Road [FSR] 1013), which would be conducted to allow the road to meet Forest Service road maintenance level 2 standards and would generally allow access for high-clearance vehicles. Maintenance level 2 roads are described in Forest Service Handbook 7709.58. Bog Creek Road is currently designated as a seasonally restricted road. Motorized use by the Forest Service, CBP, law enforcement, and other administrative agencies is permitted between April 1 and November 15 (active bear year) but is limited to 57 administrative vehicle round trips per active bear year. After road repair activities, the road designation would change to *administrative open* (as-needed administrative motorized access). Under the *administrative open* road designation, Bog Creek Road would be open to as-needed administrative motorized access but not open to the public for motorized travel.

Repair and maintenance would consist of grading and resurfacing areas of the road that have been heavily eroded by surface water flows, filling potholes, and removing protruding boulders. Repair would also include installation of six new culverts and replacement of six of the existing 67 corrugated metal pipe culverts located along the length of the roadway because they have partially rusted through, otherwise exceeded their usable life, or do not meet current design standards for width and capacity. The most intensive repair would occur at Spread Creek, where a culvert failure and road washout have made the road completely impassable. The road would not be widened, but limited areas that no longer meet minimum width requirements may require cut and fill work to achieve the desired road operating and safety standards. Trees and other vegetation within the roadway and to either side would be grubbed or

cut back to facilitate safe vehicle passage.

The second component is the change in motorized designation of Blue Joe Creek Road (FSR 2546). Blue Joe Creek Road extends from the eastern terminus of the Bog Creek Road, running 7.4 miles alongside Blue Joe Creek, to the Continental Mine property. Blue Joe Creek Road is currently designated as seasonally restricted, and motorized access is limited to 57 vehicle round trips per active bear year. Under the Proposed Action, the current seasonal restrictions that limit the number of motorized administrative trips along Blue Joe Creek Road would be removed. The road would be designated as administrative open, which would allow for as-needed administrative motorized trips. This change in designation, when combined with the Bog Creek Road designation change, would allow for administrative trips by private property owners to access their property within the Blue-Grass BMU.

The final component is the motorized closure of selected seasonally restricted Forest Service roads. Under the Proposed Action, approximately 26 miles of seasonally restricted Forest Service roads would be closed to all wheeled motorized use within the Blue-Grass BMU. Closing the roads would allow the Forest Service to meet the requirements of at least 55 percent of the BMU as core area habitat, and no more than 26 percent of the BMU having a total motorized route density (TMRD) greater than 2 miles per square mile, as specified in the Access Amendment. The means by which motorized road closure would take place would vary by site and would include both decommissioning and long-term storage. Decommissioning involves permanently removing a road from the Forest Service transportation system. Long-term storage involves rendering a road undrivable. Roads stored for creation of grizzly bear core habitat would remain stored for a minimum of ten years. On-the-ground road work is typically the same or very similar for decommissioning and long-term storage, as both are intended to prevent future failures and erosion hazards. Both methods may involve one or a combination of the following treatments: Fully or partially recontouring the road prism, ripping the road surface, removing culverts and recontouring stream crossings, planting and seeding, mulching, or slashing disturbed areas.

All roads proposed for motorized closure under the Proposed Action are currently classified as seasonally restricted Forest Service roads.

Administrative motorized use of these roads is permitted between April 1 and November 15; non-motorized public access on these roads is permitted year-round.

### Alternatives

The Agencies developed alternatives to the Proposed Action described above and disclose the environmental impacts of these alternatives in the Draft EIS. In addition to the No-Action Alternative (Alternative 1) and the Proposed Action (Alternative 2), there are two other action alternatives analyzed: Modified Proposed Action (Alternative 3) and Blue-Grass BMU West-East Open Access (Alternative 4).

The No-Action Alternative (Alternative 1) represents the effects of not implementing the proposed repair and maintenance of Bog Creek Road and motorized closure of seasonally restricted Forest Service roads, while taking into account the effects of other past, ongoing, and reasonably foreseeable activities occurring in the area. This alternative proposes that no repair and maintenance activities would occur on the 5.6-mile section of Bog Creek Road and that the 26 miles of seasonally restricted Forest Service roads would continue to be available for motorized use in accordance with seasonal access restrictions. There would be no change in Forest Service management of the roads and CBP activities in the Blue-Grass BMU. Although the Forest Service would continue to examine road closure options to meet Access Amendment requirements within the Blue-Grass BMU under the No-Action Alternative, compliance with the Access Amendment standards would not change until currently unidentified other viable road closure options are implemented.

Alternative 3 is a modified version of the Proposed Action that would close a different set of seasonally restricted Forest Service roads to motorized access. The repair and maintenance activities proposed for Bog Creek Road and the *administrative open* designation for Bog Creek Road and Blue Joe Creek Road are the same as described under the Proposed Action. Under Alternative 3, approximately 25 miles of Forest Service roads would be closed to all motorized use by the Forest Service within the Blue-Grass BMU. This would allow the Forest Service to meet the Access Amendment grizzly bear core area habitat requirement of 55 percent and the TMRD requirement of 26 percent. Two of the nine roads proposed for motorized road closure under Alternative 3 would be different from

the roads proposed for closure under the Proposed Action. These roads were included in this alternative because closing these roads would create more grizzly bear core area habitat in upper Grass Creek, a place that has been heavily and continuously used by grizzly bears since at least the 1980s. All roads proposed for motorized closure under Alternative 3 are classified as seasonally restricted Forest Service roads. Administrative motorized use of these roads is permitted between April 1 and November 15. Non-motorized public access on these roads is permitted year-round.

Alternative 4 is a modified version of the Proposed Action that would open Bog Creek Road and roads along the eastern approach to Bog Creek Road to public motorized access. Under Alternative 4, Bog Creek Road repair and maintenance and the motorized closure of seasonally restricted Forest Service roads would be identical to the Proposed Action. After repair of Bog Creek Road is completed, Alternative 4 would designate the 5.6 miles of the repaired Bog Creek Road as open for public motorized access year-round. However, winter motorized snowmobile use by the public is currently not allowed on Bog Creek Road as a result of rulings by the United States District Court of the Eastern District of Washington on November 7, 2006, and February 27, 2007, relating to recovery of Selkirk Mountain woodland caribou and the potential impacts of snowmobile use within the recovery area. Approximately 7.4 miles of Blue Joe Creek Road would change to an *administrative open* designation (as-needed administrative motorized access). Additionally, the designation of roads along the eastern approach to Bog Creek Road (1 mile of FSR 2546 and FSRs 1011, 636, and 1009) would also change from the current seasonally restricted designation (limited motorized access) to an open road designation (public motorized access) to allow for continuous public motorized travel across the Blue-Grass BMU. Under Alternative 4, the same 26 miles of seasonally restricted Forest Service roads as identified in the Proposed Action would be closed to all wheeled motorized use within the Blue-Grass BMU.

The Draft EIS addresses the potential impacts from the Proposed Action and alternatives. Evaluations were conducted on various resources present in the Blue-Grass BMU, including: Threatened and endangered species, wildlife, fish, special-status plants, water, soils, recreation, and heritage. A preferred alternative to the Proposed

Action has not yet been identified by the Agencies.

### Public Comment and Open Houses

The Draft EIS is available for public comment. The Agencies invite comments on all aspects of the Draft EIS. Comments that will provide the most assistance to the Agencies will reference a specific section of the Draft EIS, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. Substantive comments received during the comment period will be addressed in the Final EIS. The Final EIS will be made available to the public through a Notice of Availability (NOA) in the **Federal Register**.

This project is subject to 36 CFR part 218, subparts A and B of the Forest Service's Project-level Pre-decisional Administrative Review Process. Pursuant to 36 CFR part 218, only those who provide timely and specific written comments regarding the proposed project during a comment period are eligible to file an objection with the Forest Service. Comments received regarding this Draft EIS are considered part of the administrative record for the National Environmental Policy Act (NEPA) review. Within this context, a commenter's personally identifiable information, such as name and contact information, may be released to a third party upon request under the Freedom of Information Act. Comments submitted anonymously, without a name and contact information, will be accepted and considered; however, anonymous comments will not provide the commenter with standing to participate in the Forest Service objection process.

The Agencies will hold three public open houses to inform the public and solicit comments about the Draft EIS. The open houses will include displays and handouts and will provide an opportunity for the public to ask questions and submit written comments on the Draft EIS. Open house schedule is as follows:

- June 19, 2018, 5:30 to 7:30 p.m.: Priest Lake Ranger District—32203 Highway 57, Priest River, Idaho;
- June 20, 2018, 5:30 to 7:30 p.m.: Sandpoint Ranger District—1602 Ontario Street, Sandpoint, Idaho;
- June 21, 2018, 5:30 to 7:30 p.m.: Bonners Ferry Ranger District—6286 Main Street, Bonners Ferry, Idaho.

This process is being conducted pursuant to the NEPA (42 U.S.C. 4321 *et seq.*), the President's Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts

1500–1508), DHS Directive 023–01 and Instruction 023–01–001–01, and CBP and Forest Service NEPA guidelines.

### Prior Public Scoping

Public scoping for the Bog Creek Road repair and maintenance proposal was initially conducted by CBP in February and March of 2013. Information gathered from the initial scoping effort was used to inform the Agencies about what level of NEPA analysis was necessary to evaluate the proposed project. The initial scoping information included the possibility that road closures may become part of the proposed action, but did not include specific motorized road closure information. Using initial scoping information, the Agencies determined that the NEPA analysis would be conducted through an EIS process.

The Notice of Intent (NOI) stating that CBP and the Forest Service planned to prepare an EIS for the Bog Creek Road Project was published in the **Federal Register** on April 27, 2016 (81 FR 24839). The NOI asked for public comment on the proposal from April 27 to May 27, 2016. The Proposed Action described in the NOI included both repair and maintenance of Bog Creek Road and motorized road closures of specific road segments in the Blue-Grass BMU. In total, 17 comment letters were received during the NOI scoping period.

All scoping comments submitted during the initial scoping and NOI scoping were included in issue development for the current EIS process. A Scoping Report that summarizes both scoping efforts is available for review as part of the project record. The Scoping Report is available on the CBP public website: <https://www.cbp.gov/document/environmental-assessments/bog-creek-road-project-environmental-impact-statement>.

### Public Involvement in Historic Preservation Activities Under Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to review all actions which may affect resources listed on, or eligible for, the National Register of Historic Places in order to take into account the effects of their undertakings on historic properties. In accordance with NHPA, the Agencies seek to obtain public comments on historic preservation issues related to the road repair and closure of roads for motorized use. This process will also afford the Idaho State Historic Preservation Officer and tribal

governments a reasonable opportunity to comment on such undertakings.

### Next Steps

After the public review period is complete and the Agencies have reviewed the results, a list of comments and responses will be compiled and included in the Final EIS. The Agencies will select a preferred alternative that will be set forth in the Final EIS and Draft Record of Decision (ROD). The Final EIS and Draft ROD will be made available to the public through an NOA in the **Federal Register**.

Dated: May 25, 2018.

**Karl H. Calvo,**

*Assistant Commissioner, Office of Facilities and Asset Management, Office of Enterprise Services, U.S. Customs and Border Protection.*

**Gregory C. Smith,**

*Acting Associate Deputy Chief, National Forest System, U.S. Forest Service.*

[FR Doc. 2018-11766 Filed 5-31-18; 8:45 am]

BILLING CODE 9111-14-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2018-N007];

[FXES11140100000-189-FF01E00000]

### Notice of Intent To Prepare a Programmatic Environmental Impact Statement Addressing the Issuance of Incidental Take Permits for Four Wind Energy Projects in Hawai'i

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; notice of public scoping meetings; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare a draft programmatic environmental impact statement addressing the potential impacts on the human environment caused by alternatives described in habitat conservation plans (HCPs) for four similar wind energy projects. The HCPs were submitted to the Service in support of requests for incidental take permits (ITPs) under the Endangered Species Act authorizing the take of endangered species. The proposed permit actions involve a new HCP for the Pakini Nui Wind Farm on the Island of Hawai'i and major amendments to three existing HCPs addressing the Auwahi Wind and Kaheawa Wind Power II projects, both located on Maui, and the Kawaihoa Wind Power project, located on O'ahu. All four wind energy facilities are already constructed and in operation. The proposed ITP and

proposed ITP amendments would address take of three endangered species: The Hawaiian hoary bat, the Hawaiian goose, and the Hawaiian petrel.

**DATES:** The public scoping period begins with the publication of this notice in the **Federal Register** and will continue through July 2, 2018. The Service will consider all written comments on the scope of the analysis that are received or postmarked by this date.

**Public meetings:** The Service will hold three public scoping meetings, one each on the islands of Hawai'i, Maui, and O'ahu, at the following times during the scoping period:

- Hawai'i: June 18, 2018, 6 to 8 p.m.
- Maui: June 20, 2018, 6 to 8 p.m.
- O'ahu: June 21, 2018 6 to 8 p.m.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods. Please include "Wind Energy HCPs and PEIS Scoping" in the subject line of your request, message, or comment.

- **U.S. Mail:** Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, Hawai'i 96850.

- **Email:** [HIwindPEIS@fws.gov](mailto:HIwindPEIS@fws.gov).

- **Fax:** 808-792-9580, Attn: Field Supervisor.

- **Internet:** You may obtain copies of this notice from the Service's Pacific Islands Fish and Wildlife Office in Honolulu, Hawai'i, or on the internet at <https://www.fws.gov/pacificislands/>.

**Public meetings:** The three public scoping meetings will be held at the following locations:

- Hawai'i: Na'alehu Community Center, 95-5635 Mamalahoa Hwy., Na'alehu, Hawai'i, HI 96772.

- Maui: Malcolm Center, 1305 North Holopono Street, Suite 5, Kihei, Maui, HI 96753

- O'ahu: Sunset Beach Recreation Center, 59-540 Kamehameha Hwy., Haleiwa, O'ahu, HI 96712

#### FOR FURTHER INFORMATION CONTACT:

Darren LeBlanc, at 808-792-9403, or Michelle Bogardus at 808-792-9473. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 during normal business hours. Also, FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, are initiating the National Environmental Policy Act (NEPA) compliance process related to four incidental take permit

(ITP) applications under section 10 of the Endangered Species Act, as amended (ESA) (16 U.S.C. 1531 *et seq.*). The applications are for four wind energy projects in Hawai'i. The proposed ITPs (involving one new and three amended ITPs) would authorize take of the endangered Hawaiian hoary bat (ōpe'ape'a in Hawaiian; *Lasiurus cinereus semotus*), the endangered Hawaiian goose (nēnē in Hawaiian; *Branta sandvicensis*), and the endangered Hawaiian petrel ('ua'u in Hawaiian; *Pterodroma sandwichensis*).

The Service provides this notice to (1) advise other Federal and State agencies, local governments, and the general public of our intent to prepare a programmatic environmental impact statement (PEIS); (2) announce the initiation of a 30-day scoping period; and (3) request information and recommendations on the scope of the issues to be included in the PEIS, including input on the appropriateness of our intent to develop a single PEIS addressing project-specific alternatives and cumulative impacts of the four separate permit decisions, instead of preparing an individual EIS for each of the proposed permit actions. The four wind energy facilities are already constructed and in operation. Therefore, the PEIS will address only effects associated with the operation of the four wind energy projects.

The PEIS will serve as the Service's documentation of compliance with NEPA. The Service believes a programmatic NEPA analysis of similar wind energy project-related permit decisions provides the following benefits: A comprehensive analysis of cumulative impacts across all projects; a reduction in duplicative efforts between projects; improved consistency in the analysis; and a more efficient and comprehensive solicitation of public input.

### Background

Section 9 of the ESA prohibits "take" of fish and wildlife species listed as endangered or threatened. Under section 3 of the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term "harm" is further defined by regulation in title 50 of the Code of Federal Regulations as an act that actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term

“harass” is also further defined in the regulations as an intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Pursuant to section 10(a)(1)(B) of the ESA, the Service may authorize take of federally listed species, if such take occurs incidental to otherwise legal activities and a habitat conservation plan (HCP) has been developed under section 10(a)(2)(A) that describes: (1) The impact that will likely result from such taking; (2) the steps an applicant will take to minimize and mitigate that take to the maximum extent practicable and the funding that will be available to implement such steps; (3) alternative actions to such taking that an applicant considered and the reasons why such alternatives are not being used; and (4)

other measures the Service may require as being necessary or appropriate for the purposes of the plan.

Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met: (1) The taking will be incidental to otherwise lawful activities; (2) an applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) an applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures we require as necessary or appropriate for the purposes of the plan. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. The Service’s general permitting

regulations, found at 50 CFR 13.1–13.29, also apply to these actions.

### Proposed Action

The Service intends to prepare a PEIS to evaluate the project-specific alternatives and cumulative impacts of four ITP decisions addressing a newly proposed HCP for the Pakini Nui Wind Farm and major amendments for three existing HCPs for the Auwahi Wind, Kawaihoa Wind Power, and KWP II wind energy projects. If these proposed HCPs meet permit issuance criteria, the Service would issue separate ITPs to each of the four permit applicants. The existing projects, the amount of take authorized in their original ITP, and the estimated levels of take in the proposed new or amended HCPs (See Tables 1–3) are briefly described below. The ITPs, if issued, would authorize the incidental take of listed species caused by the operation of existing land-based wind energy facilities.

**TABLES 1–3—ESTIMATED CHANGE IN AUTHORIZED TAKE REQUESTED FOR THE HAWAIIAN HOARY BAT, THE HAWAIIAN PETREL, AND THE HAWAIIAN GOOSE PER PROJECT APPLICANT**

Project	Take currently authorized <sup>1 2</sup>	Change	Total <sup>3</sup>
<b>Table 1—Hawaiian Hoary Bat</b>			
Auwahi .....	21	+176	197
Kawaihoa .....	60	+162	222
KWP II .....	11	+27	38
Pakini Nui .....	NA	+26	26
<i>Total</i> .....	92	+391	483
<b>Table 2—Hawaiian Petrel<sup>4</sup></b>			
Auwahi .....	87	0	87
Kawaihoa .....	0	+7	7
KWP II .....	43	0	43
Pakini Nui .....	NA	+3	3
<i>Total</i> .....	130	+10	140
<b>Table 3—Hawaiian Goose<sup>4</sup></b>			
Auwahi .....	5	0	5
Kawaihoa .....	0	0	0
KWP II .....	30	+14	44
Pakini Nui .....	NA	+3	3
<i>Total</i> .....	35	+17	52

<sup>1</sup> Take for the Hawaiian hoary bat was originally authorized for adults and juveniles separately.

<sup>2</sup> A clarification issued in 2014 simplified the way in which indirect take (e.g., loss of dependent juveniles) associated with the mortality of a breeding adult was accounted for and tracked. Juveniles were converted to adult equivalencies using calculations based on life-history information included in the respective original HCPs, resulting in authorized take represented as a whole number as opposed to listing adults and juveniles separately.

<sup>3</sup> Represents the currently authorized take plus the new requested take.

<sup>4</sup> Take amounts for these species are summed or combined for adults, subadults, nestlings, or eggs.

### Auwahi Wind

The Auwahi Wind project began commercial operation on December 28, 2012, and is located on Ulupalakua Ranch in east Maui, Hawai‘i. Auwahi

Wind Energy, LLC, was originally issued an ITP from the Service and an incidental take license (ITL) from the Hawai‘i Department of Land and Natural Resources Division of Forestry

and Wildlife on February 24 and February 9, 2012, respectively. The Auwahi Wind project consists of eight Siemens 3.0-megawatt (MW) wind turbines, augmented with an 11-MW

battery storage system. Ancillary facilities include an underground electrical collection system, an operation and maintenance facility, an approximately 9-mile 34.5-kilovolt (kV) above-ground generator-tie line, and an interconnection substation.

The original ITP and ITL, with 2014 amendments, authorized the following amounts of incidental take over the 25-year permit term: 21 Hawaiian hoary bats; 87 Hawaiian petrels; 5 Hawaiian geese; and Blackburn's sphinx moths (*Manduca blackburni*). The above levels of take were anticipated to result from project construction and operations, including collision with vehicles, generator tie-lines, substations, wind turbines and other project structures.

Auwahi Wind Energy, LLC, is requesting a permit amendment to address a higher than anticipated amount of take of the Hawaiian hoary bat that has occurred during the first 5 years of operation. Auwahi Wind Energy, LLC, is requesting incidental take coverage for an additional estimated 176 Hawaiian hoary bats (for a total of 197 bats) over the 25-year permit term, which expires in 2037.

#### Kawailoa Wind Power

The Kawailoa Wind Power project is located approximately 4 miles from Haleiwa town, on the north shore of the island of O'ahu, Hawai'i, and began commercial operations in November of 2012. Kawailoa Wind Power, LLC, was issued an ITP and an ITL on December 8, 2011, and January 6, 2012, respectively. The Kawailoa Wind Power project consists of 30 2.3-MW wind turbine generators. Ancillary facilities include an underground electrical collection system, an operation and maintenance facility, and an approximately 4.0-mile above-ground transmission line.

The original ITP and ITL authorized the following amounts of incidental take over a 20-year permit term: 60 Hawaiian hoary bats; 12 Hawaiian ducks (koloa maoli; *Anas wyvilliana*); 18 Hawaiian moorhen ('alae 'ula; *Gallinula galeata sandvicensis*, also known as the Hawaiian gallinule); 18 Hawaiian coots ('alae kea; *Fulica americana alai*); 24 Hawaiian stilts (kukuluae'o; *Himantopus mexicanus knudseni*); and 15 Newell's shearwaters ('a'o; *Puffinus auricularis newelli*). The above levels of take were anticipated to result from project construction and operations, including collision with vehicles, generator tie-lines, substations, wind turbines, and other project structures.

Kawailoa Wind Power, LLC, is requesting a permit amendment to address a higher than anticipated

amount of take of the Hawaiian hoary bat that has occurred during the first 5 years of operation. Kawailoa Wind Power, LLC, is requesting incidental take coverage for an additional estimated 162 Hawaiian hoary bats (for a total of 222 bats), over the 20-year permit term, which expires in 2031. Additionally, in 2017, Kawailoa Wind Power, LLC, documented the take of at least one Hawaiian petrel at their project site. Incidental take of this species was not authorized in their existing ITP or ITL; therefore, Kawailoa Wind Power, LLC, is requesting incidental take authorization for seven Hawaiian petrels in their permit amendment.

#### Kaheawa Wind Power II

The Kaheawa Wind Power II (KWP II) project is located at Kaheawa Pastures above Mā'alaea town, in the southwestern portion of the island of Maui, Hawai'i, and began commercial operations in July 2012. KWP II, LLC, was issued an ITP and an ITL in January 2012. The KWP II project consists of 14 1.5-MW wind turbine generators. Ancillary facilities include an underground electrical collection and communication system, an operation and maintenance facility, a battery energy storage system, and an overhead electrical transmission line connecting the facility substation to the County's electrical grid.

The original ITP and ITL authorized the following levels of incidental take over the 20-year permit term, which expires in 2032: 11 Hawaiian hoary bats, 30 Hawaiian geese, 8 Newell's shearwater, and 43 Hawaiian petrel. The above levels of take were anticipated to result from project construction and operations, including collisions with vehicles, generator tie-lines, substations, wind turbines and other project structures.

Kaheawa Wind Power II, LLC, is requesting a permit amendment to address a higher than anticipated amount of take of the Hawaiian hoary bat and the Hawaiian goose that has occurred during the first 6 years of operation. Kaheawa Wind Power II, LLC, is requesting incidental take authorization for an additional estimated 27 Hawaiian hoary bats (for a total of 38 bats) over the 20-year permit term. Additionally, KWP II, LLC, is also requesting incidental take authorization for an additional estimated 14 Hawaiian geese (for a total of 44 geese) over the 20-year permit term.

#### Pakini Nui Wind Farm

The Pakini Nui Wind Farm is operated by Tawhiri Power, LLC, and is located on Ka Lae or South Point on the

island of Hawai'i, Hawai'i. The Pakini Nui Wind Farm is currently not covered by a valid ITP or ITL, and Tawhiri Power, LLC, has not previously applied for an ITP or ITL. Tawhiri Power, LLC, has submitted a draft HCP to support their requests for an ITP and an ITL. The Pakini Nui Wind Farm began operations in April 2007 and consists of 14 1.5-MW wind turbine generators. Ancillary facilities include one mile of underground connector lines, an operation and maintenance building, a substation, and an overhead electrical transmission line connecting the facility substation to the County's electrical grid. The entire project facility footprint is 79.42 acres. Tawhiri Power, LLC, is requesting incidental take authorization for an estimated 26 Hawaiian hoary bats, 3 Hawaiian petrels, and 3 Hawaiian geese over a 20-year permit term.

#### Covered Species

The applicants are requesting incidental take authorization for one or more of the following species: The endangered Hawaiian hoary bat; the endangered Hawaiian goose; and the endangered Hawaiian petrel. Three of the applicants were authorized to take other listed species in their original ITPs; such take authorization would remain unchanged by the currently proposed amendments.

The Hawaiian hoary bat is the only fully terrestrial, native mammal in the Hawaiian Islands and was federally listed as endangered under the ESA on October 13, 1970 (35 FR 16047). The Hawaiian hoary bat is nocturnal, solitary, and small in size and is known to collide with wind turbine structures. Take of Hawaiian hoary bats at the three currently permitted wind projects (Auwahi Wind, Kawailoa Wind Power, and KWP II) has been higher than anticipated under their original HCPs. The applicants assert that more recent project-specific bat fatality data and use of new statistical tools for estimating and predicting take of bats provides confidence that their revised estimates of total project-related take of bats are conservative and are unlikely to be exceeded over the term of these projects.

The Hawaiian goose was listed as endangered under the ESA on March 11, 1967 (32 FR 4001). The Hawaiian goose is found in a variety of habitats including scrubland, grassland, golf courses, sparsely vegetated slopes, and open lowland country. This species is also known to collide with wind turbine structures.

The Hawaiian petrel was listed as endangered under the ESA on March 11, 1967 (32 FR 4001). The Hawaiian petrel

is a seabird that breeds in high-elevation volcanic terrain or in montane mesic forests. When Hawaiian petrels fly over land areas, they are vulnerable to collision with manmade structures, including wind turbines.

### **Draft Programmatic Environmental Impact Statement**

This notice was prepared pursuant to NEPA (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1506.6), and pursuant to section 10(c) of the ESA. For purposes of NEPA compliance, preparation of an EIS is required for actions that have the potential to significantly impact the human environment (40 CFR parts 1500–1508).

To determine whether a proposed Federal action would require the preparation of an EIS, the Service must consider two distinct factors: Context and intensity (40 CFR 1508.27, Service and National Marine Fisheries Service HCP Handbook 2016). Context refers to the geographic scale (local, regional, or national) of significance of short- and/or long-term effects/impacts of a proposed action. Intensity refers to the severity of the effects/impacts relative to the affected settings, including the degree to which the proposed action affects: An endangered or threatened species or designated critical habitat; public health or safety; scientific, historic or cultural resources; or other aspects of the human environment.

In determining whether the preparation of an EIS is warranted, we must also consider the 10 components of intensity, as set forth under 40 CFR 1508.27(b):

1. Impacts that may be both beneficial and adverse. A significant impact may exist even if the Federal agency believes that on balance the effect will be beneficial.

2. The degree to which the proposed action affects public health or safety.

3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

5. The degree to which the potential impacts are highly uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually

insignificant but cumulatively significant impacts.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The Service performed internal NEPA scoping for the four proposed ITP actions and identified the environmental issues requiring detailed analysis and also identified connected, similar, and cumulative actions. In this case, and after considering the above factors, the Service has determined that the four proposed ITP actions have the potential to significantly impact the human environment as described in the following paragraphs.

Nearly 30 percent of renewable energy generated on the islands of Hawaii, Maui, and O'ahu is sourced solely from land-based wind. Combined, the four proposed ITP actions would address 50 percent of the existing wind energy operations in the State of Hawaii. Three of the four ITP actions propose to significantly increase their authorized incidental take levels for the endangered Hawaiian hoary bat. The applicants assert that recent project-specific bat fatality data and use of new statistical tools account for unobserved fatalities in estimating and predicting take of bats. This information provides confidence that their revised estimates of total project-related take of bats are conservative (high). There is a significant amount of mathematical uncertainty built into the projected take estimate, such that permit applicants believe take levels will not be exceeded and any commensurate mitigation proposed would provide a net conservation benefit compared to the actual take impact to the species.

Cumulatively, the four proposed actions may have significant impacts to the Hawaiian hoary bat or other connected components of the human environment. The Hawaiian hoary bat is nocturnal, solitary, and small in size. These qualities have made it difficult for wildlife researchers to effectively study this species, and as a result much of the biological characteristics of the Hawaiian hoary bat are relatively

unknown. The permit applicants may propose a suite of measures to mitigate for take of the Hawaiian hoary bat, including but not limited to: Habitat restoration, land acquisition, and scientific research to determine the relative size and priority needs of the Hawaiian hoary bat population. The results of this scientific research are intended to inform mitigation strategies for the Hawaiian hoary bat. Given the high level of uncertainty concerning biological impacts and mitigation efficacy, the context and intensity of potential impacts of these permit actions on the human environment are likely to be locally and regionally significant.

Examining the four proposed permit actions individually, the Service determined that each of the proposed actions is of sufficient size and complexity to warrant the preparation of an EIS; is similar to previous permit actions taken by the Service's Pacific Region that likewise required the preparation of an EIS; and may have significant effects on the human environment. On that basis and in accordance with regulations at 40 CFR 1501.4, 1507.3, and 1508.27, the Service believes preparation of an EIS is warranted to analyze the project-specific and cumulative environmental impacts associated with these four individual proposed ITP actions. We do not intend to prepare an environmental assessment for any of these four ITP actions.

### **Similar Actions**

In accordance with regulations at 40 CFR 1508.25, an agency may analyze similar actions in the same impact statement when this is the best way to assess their combined impacts. Due to the similarities between these four wind energy projects including geography, impacts to covered species, and proposed minimization and mitigation measures, the Service believes a combined PEIS is the most efficient and comprehensive approach for considering the project-specific and cumulative impacts of these actions on the human environment. The PEIS will ensure consistency and reduce duplication in analysis across all projects, support a comprehensive look at cumulative impacts, and simplify opportunities for public input and engagement.

### **Request for Information**

We intend to gather information necessary to determine impacts and alternatives of permit decisions, regarding the potential issuance of separate ITPs to each of the four wind energy project applicants and the

implementation of their supporting HCPs. The primary purpose of the scoping process is for the public and other agencies to assist in developing the PEIS by identifying important issues and alternatives that should be considered. However, this scoping process would also be used to inform single-project EISs if we determine it is more appropriate to prepare a separate EIS for each of the proposed permit actions.

The Service is requesting data, comments, new information, and/or recommendations from the public, other governmental agencies, the scientific community, Native Hawaiian organizations or entities, industry, or other interested parties related to our development of the PEIS or individual EISs. We seek specific comments on:

1. Biological information and relevant data (e.g., range, distribution, population size, and population trends) for the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel;

2. Potential direct and indirect impacts on the human environment that would occur as a result of the continued operation of these wind energy facilities and the proposed increase in authorized take of the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel;

3. Whether a programmatic NEPA approach, as proposed, or separate NEPA evaluations for each of the four wind energy projects, is appropriate;

4. Possible alternatives to the proposed ITP actions that the Service should evaluate;

5. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns in the vicinity of any of the four wind project sites, including their mitigation areas, which are required to be considered in project planning by the National Historic Preservation Act; and

6. Other past, present, or reasonably foreseeable future activities on the islands of Oahu, Maui, and Hawaii that may contribute to the cumulative impact on the Hawaiian hoary bat, Hawaiian goose, and the Hawaiian petrel.

Once the draft PEIS (or individual EISs) and draft HCPs are prepared, there will be further opportunity for comment on the content of these documents through an additional public comment period.

#### Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in **ADDRESSES**. Before including your address, phone number, email

address, or other personal identifying information in your comment, you should be aware that your entire comment(s)—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment(s) to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we use in preparing the PEIS, will be available for public inspection by appointment, during normal business hours, at the Service's Pacific Islands Fish and Wildlife Office.

#### Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Darren LeBlanc or Michelle Bogardus at the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call no later than 14 days in advance of the meeting dates.

#### Authority

We provide this notice in accordance with the requirements of section 10 of the ESA (16 U.S.C. 1531 *et seq.*), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

Dated: January 31, 2018.

**Theresa E. Rabot,**

*Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2018-11821 Filed 5-31-18; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[189A2100DD/AAKC001030/  
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### Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation Liquor Ordinance; Repeal and Replace

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (the Tribe) Liquor Control Ordinance (the Ordinance). The Ordinance certifies the Tribe's liquor licensing laws to regulate and control the possession, sale, and consumption of liquor within the jurisdiction of the Tribe's reservation. The Ordinance repeals and replaces the previous liquor control ordinance

published in the **Federal Register** on November 14, 1979, and any and all previous statutes.

**DATES:** This Ordinance takes effect July 2, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, OR 97232; telephone: (503) 231-6702; fax: (503) 231-2201.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation adopted Resolution Number: 02-16-18-07 (Liquor Control Ordinance) on February 16, 2018. The statute repeals and replaces the previous liquor control ordinance published in the **Federal Register** on November 14, 1979 (44 FR 65675).

Dated: May 14, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Assistant Secretary—Indian Affairs.*

## SHOALWATER BAY INDIAN TRIBE TRIBAL CODE

### TITLE 10—LIQUOR CONTROL

#### Chapter 10.1 General Provisions

##### Section 10.1.01 Title

This Title shall be cited as the tribal "Liquor Control" code of the Shoalwater Bay Indian Tribe.

##### Section 10.1.02 Authority

This title is enacted pursuant to the Tribe's inherent sovereignty and pursuant to the provisions of the Shoalwater Bay Tribal Constitution, Article VI, Powers of the Tribal Council, Section 1. Enumerated Powers, subsections (e), (f) and (x) and in conformity with the applicable laws of the State of Washington to the extent required under 18 U.S.C. § 1161.

##### Section 10.1.03 Relation to Other Tribal Laws

Prior liquor control ordinances are hereby repealed. Chapter 2.06 of the



Shoalwater Bay Code of Laws shall remain in effect but, if there is a conflict, this Title shall control.

#### **Section 10.1.04 Definitions**

The definitions related to this Title are as follows:

A. Alcoholic Beverage: Shall mean any intoxicating liquor, spirits, beer, or any wine, as defined under the provisions of this Title or other applicable law or regulation.

B. Council: Shall mean the Tribal Council of the Shoalwater Bay Indian Tribe.

C. Legal Age: Shall mean the age requirements as defined in this Title.

D. Liquor Store: Shall mean any store established by the Tribe for the sale of alcoholic beverages or any entity licensed by the Tribe to sell alcoholic beverages.

E. On-Site Licensee: Shall mean the Shoalwater Bay Indian Tribe or its duly authorized licensee when it sells, or keeps for sale, any alcoholic beverage authorized under this Title for consumption on the premises where sold.

F. On-Site Sale: Shall mean the sale of any alcoholic beverage for consumption only upon the premises where sold.

G. Sale: Shall include the exchange, barter, traffic, donation, with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor, spirits, alcoholic beverage, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also includes a sale or selling within an area of tribal jurisdiction to a foreign consignee or his or her agent.

H. Reservation: means the Shoalwater Bay Indian Reservation.

I. Shoalwater Bay Indian country shall mean all lands to fullest extent of applicable law under the control of the Tribe as well as all trust land owned by the Tribe both on and off of its Reservation.

J. Transaction: Shall mean any transfer of any bagged, bottled, boxed, canned or kegged alcoholic beverage, or the transfer of any contents of any bagged, bottled, boxed, canned or kegged alcoholic beverage from any liquor store, on-site dealer or vendor to any person.

K. Tribe: means the Shoalwater Bay Indian Tribe.

L. Tribal Court: means the Shoalwater Bay Tribal Court.

M. Tribal Council or Council: means the Shoalwater Bay Tribal Council.

N. Trust land: means all land held in trust or restricted fee status by the

United States on behalf of the Shoalwater Bay Indian Tribe.

O. Vendor: Shall mean any person employed or under the supervision by and of a liquor store or on-site dealer who conducts sales or transactions involving alcoholic beverages.

#### **Chapter 10.2 Tribal Control of Alcoholic Beverages**

##### **Section 10.2.01 General Prohibition**

It shall be a violation of Tribal law to manufacture for sale, sell, offer, or keep for sale, possess, transport or conduct any transaction involving any alcoholic beverage except in compliance with the terms, conditions, limitations, and restrictions specified in this Title.

##### **Section 10.2.02 Tribal Control of Alcoholic Beverages**

The Tribal Council shall have the sole and exclusive right to authorize the importation of alcoholic beverages for sale or other exchange or for the purpose of conducting transactions therewith, and no person or organization shall so import any such alcoholic beverage into the Shoalwater Bay Indian Country and into trust land, which includes the Reservation and trust lands of the Tribe, wherever situated, unless authorized by the Tribal Council.

##### **Section 10.2.03 Regulatory Authority of Tribal Council**

(a.) To promulgate rules and regulations governing the sale, manufacture, distribution, licensing and possession of alcoholic beverages on the Reservation;

(b.) To issue such licenses and permits as it deems appropriate permitting the sale or manufacture or distribution of liquor, for retail or wholesale, and to revoke such licenses;

(c.) To employ such managers, accountants, security personnel, inspectors, and such other personnel as it shall determine necessary to allow the Tribal Council to perform its functions;

(d.) To charter or create such tribal enterprises, divisions, corporations or other entities as it shall determine necessary to sell, possess, manufacture, or exchange alcoholic beverages as provided in Chapter 10.3 hereunder and elsewhere in Tribal law;

(e.) To do all other things necessary and proper to fulfill this Title and duties, rights and responsibilities it has hereunder.

#### **Chapter 10.3 Tribal Liquor Store Enterprise**

##### **Section 10.3.01 Tribal Liquor Enterprise**

In addition to any other licensed outlets under Chapter 10.4 of this Code, the Council may establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a Tribal liquor store or stores for the retail sale or wholesale of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by any Tribal liquor store and may set such other regulations as it deems appropriate to regulate the store.

#### **Chapter 10.4 Liquor Licenses and Permits**

##### **Section 10.4.01 Retail License**

The Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a retail establishment or establishments for storage and on-site consumption of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these on-site dealers.

##### **Section 10.4.02 Grocery License**

The Tribal Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, a grocery or groceries for storage and sale of alcoholic beverages in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these groceries.

##### **Section 10.4.03 Special Occasion License**

The Council may issue a license or licenses for the consumption of alcoholic beverages at special events at specific times and places and under such conditions as it may deem appropriate by regulation. Such special events may include but not be limited to banquets, fund raisers, and private parties.

##### **Section 10.4.04 Wholesale License**

The Council may issue a license or licenses to establish and maintain anywhere within the Shoalwater Bay Indian Country that the Council may deem advisable, an establishment for the sale or distribution of alcoholic beverages at wholesale in accordance with the provisions of this Title. The Council may set the prices of alcoholic beverages sold by these distributors.



**Section 10.4.05 Other Licenses and Permits**

The Council may issue such other licenses and permits for alcohol or alcoholic beverages as it deems appropriate. Such additional licenses and permits may be issued pursuant to tribally issued regulations determining the terms and conditions as the Council may determine.

**Section 10.4.06 Regulation and Control****Section 10.4.06.1**

Applications for licenses or permits shall be subject to such conditions, fees and restrictions on these licenses or permits as the Council shall deem appropriate. Applications shall be submitted on the prescribed form to the Council or its authorized employees. The Council may, at its sole discretion and subject to the conditions of this Code and other tribal laws and regulations, issue or refuse to issue any license permit upon payment of the prescribed fee.

**Section 10.4.06.2**

For the purpose of considering any application for a license or permit, the Council may cause an inspection of the premises to be made and may inquire into all matters with the construction and operation of the premises.

**Section 10.4.06.3**

No license shall be issued to:

- (a.) A person who is not a member of the Shoalwater Bay Indian Tribe;
- (b.) A partnership entity unless each partner is qualified to obtain a license, as provided in this section;
- (c.) A corporation or other entity unless all shareholders or owners are members of the Tribe;
- (d.) A person whose place of business is conducted by a manager or agent, unless such manager or agent is also an enrolled member of the Tribe;
- (e.) A person who has been convicted of a felony within five years prior to filing his or her application;
- (f.) A person who has been convicted of a violation of any federal, state or tribal law concerning the manufacture, possession or sale of alcoholic beverages within the last five years or has forfeited his or her bond to appear in court within the preceding five years to answer charges for such violation; or
- (g.) A person who is less than twenty-one years of age.

In conformity with State and federal law, the requirements of subparagraphs (a) through (f) may be waived by the Tribal Council for special occasion licenses.

**Section 10.4.06.4**

Every license shall be issued in the name of the applicant and no license shall be transferable, nor shall the holder thereof allow any other person to use the license.

**Section 10.4.06.5**

Before the Council shall issue any license, notice of the application shall be posted in public places and comments shall be received on the application for period of twenty (20) days at the Shoalwater Bay Tribal office.

**Section 10.4.06.6**

Before the Council shall issue any license it shall give due consideration to the location of the business.

**Section 10.4.06.7**

All licenses issued by the Tribe shall be posted in a conspicuous place on the licensed premises.

**10.4.06.8 Inspection Following License**

(a.) All licensed premises used in the storage or sale of alcoholic beverages, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, shall at all times be open to inspection by any tribal inspector or tribal police officer authorized by the Council to do such inspection.

(b.) Every person, being on any such premises and having charge thereof, who refuses to admit a tribal inspector or tribal police officer demanding to enter therein pursuant to authority herein, or who obstructs or attempts to obstruct the entry of such inspector or tribal police officer, or who refuses to allow the inspector to examine the books of the licensee, or who refuses to or neglects to make any return required by this Code or the regulations passed pursuant thereto, shall be deemed to be in violation of this Code.

**10.4.06.9 Suspension and Cancellation**

(a.) The Council may, for violation of this Code, suspend or cancel any license or permit; and all rights to keep or sell alcoholic beverages thereunder shall be suspended or terminated as the case may be.

(b.) Prior to cancellation or suspension, the Council shall send notice of its intent to cancel or suspend to the licensee or permit holder. A license or a permit is a privilege and no person shall have a vested right to one. The Council shall give at least ten (10) day's notice of such cancellation or suspension. The licensee shall have the right, prior to cancellation or

suspension date, to apply to the Tribal Court for a hearing to determine whether the license was rightfully suspended or cancelled. The sovereign immunity of the Shoalwater Bay Tribe is waived for this hearing to seek declaratory and injunctive relief; *provided that* this waiver shall not waive sovereign immunity to allow the award of money damages, attorney fees or cost against the Tribe nor to grant any other relief other than a declaratory and injunctive relief nor shall it be construed to waive sovereign immunity for suit in any court other than Tribal Court. This waiver shall not apply to a denial of an application for a license nor to a refusal to renew an expired license.

**10.4.06.10 Expiration of License**

No license or permit shall be for a period longer than a year and may be for a shorter period at the discretion of the Tribe. Unless sooner cancelled, every license or permit issued by the Council shall expire at midnight on the last day of the Tribal fiscal year. Licenses issued less than six months before that date shall only cost one-half of the annual fee.

**Chapter 10.5 State of Washington Licenses and Agreements****Section 10.5.01 State of Washington Licenses and Agreements**

The Tribe may negotiate at its discretion an agreement with the State of Washington or obtain a State of Washington liquor license or licenses for any purpose including any tribally operated establishment that sells alcoholic beverages or conducts transactions involving alcoholic beverages to allow the Tribe or its licensees to sell liquor in Shoalwater Bay Indian Country or within trust land under the Tribe's control.

**Chapter 10.6 Disputes; Violations; Penalties****Section 10.6.01 Disputes with Licensees; Violations; Penalties; Exclusive Tribal Court Jurisdiction**

Any disputes or violations that arise under this Title shall be resolved by mediation or by a suit in Tribal Court, which shall have exclusive civil and criminal jurisdiction for actions arising under or to enforce this Title.

**Chapter 10.7****Section 10.07.01 Applicability of State Law**

The Council and its agents shall act in conformity with Washington State laws regarding the liquor transactions to the extent required by applicable federal law, including 18 U.S.C. § 1161.

**Chapter 10.8 Illegal Activities****Section 10.8.01 Persons Under 21 Years of Age: Restrictions**

(a.) No person under the age of 21 years shall purchase or possess alcoholic beverages in any establishment operating pursuant to the provisions of this Title.

(b.) No person shall permit any other person under the age of 21 to consume liquor on his premises or any premises under their control except in those situations set out in this section. Any person violating this section shall be guilty of a separate violation of this Title for each and every drink so consumed.

(c.) Any person who shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Title for each such sale or drink provided.

(d.) Any person who transfers in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor shall be guilty of an offense, provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Title.

(e.) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification which falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Title.

**Section 10.8.02 Restrictions on Intoxicated Persons**

No Tribally operated or licensed establishment shall sell, give, or furnish any alcoholic beverage or in any way allow any alcoholic beverage to be sold, given or furnished to a person who is obviously intoxicated.

**Section 10.8.03 Hours and Days of Sale**

No Tribally operated or licensed establishment shall sell or furnish alcoholic beverages for on-site purposes during hours or on days not in compliance with applicable law.

**Section 10.8.04 Illegal Sales or Purchase**

(a.) Any person who shall sell or offer for sale or distribute or transport in any manner, liquor in violation of this Title, or who shall operate or shall have liquor for sale in their possession without a license, shall be guilty of a violation of this Title subjecting them to civil fines assessed by the Tribal Council;

(b.) Any person within the boundaries of the reservation or trust land of the Tribe who buys liquor from any person other than a properly licensed facility or

the Tribal Enterprise shall be guilty of a violation of this Title;

(c.) Any person who keeps or possesses liquor upon their person or in any place or on premises conducted or maintained by their principal or agent with the intent to sell or distribute it contrary to the provisions of this Title, shall be guilty of a violation of this Title;

(d.) Any person engaging wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance, shall be guilty of an offense under this Title. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Title.

**Section 10.8.06 Identification**

When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature, and photograph. Official documentation includes one of the following:

(a.) Valid driver's license, identification, or enrollment card issued by any Tribe or State department of motor vehicles;

(b.) United States Active Duty Military Identification;

(c.) Liquor control authority card of identification of any state; or

(d.) Passport.

**Section 10.8.07 Contraband**

(a.) Liquor, which is possessed, including for sale, contrary to the terms of this Title is declared to be contraband. Any Tribal agent, employee or officer who is authorized by the Tribal Council to enforce this section shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property; and

(b.) Upon being found in violation of the Title, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Tribe.

**Section 10.8.08 Tribal Liquor Stamp**

(a.) No liquor, other than beer and wine, sold pursuant to a Tribal license shall be sold on the Shoalwater Bay Indian Reservation, in Shoalwater Bay Indian Country or on trust land unless there shall be affixed a stamp of the Shoalwater Bay Tribal Council.

Any sales made in violation of this provision shall be remedied as set out in this Title. All liquor other than beer and wine sold pursuant to a Tribal license not so stamped, which is sold or

held for sale, is hereby declared contraband and, in addition to any penalties imposed by the Court in violation of this section, it may be confiscated and forfeited in accordance with procedures herein.

(b.) No person other than an employee of the Tribe shall keep or have in his or her possession any legal seal prescribed under this Code unless the same is attached to a package which has been purchased from a tribal liquor outlet, nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this Code or calculated to deceive by its resemblance to any official seal or any paper upon which such design is stamped, engraved, lithographed, printed or otherwise marked. Any person violating this provision shall be in violation of this Title.

**Section 10.8.09 Defense to Action for Sale to Minors**

It shall be a defense to a suit for serving alcoholic beverages to a person under twenty-one years of age if such a person has presented a card of identification.

(a.) In addition to the presentation by the holder and verification of such card of identification, the seller shall require the person whose age may be in question to sign a card and place a date and number of this card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee at or before the close of business on the day on which the statement is executed, in the file box contained containing a suitable alphabetical index and the card shall be subject to examination by any tribal peace officer or employee of the Tribe at all times.

(b.) Such card in the possession of a licensee may be offered as defense in any hearing by the Tribal Court for serving liquor to the person who signed the card and may be considered by the Court as evidence that the licensee acted in good faith.

**Section 10.8.10 Civil Fines**

Any person guilty of a violation of this Title or any regulation shall be liable to pay the Tribe the amount of \$500 per violation plus costs as civil damages to defray the Tribe's cost of enforcement of this Title when there is no other penalty specifically provided.

**Section 10.8.11 Enforcement**

(a.) In any proceeding under this Title, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping

liquor for sale, selling liquor or distributing liquor in violation of this Title.

(b.) The Shoalwater Bay Tribal Court shall have jurisdiction over any case brought by the Tribe for violations of this Code. The Tribal Court may, in addition to the above penalty, grant to the Tribe such other relief as may be necessary and proper for the enforcement of this Code, including but not limited to injunctive relief against acts in violation of this Code.

#### **Section 10.8.12 Abatement**

(a.) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Title or of any other Tribal law relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance;

(b.) The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council may institute and maintain an action in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this Title. The Tribe shall not be required to give bond to maintain this action. In addition to all other remedies at Tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than \$25,000 payable to the Tribe and on the condition that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provisions of this Title or of any other applicable Tribal law and that they will pay all fines, costs and damages assessed against them for any violation of this Title. If any conditions of the bond be violated, the bond may be recovered for the use of the Tribe; and

(c.) In all cases where any person has been found in violation of this Title relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Title and violation of this Title shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

### **Chapter 10.9 Tribal Taxation**

#### **Section 10.9.01 Taxation**

(a.) The power to levy taxes under the provisions of this Title is vested exclusively with the Tribal Council.

(b.) All revenues received, funds collected, and property acquired by the Shoalwater Bay Tribal Council or by the Shoalwater Bay Tribal Enterprise pursuant to this Code shall be the property of the Shoalwater Bay Indian Tribe. The net proceeds shall be paid through the tribal treasurer in the general tribal fund of the Shoalwater Bay Indian Tribe for the general governmental services of the Tribe. The Tribe reserves the right to enter into any agreement with the State of Washington related to taxation in lieu of, or in addition to, this Chapter 10.9, as the Tribe deems necessary.

#### **Section 10.9.02 Liquor Sales Excise Tax**

(a.) There is hereby levied and shall be collected a tax upon each sale of liquor, except beer and wine, whatever package or container, in the amount of three (3) cents per fluid ounce or fraction thereof contained in such package or container.

(b.) There is hereby levied and shall be collected a tax upon each sale of beer or wine in the amount of five percent (5%) of the selling price.

(c.) These excise taxes shall be added to the sale price of the liquor sold and shall be paid by the buyer to the Shoalwater Bay Liquor Enterprise or the licensed or permitted tribal seller who shall collect the same and hold those taxes in trust until collected by the Shoalwater Bay Tribal treasurer. The taxes provided for herein shall be the only taxes applicable to the activities of the Shoalwater Bay Liquor Enterprise.

(d.) All tax revenues shall be transferred to the Tribal treasurer for deposit in the tribal tax fund for the benefit of the Shoalwater Bay Indian Tribe. In appropriating from those tax revenues, the Council shall give priority to:

(1.) Strengthening tribal government which shall include but not be limited to strengthening tribal court and law enforcement systems and the system for administering and enforcing this Code.

(2.) Fire protection, roads, and water and sewage services.

(3.) Health, education, and other social services, and land acquisition and development needs. The Council shall have the sole discretion to determine which of the above priorities shall receive an appropriation and the amount of the appropriation for a given priority.

(e.) The Enterprise and retail licensees shall keep such records required by the Tribal treasurer to determine the amount of taxes owing and shall complete the tax returns in accordance with instructions from the Tribal treasurer.

(f.) Amendments to the amounts and types of taxes levied on the sale of liquor may be made from time to time by regulation by the Shoalwater Bay Tribal Council.

### **Chapter 10.10 Construction**

#### **Section 10.10.01 Severability**

If any part of this Title or the application thereof to any party, person, or entity or to any circumstances shall be held invalid for any reason whatsoever, the remainder of the Title shall not be affected thereby, and shall remain in full force and effect as though no part thereof had been declared to be invalid.

#### **Section 10.10.02 Amendment or Repeal of Title**

This Title may be amended or repealed by a majority vote of the Tribal Council.

#### **Section 10.10.03 Sovereign Immunity**

Nothing in this Title is intended to nor shall be construed as a waiver of the sovereign immunity of the Shoalwater Bay Indian Tribe except as provided in section 10.04.06.9 above.

#### **Section 10.10.04 Effective Date**

This Title shall be effective upon the thirtieth (30th) day after the Secretary of the Interior certifies this Title and publishes it in the **Federal Register**.

#### **Section 10.10.05 Jurisdiction**

Notwithstanding anything in this Title to the contrary, nothing herein is intended to nor shall be construed as a grant of jurisdiction from the Shoalwater Bay Indian Tribe to the State of Washington beyond that provided expressly by applicable law. The Tribe shall operate in conformity with State law and Tribal law to the extent required pursuant to 18 U.S.C. § 1161.

[FR Doc. 2018-11839 Filed 5-31-18; 8:45 am]

**BILLING CODE 4337-15-P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

[189A2100DD/AAKC001030/  
A0A501010.999900253G]

**Indian Gaming; Tribal-State Class III Gaming Compact Taking Effect in the State of Connecticut**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The notice announces that the Tribal-State Class III Gaming Compact Amendment entered into between the Mohegan Tribe of Indians of Connecticut and the State of Connecticut is taking effect.

**DATES:** This compact takes effect on June 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219-4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100-497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior (Secretary) shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Secretary took no action on the Amendment to the compact between the Mohegan Tribe of Indians of Connecticut and the State of Connecticut within 45 days of its submission. Therefore, the Amendment is considered to have been approved, but only to the extent the Amendment is consistent with IGRA. *See* 25 U.S.C. 2710(d)(8)(C).

Dated: May 25, 2018.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs, Exercising the Authority of the Acting Assistant Secretary—Indian Affairs.*

[FR Doc. 2018-11738 Filed 5-31-18; 8:45 am]

**BILLING CODE** 4337-15-P

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

[LLNVS01000. L51010000.PQ0000.  
LVRWF1201670; N-90788; MO#  
4500110426]

**Notice of Intent To Prepare an Environmental Impact Statement and a Notice of Segregation for the Proposed Yellow Pine Solar Project, Clark County, NV**

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of intent.

**SUMMARY:** As requested by Yellow Pine Solar, LLC, and in compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the BLM Las Vegas Field Office will prepare an Environmental Impact Statement (EIS) for a proposed solar project located approximately 10 miles southeast of Pahrump, Nevada, and approximately 32 miles west of Las Vegas, Nevada. Publication of this Notice initiates the scoping process and opens a 90-day public comment period. Publication of this Notice also serves to segregate the public lands from appropriation under the public land laws, including location and entry under the Mining Law, but not disposal under the Mineral Leasing Act or the Materials Act, subject to valid existing rights. This Notice initiates the public scoping process and the segregation.

**DATES:** Comments on issues may be submitted in writing until August 30, 2018. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media and the BLM website at: <https://goo.gl/gNbznz>. Comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later, to be included in the Draft EIS. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** Submit comments related to the project by any of the following methods:

- *Email:* [blm\\_nv\\_snd0\\_yellowpine@blm.gov](mailto:blm_nv_snd0_yellowpine@blm.gov)
- *Fax:* (702) 515-5073, attention Nicollee Gaddis
- *Mail:* BLM, Las Vegas Field Office, Attn: Nicollee Gaddis, 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to the mailing list, send requests to: Nicollee Gaddis, Renewable

Energy Project Manager, at telephone (702) 515-5136; or address 4701 North Torrey Pines Drive, Las Vegas, NV 89130-2301; or email [blm\\_nv\\_snd0\\_yellowpine@blm.gov](mailto:blm_nv_snd0_yellowpine@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** In 2016, Yellow Pine Solar, LLC requested an amended right-of-way (ROW) authorization for the construction, operation, maintenance, and decommissioning of a 250-megawatt (MW) photovoltaic (PV) power plant that would provide renewable energy to Nevada's electrical transmission grid. In 2011, the original ROW application was filed by Boulevard Associates, LLC, a subsidiary of NextEra Energy Resources, LLC, and the project is thus not subject to the decisions adopted by the 2012 Western Solar Plan, the BLM's Record of Decision (ROD) for Solar Energy Development in Six Southwestern States (BLM 2012).

The proposed project includes 9,290 acres of lands managed by the BLM. The project is located in Clark County at the intersection of Nevada State Route 160 and Tecopa Road, approximately 10 miles southeast of Pahrump, Nevada and approximately 32 miles west of Las Vegas.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Threatened and endangered species, cultural resources, visual resources, surface water, recreation, socioeconomic effects, and cumulative impacts. The congressionally designated Old Spanish National Historic Trail crosses the area. Habitat for the federally listed desert tortoise is in this proposal area.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with applicable laws, regulations, Executive Order 13175, and other policies. Tribal concerns will be given due consideration, including any impacts on Indian Trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the

scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Segregation of the Public Lands

In 2013, the BLM published a Final Rule, *Segregation of Lands—Renewable Energy* (78 FR 25204), that amended the regulations found in 43 CFR 2090 and 2800. The provisions of the Final Rule allow the BLM to temporarily segregate public lands within a solar or wind application area from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** Notice. The BLM uses this temporary segregation authority to preserve its ability to approve, approve with modifications, or deny proposed ROWs, and to facilitate the orderly administration of the public lands. This temporary segregation is subject to valid existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregation period.

The lands segregated under this notice are legally described as follows:

#### Mount Diablo Meridian, Nevada

T. 21 S., R. 55 E.,

Sec. 31, SE $\frac{1}{4}$ NE $\frac{1}{4}$  and E $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 32, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Sec. 33, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Sec. 34, S $\frac{1}{2}$ NW $\frac{1}{4}$ , SW $\frac{1}{4}$ , and W $\frac{1}{2}$ SE $\frac{1}{4}$ .

T. 22 S., R. 55 E.,

Sec. 1, W $\frac{1}{2}$ SW $\frac{1}{4}$  and SE $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Sec. 3, lots 2 thru 4, S $\frac{1}{2}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Secs. 4 and 5;

Sec. 6, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$ , and E $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 7, E $\frac{1}{2}$ NE $\frac{1}{4}$ ;

Sec. 8, N $\frac{1}{2}$ ;

Sec. 9, N $\frac{1}{2}$ ;

Secs. 10 thru 14.

T. 22 S., R. 56 E.,

Sec. 7, lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$ ;

Sec. 17, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$ , and S $\frac{1}{2}$ ;

Sec. 18.

As provided in the Final Rule, the segregation of lands in this Notice will not exceed 2 years from the date of publication unless extended for up to 2

additional years, through publication of a new notice in the **Federal Register**. Termination of the segregation occurs on the earliest of the following dates: Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; automatically at the end of the segregation; or upon publication of a **Federal Register** Notice of termination of the segregation.

Upon termination of segregation of these lands, all lands subject to this segregation will automatically reopen to appropriation under the public land laws.

(Authority: 40 CFR 1501.7, 43 CFR 2091.3–1(e), and 43 CFR 2804.25(f))

Vanessa L. Hice,

Acting Las Vegas Field Manager.

[FR Doc. 2018–10961 Filed 5–31–18; 8:45 am]

BILLING CODE 4310–HC–P

### INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1203 (Review)]

#### Xanthan Gum From China; Institution of a Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on xanthan gum from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2018. To be assured of consideration, the deadline for responses is July 2, 2018. Comments on the adequacy of responses may be filed with the Commission by August 14, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On July 19, 2013, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of xanthan gum from China (78 FR 43143). The Commission is conducting a review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined a single *Domestic Like Product*, xanthan gum, coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the *Domestic Industry* as all U.S. producers of xanthan gum.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the *Order Date* is July 19, 2013.

(6) An *Importer* is any person or firm engaged, either directly or through a

parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9),

who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 2, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 14, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget (“OMB”) number is not displayed; the OMB number is 3117 0016/USITC No. 18–5–408, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

**Information To Be Provided in Response to This Notice of Institution:** As used below, the term “firm” includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of

total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.



Issued: May 25, 2018.

**William Bishop,**

*Supervisory Hearings and Information  
Officer.*

[FR Doc. 2018-11676 Filed 5-31-18; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1110 (Second  
Review)]

### Sodium Hexametaphosphate From China; Institution of a Five-Year Review

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the antidumping duty order on sodium hexametaphosphate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2018. To be assured of consideration, the deadline for responses is July 2, 2018. Comments on the adequacy of responses may be filed with the Commission by August 14, 2018.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On March 19, 2008, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of sodium hexametaphosphate from China (73 FR 14772). Following the first five-year reviews by Commerce and the Commission, effective July 17,

2013, Commerce issued a continuation of the antidumping duty order on imports of sodium hexametaphosphate from China (78 FR 42754). The Commission is now conducting a second review pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission’s determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its first five-year review determination, the Commission defined a single *Domestic Like Product* consisting of sodium hexametaphosphate, coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its first five-year review determination, the Commission defined a single *Domestic Industry* consisting of all domestic producers of sodium hexametaphosphate.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject*

*Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202-205-3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission’s rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission’s rules, any person submitting information to the



Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 2, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is August 14, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 18–5–410, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments

regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determination in the review.

**Information to be provided in response to this notice of institution:** As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of

imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in metric tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit,

(iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in metric tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in metric tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for

downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2018.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2018-11677 Filed 5-31-18; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-873-875, 878-880, and 882 (Third Review)]

### Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine; Institution of Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 ("the Act"), as amended, to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted June 1, 2018. To be assured of consideration, the deadline for responses is July 2, 2018. Comments on the adequacy of responses may be filed with the Commission by August 14, 2018.

#### FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On September 7, 2001, the Department of Commerce ("Commerce") issued antidumping duty orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine (66 FR 46777). Following the first five-year reviews by Commerce and the Commission, effective August 9, 2007, Commerce issued a continuation of the antidumping duty orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia,

Moldova, Poland, and Ukraine (72 FR 44830). Following the second five-year reviews by Commerce and the Commission, effective July 22, 2013, Commerce issued a continuation of the antidumping duty orders on imports of steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine (78 FR 43858). The Commission is now conducting third reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR parts 201, subparts A and B and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations and its full first and second five-year reviews, the Commission defined the *Domestic Like Product* as certain steel concrete reinforcing bar, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, three Commissioners based their material injury analysis on a national industry consisting of all producers of steel concrete reinforcing bar and three Commissioners found a regional industry consisting of all domestic production facilities producing the *Domestic Like Product* in the region

consisting of the 30 contiguous states from New England to Texas and from the Gulf of Mexico north on both sides of the Mississippi up to the Canadian border, plus the District of Columbia and Puerto Rico. In its full first five-year review determinations, the Commission found that appropriate circumstances did not exist to conduct a regional industry analysis and defined the *Domestic Industry* to consist of all domestic producers of steel concrete reinforcing bar. In its full second five-year review determinations, the Commission conducted its analysis on a national industry basis and defined the *Domestic Industry* to include all domestic producers of steel concrete reinforcing bar. For purposes of this notice, you should report *Domestic Industry* information based on the Commission's two most recent determinations defining the *Domestic Industry* to consist of all domestic producers of steel concrete reinforcing bar.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR

201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

**Written submissions.**—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is July 2, 2018. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also

file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is August 14, 2018. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at <https://edis.usitc.gov>, elaborates upon the Commission's rules with respect to electronic filing. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 18-5-409, expiration date June 30, 2020. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

**Information To Be Provided in Response to this Notice of Institution:** If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one

*Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2012.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone

number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2017, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2017 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2012, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology;

production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: May 25, 2018.

**William Bishop,**

*Supervisory Hearings and Information Officer.*

[FR Doc. 2018-11678 Filed 5-31-18; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On May 24, 2018, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Utah in the lawsuit entitled *United States v. Stevens*, Civil Action No. 2:18-cv-00402-PMW.

The United States filed this lawsuit under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The United States' complaint names J. Daniel Stevens, in his capacity as trustee of the Fifam Trust, as defendant. The complaint requests recovery of costs that the United States incurred responding to releases of hazardous substances at the North Salt Lake HazMat Site in Salt Lake City, Utah. Mr. Stevens, on behalf of the

Fifam Trust, agrees to sell the Site property and to pay 75% of the net proceeds to the EPA Hazardous Substance Superfund in reimbursement of the United States' response costs. The United States will pay \$302,950 to the EPA Hazardous Substance Superfund to resolve the alleged liability of the Department of Defense, the Defense Logistics Agency, and DLA Disposition Services. Under the consent decree, the United States agrees not to sue Mr. Stevens or the Fifam Trust under sections 106 or 107 of CERCLA regarding the Site, and Mr. Stevens and the Fifam Trust agree not to sue the United States with respect to the Site. Mr. Stevens, the Fifam Trust, the Department of Defense, the Defense Logistics Agency, and DLA Disposition Services will receive protection against contribution claims under CERCLA with respect to the Site.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Stevens*, D.J. Ref. Nos. 90-11-3-11588, 90-11-6-20789. 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:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
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 \$16.75 (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. 2018-11795 Filed 5-31-18; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On May 24, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States of America v. Triple Dragon LLC et al.*, Civil Action No. 1:18-cv-152.

The Complaint in this Clean Water Act case was filed against the defendants on April 27, 2018. The Complaint alleges that the defendants, Triple Dragon LLC, Trung Anh Quach, and Aukusitino Lui Maui, are civilly liable for violations of Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. 1321. Mr. Quach is the managing member of the company and Mr. Maui was the operator of the vessel at the time the Coast Guard discovered the violations. The Complaint alleges that the company and individuals are liable for violations related to the commercial longline fishing vessel *Triple Dragon's* operations based out of Honolulu, Hawaii. The Complaint addresses discharges of oily bilge waste from the vessel while fishing for tuna off Hawaii. The Complaint also includes a Clean Water Act claim for violations of the Coast Guard's pollution control regulations, including failure to provide sufficient capacity to retain all oily bilge water onboard the vessel. The United States seeks civil penalties and injunctive relief to deter future violations by the defendants and others in the industry.

Under the proposed Consent Decree, the defendants will perform corrective measures to remedy the violations and prevent future violations, including: (1) Repairing the vessel to reduce the quantity of oily waste generated during a fishing voyage; (2) providing crewmembers with training on the proper handling of oily wastes; (3) documenting proper oily waste management and disposal after returning to port; and (4) submitting compliance reports to the Coast Guard and the Department of Justice.

The consent decree also requires the company, company manager, and vessel operator to each pay a civil penalty. The penalty amounts were set considering each defendant's limited ability to pay a higher penalty, as demonstrated through documentation submitted to the United States and analyzed by a financial expert. Triple Dragon LLC must pay a civil penalty of \$15,000; the company manager, Trung Anh Quach, must pay a civil penalty of \$10,000; and

the vessel operator, Aukusitino Lui Maui, must pay a civil penalty of \$500. Under the terms of the Clean Water Act, the penalties paid for these discharges will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. Triple Dragon LLC et al.*, D.J. Ref. No. 90-5-1-1-11817. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

To submit comments:	Send them to:
By e-mail .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$15.75 (25 cents per page reproduction cost) payable to the United States Treasury.

#### Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2018-11781 Filed 5-31-18; 8:45 am]

BILLING CODE 4410-15-P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On May 24, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Hawaii in the lawsuit entitled *United States of America v. Capt. Millions III, LLC et al.*, Civil Action No. 1:18-cv-196.

The Complaint in this Clean Water Act case was filed against the defendants concurrently with the lodging of the Consent Decree. The Complaint alleges that the defendants, Capt. Millions III, LLC, Brian Nguyen, and Kha Van, are civilly liable for violations of Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. 1321. Mr. Nguyen is the managing member of the company and Mr. Van is the longtime operator of the vessel. The Complaint alleges that the company and individuals are liable for violations related to the commercial longline fishing vessel *Capt. Millions III's* operations based out of Honolulu, Hawaii. The Complaint addresses discharges of oily bilge waste from the vessel while fishing for tuna off Hawaii. The Complaint also includes a Clean Water Act claim for violations of the Coast Guard's pollution control regulations, including failure to provide sufficient capacity to retain all oily bilge water onboard the vessel. The United States seeks civil penalties and injunctive relief to deter future violations by the defendants and others in the industry.

Under the proposed Consent Decree, the defendants will perform corrective measures to remedy the violations and prevent future violations, including: (1) Repairing the vessel to reduce the quantity of oily waste generated during a fishing voyage; (2) providing crewmembers with training on the proper handling of oily wastes; (3) documenting proper oily waste management and disposal after returning to port; and (4) submitting compliance reports to the Coast Guard and the Department of Justice.

The consent decree also requires the company, company manager, and vessel operator to each pay a civil penalty. The penalty amounts were set considering each defendant's limited ability to pay a higher penalty, as demonstrated through documentation submitted to the United States and analyzed by a financial expert. Capt. Millions III, LLC must pay a civil penalty of \$10,000; the company manager, Brian Nguyen, must pay a civil penalty of \$5,000; and the vessel operator, Kha Van, must pay a civil penalty of \$7,000. Under the terms of the Clean Water Act, the penalties paid for these discharges will be deposited in the federal Oil Spill Liability Trust Fund managed by the National Pollution Funds Center.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources

Division, and should refer to *United States of America v. Capt. Millions III, LLC et al.*, D.J. Ref. No. 90–5–1–1–11816. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or by mail:

To submit comments:	Send them to:
By email .....	<a href="mailto:pubcomment-ees.enrd@usdoj.gov">pubcomment-ees.enrd@usdoj.gov</a> .
By mail .....	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for \$13.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2018–11782 Filed 5–31–18; 8:45 am]

BILLING CODE 4410–15–P

## DEPARTMENT OF LABOR

### Office of the Secretary

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration) sponsored information collection request (ICR) revision titled, “Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities,” to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of

1995. Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 2, 2018.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201708-1205-003](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201708-1205-003) (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor–OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

#### FOR FURTHER INFORMATION CONTACT:

Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request Activities information collection. To monitor the progress of each State Workforce Agency in successfully implementing projects funded through Supplemental Budget Requests, this collection will request information including the funded project’s title and purpose, timeline and milestones, and project implementation status. This information collection has been classified as a revision, because Form ETA–9178 will now cover Reemployment & Systems Integration—Dislocated Worker Grants. The ETA also updated the title of the collection to “Quarterly Narrative Progress Report, Employment and Training Supplemental Budget Request

Activities.” Social Security Act section 303(a)(6) authorizes this information collection. See 42 U.S.C. 503(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0517. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 8, 2017 (82 FR 26714).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0517. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Quarterly Narrative Progress Report, Employment



and Training Supplemental Budget Request Activities.

*OMB Control Number:* 1205–0517.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of*

*Respondents:* 57.

*Total Estimated Number of*

*Responses:* 228.

*Total Estimated Annual Time Burden:* 1,140 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: May 29, 2018.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2018–11807 Filed 5–31–18; 8:45 am]

**BILLING CODE 4510–FW–P**

## Securities and Exchange Commission

### Sunshine Act Meeting

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Tuesday, June 5, 2018 at 10:00 a.m.

**PLACE:** The meeting will be held in the Multi-Purpose Room L–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** The meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at [www.sec.gov](http://www.sec.gov).

**MATTERS TO BE CONSIDERED:** The subject matters of the Open Meeting will be the Commission's consideration of:

- Whether to adopt a new rule as well as amendments to rules and forms to provide certain registered investment companies ("funds") with an optional method to transmit shareholder reports.
- whether to issue a release requesting comment about processing fees for delivering shareholder reports and other materials to fund investors.
- whether to issue a release requesting comment from individual investors and other interested parties on how to enhance the delivery, design, and content of fund disclosures, including shareholder reports and prospectuses.
- whether to propose amendments to rules adopted under section 13 of the Bank Holding Company Act related to prohibitions and restrictions on proprietary trading and certain interests

in, and relationships with, hedge funds and private equity funds (commonly known as the "Volcker rule").

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

#### **CONTACT PERSON FOR MORE INFORMATION:**

For further information, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: May 29, 2018.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2018–11917 Filed 5–30–18; 4:15 pm]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 10435]**

### **Notice of Public Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings**

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC). The ITAC will meet on June 26, 2018, at AT&T, 1120, 20th Street NW, Washington DC at 2:00 p.m. to review the results of recent multilateral meetings, update on preparations for the International Telecommunication Union (ITU) 2018 Plenipotentiary Conference (PP–18), and discuss preparations for other upcoming multilateral meetings at the ITU. The meeting will focus on the following topics:

1. ITU Council
2. CITEL PCC.I meeting
3. Preparations for the ITU 2018 Plenipotentiary Conference (PP–18)
4. ITU Radiocommunication Sector (ITU–R) meetings
5. ITU Telecommunication Standardization Sector (ITU–T) meetings
6. ITU Development Sector meetings
7. Regional PP–18 Preparatory Groups
8. APEC Telecommunications Working Group 57 (TEL 57)
9. Organization for Economic Corporation and Development (OECD) Committee on Digital Economy Policy (CDEP)

PP–18 will take place in Dubai, United Arab Emirates, from October 29 to November 17, 2018. The Plenipotentiary Conference, which takes place every four years, is the highest policy-making body of the ITU. PP–18 is expected to determine the overall policy direction of the ITU; adopt the strategic and financial plans for the next four

years; elect the 48 members of Council, 12 members of the Radio Regulations Board, and five senior ITU elected officials; and consider and adopt, if appropriate, amendments to the ITU Constitution and Convention.

Attendance at the ITAC meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair. Persons wishing to request reasonable accommodation during the meeting should send their requests to [ITAC@state.gov](mailto:ITAC@state.gov) no later than June 21, 2018. Requests made after that time will be considered, but might not be able to be accommodated.

Further details on this ITAC meeting will be announced through the Department of State's email list, [ITAC@lmlist.state.gov](mailto:ITAC@lmlist.state.gov). Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to remain on or join the ITAC listserve by registering by email via [ITAC@state.gov](mailto:ITAC@state.gov) and providing his or her name, email address, telephone contact and the company, organization, or community that he or she is representing, if any.

Please send all inquiries to [ITAC@state.gov](mailto:ITAC@state.gov).

**Franz J. Zichy,**

*Designated Federal Officer, Multilateral Affairs, International Communications and Information Policy, Department of State.*

[FR Doc. 2018–11811 Filed 5–31–18; 8:45 am]

**BILLING CODE 4710–AE–P**

## DEPARTMENT OF STATE

**[Public Notice: 10433]**

### **In the Matter of the Amendment of the Designation of Al-Nusrah Front (and Other Aliases) as a Specially Designated Global Terrorist**

Based upon a review of the administrative record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that Al-Nusrah Front (and other aliases) is also known as Hay'at Tahrir al-Sham, also known as Hay'et Tahrir al-Sham, also known as Hayat Tahrir al-Sham, also known as HTS, also known as Assembly for the Liberation of Syria, also known as Assembly for Liberation of the Levant, also known as Liberation of al-Sham Commission, also known as Liberation of the Levant Organisation,



also known as Tahrir al-Sham, also known as Tahrir al-Sham Hay'at.

Therefore, pursuant to Section 1(b) of Executive Order 13224, I hereby amend the designation of Al-Nusrah Front as a Specially Designated Global Terrorist to include the following new aliases:

Hay'at Tahrir al-Sham, also known as Hay'et Tahrir al-Sham, also known as Hayat Tahrir al-Sham, also known as HTS, also known as Assembly for the Liberation of Syria, also known as Assembly for the Liberation of the Levant, also known as Liberation of al-Sham Commission, also known as Liberation of the Levant Organisation, also known as Tahrir al-Sham, also known as Tahrir al-Sham Hay'at.

This determination shall be published in the **Federal Register**.

Dated: May 17, 2018.

**Michael Pompeo**,  
Secretary of State.

[FR Doc. 2018-11794 Filed 5-31-18; 8:45 am]

BILLING CODE 4710-AD-P

## DEPARTMENT OF STATE

[Public Notice: 10432]

### In the Matter of the Amendment of the Designation of Al-Nusrah Front (and Other Aliases) as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that the following are aliases of Al-Nusrah Front (and other aliases): Hay'at Tahrir al-Sham, also known as Hay'et Tahrir al-Sham, also known as Hayat Tahrir al-Sham, also known as HTS, also known as Assembly for the Liberation of Syria, also known as Assembly for Liberation of the Levant, also known as Liberation of al-Sham Commission, also known as Liberation of the Levant Organisation, also known as Tahrir al-Sham, also known as Tahrir al-Sham Hay'at.

Therefore, pursuant to Section 219(b) of the INA, as amended (8 U.S.C. 1189(b)), I hereby amend the designation of Al-Nusrah Front as a foreign terrorist organization to include the following new aliases: Hay'at Tahrir al-Sham, also known as Hay'et Tahrir al-Sham, also known as Hayat Tahrir al-Sham, also known as HTS, also known as Assembly for the Liberation of Syria,

also known as Assembly for the Liberation of the Levant, also known as Liberation of al-Sham Commission, also known as Liberation of the Levant Organisation, also known as Tahrir al-Sham, also known as Tahrir al-Sham Hay'at.

This determination shall be published in the **Federal Register**.

Dated: May 17, 2018.

**Michael Pompeo**,  
Secretary of State.

[FR Doc. 2018-11797 Filed 5-31-18; 8:45 am]

BILLING CODE 4710-AD-P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2018-0016; Dispute Number WT/DS533]

### WTO Dispute Settlement Proceeding Regarding United States— Countervailing Measures on Softwood Lumber From Canada

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that Canada has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement). That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS533/2. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before June 25, 2018, to be assured of timely consideration by USTR.

**ADDRESSES:** USTR strongly prefers electronic submissions made using the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. The docket number is USTR-2018-0016. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395-9483.

**FOR FURTHER INFORMATION CONTACT:** Assistant General Counsel Katherine Wang at (202) 395-6214, or Senior Associate General Counsel J. Daniel Stirk at (202) 395-9617.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19

U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has received a request for a dispute settlement panel pursuant to the WTO *Understanding on Rules Procedures Governing the Settlement of Disputes* (DSU). The WTO has established a dispute settlement panel, and the panel will hold its meetings in Geneva Switzerland.

##### II. Major Issues Raised by Canada

On March 16, 2018, Canada requested the establishment of a WTO dispute settlement panel regarding certain countervailing measures on softwood lumber products from Canada as well as an alleged measure treating Nova Scotia and New Brunswick as in-country benchmarks for provincial stumpage markets in Alberta, Ontario, and Québec. Canada argues that these measures are inconsistent with Articles 1, 2, 10, 14, 11, 19, 21, and 32 of the *Agreement on Subsidies and Countervailing Measures* and Article VI:3 of the *General Agreement on Tariffs and Trade 1994*. The United States and Canada held consultations regarding these matters on January 17, 2018, which failed to resolve the dispute.

##### III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov). To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2018-0016 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a 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!" For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on "How to Use Regulations.gov" on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a "Type Comment" field, or by attaching a document using an "Upload File" field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment" field. USTR prefers submissions in Microsoft Word (.doc) or

Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Type Comment" field.

For any comments submitted electronically containing 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 and bottom of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions 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 or rebuttal comments. If this is not sufficient to protect business confidential information or otherwise protect business interests, please contact Sandy McKinzy at (202) 395-9483 to discuss whether alternative arrangements are possible.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2018-0016, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute publicly

available at [www.ustr.gov](http://www.ustr.gov). If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, will also be available on the website of the World Trade Organization, at [www.wto.org](http://www.wto.org).

**Juan Millan,**

*Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.*

[FR Doc. 2018-11776 Filed 5-31-18; 8:45 am]

**BILLING CODE 3290-F8-P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**[Docket Number USTR-2018-0015; Dispute Number WT/DS534]**

### WTO Dispute Settlement Proceeding Regarding United States—Anti- Dumping Measures Applying Differential Pricing Methodology to Softwood Lumber From Canada

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with request for comments.

**SUMMARY:** The Office of the United States Trade Representative (USTR) is providing notice that Canada has requested the establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* (WTO Agreement). That request may be found at [www.wto.org](http://www.wto.org) in a document designated as WT/DS534/2. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, you should submit your comment on or before June 25, 2018, to be assured of timely consideration by USTR.

**ADDRESSES:** USTR strongly prefers electronic submissions made using the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section III below. The docket number is USTR-2018-0015. For alternatives to on-line submissions, please contact Sandy McKinzy at (202) 395-9483.

**FOR FURTHER INFORMATION CONTACT:** Assistant General Counsel Katherine Wang at (202) 395-6214, or Senior Associate General Counsel J. Daniel Stirk at (202) 395-9617.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires notice and opportunity for comment after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Pursuant to this provision, USTR is providing notice that the United States has received a request for a dispute settlement panel pursuant to the WTO *Understanding on Rules Procedures Governing the Settlement of Disputes* (DSU). The WTO has established a dispute settlement panel, and the panel will hold its meetings in Geneva Switzerland.

## II. Major Issues Raised by Canada

On March 16, 2018, Canada requested the establishment of a WTO dispute settlement panel regarding U.S. antidumping measures applying a differential pricing analysis and zeroing to softwood lumber products from Canada. Canada argues application of a differential pricing analysis and zeroing is inconsistent with Articles 1, 2.1, 2.4, and 2.4.2 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* and Articles VI:1 and VI:2 of the *General Agreement on Tariffs and Trade 1994*. The United States and Canada held consultations regarding these matters on January 17, 2018, which failed to resolve the dispute.

## III. Public Comments: Requirements for Submissions

USTR invites written comments concerning the issues raised in this dispute. All submissions must be in English and sent electronically via [www.regulations.gov](http://www.regulations.gov). To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2018-0015 on the home page and click "search." The site will provide a search-results page listing all documents associated with this docket. Find a 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!" For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on "How to Use Regulations.gov" on the bottom of the home page.

The [www.regulations.gov](http://www.regulations.gov) website allows users to provide comments by filling in a "Type Comment" field, or by attaching a document using an "Upload File" field. USTR prefers that comments be provided in an attached document. If a document is attached, it is sufficient

to type “See attached” in the “Type Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the “Type Comment” field.

For any comments submitted electronically containing 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 and bottom of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. If you request business confidential treatment, you must certify in writing that disclosure of the information would endanger trade secrets or profitability, and that the information would not customarily be released to the public. Filers of submissions 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 or rebuttal comments. If this is not sufficient to protect business confidential information or otherwise protect business interests, please contact Sandy McKinzy at (202) 395-9483 to discuss whether alternative arrangements are possible.

USTR may determine that information or advice contained in a comment, other than business confidential information, is confidential in accordance with

section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If a submitter believes that information or advice is confidential, s/he must clearly designate the information or advice as confidential and mark it as “SUBMITTED IN CONFIDENCE” at the top and bottom of the cover page and each succeeding page, and provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding, docket number USTR-2018-0015, accessible to the public at [www.regulations.gov](http://www.regulations.gov). The public file will include non-confidential public comments USTR receives regarding the dispute. If a dispute settlement panel is convened, or in the event of an appeal from a panel, USTR will make the U.S. submissions and any non-confidential summaries of submissions received from other participants in the dispute publicly available at [www.ustr.gov](http://www.ustr.gov). If a dispute settlement panel is convened, or in the event of an appeal from a panel, the report of the panel, and, if applicable, the report of the Appellate Body, also will be available on the website of the World Trade Organization, at [www.wto.org](http://www.wto.org).

**Juan Millan,**

*Assistant United States Trade Representative for Monitoring and Enforcement, Office of the U.S. Trade Representative.*

[FR Doc. 2018-11777 Filed 5-31-18; 8:45 am]

**BILLING CODE 3290-F8-P**

## DEPARTMENT OF VETERANS AFFAIRS

### Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Special Medical Advisory Group will meet on June 6, 2018 from 2:30 p.m.–4:30 p.m. ET. This meeting will be virtual. Members of the public can join—please contact [brenda.faas@va.gov](mailto:brenda.faas@va.gov) or call 202-461-7005 to obtain dial in information and confirm your attendance. All must identify themselves when they join the call. In accordance with Federal Advisory Committee Act (1972), we must keep a record of attendance.

The purpose of the committee is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of Veterans, and other matters pertinent to the Veterans Health Administration (VHA).

The agenda for the meeting will focus on VHA Modernization. There will not be a public comment period. If any member of the public would like to submit comments for the committee to consider at this meeting, please submit in writing to [brenda.faas@va.gov](mailto:brenda.faas@va.gov) or by mail: Attn Brenda R. Faas, Department of Veterans Affairs, (10B), Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420. Comments will be accepted until close of business June 7, 2018.

Dated: May 29, 2018.

**LaTonya L. Small,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2018-11767 Filed 5-31-18; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

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Vol. 83

Friday,

No. 106

June 1, 2018

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## Part II

### Department of Health and Human Services

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42 CFR Part 59

Compliance With Statutory Program Integrity Requirements; Proposed Rule

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 42 CFR Part 59

[Docket No.: HHS–OS–2018–0008]

RIN 0937–ZA00

## Compliance With Statutory Program Integrity Requirements

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Population Affairs (OPA), in the Office of the Assistant Secretary for Health, proposes to revise its Title X regulations (Title X of the Public Health Service Act) to ensure compliance with, and enhance implementation of, the statutory requirement that none of the funds appropriated for Title X may be used in programs where abortion is a method of family planning and related statutory requirements. In addition, OPA proposes amendments to the Title X regulations that would, among other things, clarify grantee responsibilities to provide a broad range of family planning methods; to require documented compliance with State and local laws requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking; to provide free or low cost access to family planning services for those women who are unable to obtain employer-sponsored insurance coverage for certain contraceptive services due to their employers' religious beliefs or moral convictions; to provide for the appropriate expenditure of federal Title X funds on family planning services, rather than on lobbying or related activities; and to appropriately encourage family participation in family planning decisions, all as required by Federal law.

**DATES:** Comments on this proposed rule are invited. To be considered, comments must be received by July 31, 2018.

**ADDRESSES:** Written comments may be submitted to the Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Population Affairs, as specified below. Any comment that is submitted will also be made available to the public.

**Warning:** Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be

retrieved by most internet search engines. No deletions, modifications, or redactions will be made to the comments received. Comments may be submitted anonymously.

Comments, identified by "Family Planning" may be submitted by one of the following methods:

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

*Mail or Hand Delivery:* Office of the Assistant Secretary for Health, Office of Population Affairs, Attention: Family Planning, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 716G, 200 Independence Avenue SW, Washington, DC 20201.

Comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Valerie Huber at (202) 690–7694.

### SUPPLEMENTARY INFORMATION:

#### I. Background

##### *A. Statutory Requirements of Title X of the Public Health Service Act and the Title X Appropriations Acts*

Title X of the Public Health Service Act (PHS Act or the Act), 42 U.S.C. 300 through 300a–6, was enacted in 1970 by Public Law 91–572. It authorizes the Secretary of Health and Human Services, among other things, "to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." PHS Act sec. 1001(a); 42 U.S.C. 300(a).

Presently, the Title X program funds approximately 90 public health departments and community health, family planning, and other private nonprofit agencies through grants, supporting delivery of family planning services at almost 4,000 service sites.<sup>1</sup> As a program designed to provide voluntary family planning services, the Title X program should help men, women, and adolescents make healthy and fully informed decisions about starting a family and determine the number and spacing of children.

Section 1008 of the Act contains the following prohibition, which has not

been altered since it was enacted in 1970:

None of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

The Conference Report described the intent of this provision as follows:

It is, and has been, the intent of both Houses that funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services and other related medical, information, and educational activities. The conferees have adopted the language contained in section 1008, which prohibits the use of such funds for abortion, in order to make clear this intent.

H.R. Rep. No 91–1667, at 8–9 (1970) (Conf. Rep.). Later Congresses have, through annual appropriations provisos, reiterated this requirement: "[A]mounts provided to said [voluntary family planning] projects, under such title shall not be expended for abortions." *See, e.g.,* Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. 348, 716 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, Title II, 131 Stat. 135, 521 (2017); Consolidated Appropriations Act, 2016, Public Law 114–113, Div. H, Title II, 129 Stat. 2242, 2602 (2015).

Since it originally created the Title X program in 1970, Congress has, from time to time, imposed additional requirements on it. For example, the annual Title X appropriation includes the provisos that "all pregnancy counseling shall be nondirective"<sup>2</sup> and that Title X funds "shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office."<sup>3</sup> *See, e.g.,* Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. 348, 716–717 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, Title II, 131 Stat. 135, 521 (2017).

Congress has given particular instructions for the services provided under Title X to minors and other vulnerable populations. Congress specifically required that Title X provide distinct services for adolescents. *See* PHS Act sec. 1001(a), 42 U.S.C. 300(a) (requirement to provide

<sup>2</sup> *See* Omnibus Consolidated Rescissions and Appropriations Act, 1996, Public Law 104–134, Title II, 110 Stat.1321, 1321–221 (1996).

<sup>3</sup> *See* Omnibus Consolidated Rescissions and Appropriations Act, 1996, Public Law 104–134, Title II, 110 Stat.1321, 1321–221 (1996).

<sup>1</sup> Fowler, C. I., Gable, J., Wang, J., & Lasater, B. *Family Planning Annual Report: 2016 National Summary* (Aug. 2017), <https://www.hhs.gov/opa/sites/default/files/title-x-fpar-2016-national.pdf>.

“a broad range of acceptable and effective family planning methods and services (including . . . services for adolescents”). Congress also amended Title X in 1981 to require that, “[t]o the extent practicable, entities which receive grants or contracts under this subsection shall encourage family [sic] participation in projects under this subsection.” Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, sec. 931(b)(1), 95 Stat. 357, 570 (1981); PHS Act sec. 1001(a), 42 U.S.C. 300(a). Since 1997,<sup>4</sup> Congress has included a rider in HHS’s annual appropriations act that provides that “[n]one of the funds appropriated in this Act may be made available to any entity under title X of the PHS Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services.” Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 207, 132 Stat. 348, 736 (2018). The same appropriations rider also requires that such an applicant certify to the Secretary that it “provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.” *Id.* By means of another rider, Congress requires that, “[n]otwithstanding any other provision of law, no provider of services under Title X of the PHS Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.” Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 208, 132 Stat. 348, 736 (2018).

#### B. Title X Regulations

Since 1971, the Department has repeatedly exercised rulemaking authority with respect to the Title X program. Section 1006(a) of the Act, 42 U.S.C. 300a–4, grants rulemaking power to the Department: It provides that “[g]rants and contracts made under this subchapter shall be made in accordance with such regulations as the Secretary may promulgate.” The Department began to exercise that authority by issuing regulations implementing section 1008 in 1971. *See* 36 FR 18465 (Sept. 15, 1971). Although those regulations, and revised regulations issued in 1980 (45 FR 37436 (June 3, 1980)), as well as guidelines promulgated in 1981, prohibited Title X projects from providing abortion as a

method of family planning, they did not provide further guidance on the application of that prohibition. In 1982, the Department’s Office of Inspector General (OIG) audited 32 Title X clinics and found that the Department’s failure to provide such guidance had created confusion about precisely what activities were proscribed by the section and resulted in variations in practice among grantees.<sup>5</sup> The General Accounting Office (GAO, now the Government Accountability Office) recommended that “the Secretary establish clear operational guidance by incorporating into the Title X program regulations and guidelines, HHS’ position on the scope of the abortion restriction in section 1008.”<sup>6</sup>

#### 1. 1988 Regulations and *Rust v. Sullivan*

On February 2, 1988, the Secretary of Health and Human Services promulgated Title X regulations (the “1988 Regulations”) to give specific program guidance regarding the statutory prohibition on the use of Title X funds in programs where abortion is a method of family planning. The Department noted “as a matter of experience with Title X, its responsibility to administer the program as provided by Congress, and its general administrative discretion, that the provisions of the current guidelines do not faithfully or effectively maintain the prohibition contained in section 1008.” Statutory Prohibition on Use of Appropriated Funds in Programs Where Abortion is a Method of Family Planning; Standard of Compliance for Family Planning Services Projects, Final Rule, 53 FR 2922, 2923 (Feb. 2, 1988). The Department sought to address this deficiency.

The 1988 Regulations had several key features to support compliance with the statutory prohibition. To more effectively implement section 1008, the regulations prohibited Title X projects from counseling or referring project clients for abortion as a method of family planning; required grantees to separate their Title X project—physically and financially—from any abortion activities; and implemented compliance standards for family planning projects under Title X to specifically prohibit certain actions that promote or encourage, or advocate abortion as a method of family planning,

such as the use of project funds for lobbying for abortion, developing and disseminating materials advocating abortion, or taking legal action to make abortion available as a method of family planning. 53 FR 2922 (Feb. 2, 1988).

The 1988 Regulations were upheld on both statutory and constitutional grounds by the United States Supreme Court in *Rust v. Sullivan*, 500 U.S. 173 (1991). The Court first rejected the claim that the regulations violated the Administrative Procedure Act. Under *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), the Supreme Court reasoned that “substantial deference” was owed “to the interpretation of the authorizing statute by the agency authorized with administering it.” *Rust*, 500 U.S. at 184. Applying that framework, the Court concluded that—although the language of section 1008 did not speak directly to the issues of counseling, referral, advocacy, or program integrity—because the “broad language of Title X plainly allows the Secretary’s construction of the statute, . . . we are unable to say that the Secretary’s construction of the prohibition in § 1008 to require a ban on counseling, referral, and advocacy within the Title X project is impermissible.” *Id.* The Court similarly declined to view the regulations skeptically because they represented a change in policy; instead, it noted that it “has rejected the argument that an agency’s interpretation ‘is not entitled to deference because it represents a sharp break with prior interpretation’ of the statute in question.” *Id.* at 186–87. Accordingly, it reaffirmed that “[a]n agency is not required to ‘establish rules of conduct to last forever,’ but rather ‘must be given ample latitude to ‘adapt [its] rules and policies to the demands of changing circumstances.’” *Id.* (internal citations omitted). Finally, the Supreme Court concluded that the regulations’ “program integrity” requirements—the portions of the regulations mandating separate facilities, personnel, and records—were “based on a permissible construction of the statute and are not inconsistent with congressional intent.” *Id.* at 188. On the contrary, the court noted, “if one thing is clear from the legislative history, it is that Congress intended that Title X funds be kept separate and distinct from abortion-related activities. . . . Certainly, the Secretary’s interpretation of the statute that separate facilities are necessary, especially in light of the express prohibition of § 1008, cannot be judged unreasonable.” *Id.* at 190. Accordingly, the Court “defer[red] to the Secretary’s reasoned determination

<sup>4</sup> *See* Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998, Public Law 105–78, sec. 212, 111 Stat. 1467, 1495 (1997).

<sup>5</sup> HHS OIG, Review of PHS Title X Family Planning Grantees, Audit Control No. 12–33177 (Nov. 18, 1982).

<sup>6</sup> GAO, No. HRD–82–106, Restrictions on Abortion and Lobbying Activities in Family Planning Programs Need Clarification, at 22 (Sept. 24, 1982), <https://www.gao.gov/assets/140/138760.pdf>.

that the program integrity requirements are necessary to implement the prohibition.” *Id.*

The Supreme Court similarly rejected constitutional challenges to the regulations. As an initial matter, it upheld the statutory limitation of Title X funds to programs where abortion is not a method of family planning, concluding that “[t]here is no question but that the statutory prohibition contained in § 1008 is constitutional” because Congress “may ‘make a value judgment favoring childbirth over abortion and . . . implement that judgment by the allocation of public funds.’” *Rust*, 500 U.S. at 192 (internal citations omitted; ellipsis in original). The Court explained that the counseling and referral provisions were consistent with the First Amendment as follows:

The challenged regulations implement the statutory prohibition by prohibiting counseling, referral, and the provision of information regarding abortion as a method of family planning. They are designed to ensure that the limits of the federal program are observed. The Title X program is designed not for prenatal care, but to encourage family planning. A doctor who wished to offer prenatal care to a project patient who became pregnant could properly be prohibited from doing so because such service is outside the scope of the federally funded program. The regulations prohibiting abortion counseling and referral are of the same ilk. . . . This is not a case of the Government ‘suppressing a dangerous idea,’ but of a prohibition on a project grantee or its employees from engaging in activities outside of the project’s scope.

*Rust*, 500 U.S. at 193–94. The Court also explained that the requirement of physical and financial program separation was consistent with the First Amendment as follows:

By requiring that the Title X grantee engage in abortion-related activity separately from activity receiving federal funding, Congress has, consistent with our teachings . . . not denied it the right to engage in abortion-related activities. Congress has merely refused to fund such activities out of the public fisc, and the Secretary has simply required a certain degree of separation from the Title X project in order to ensure the integrity of the federally funded program.

*Rust*, 500 U.S. at 198. Finally, the Court held that the regulations did not violate any Fifth Amendment rights because the “Government has no constitutional duty to subsidize an activity merely because the activity is constitutionally protected and [Congress] may validly choose to fund childbirth over abortion and ‘implement that judgment by the allocation of public funds’ for medical services relating to childbirth but not to those relating to abortion.” *Id.* at 201 (internal quotations omitted). The Court,

thus, held that the regulations “are a permissible construction of Title X and do not violate either the First or Fifth Amendments to the Constitution.” *Id.* at 203.

## 2. Suspension of 1988 Regulations and Finalization of 2000 Regulations

The 1988 Regulations continued to govern the Title X program until February 5, 1993, when a new Administration suspended them pursuant to a Presidential Memorandum and issued a proposed regulation, 58 FR 7464, that it finalized seven years later, *see* 65 FR 41270 (July 3, 2000) (the “2000 Regulations”). The 2000 Regulations essentially returned to the 1981 Regulations (with one revision), which eliminated provisions (a) prohibiting Title X projects from counseling or referring project clients for abortion as a method of family planning; (b) requiring grantees to separate their Title X project physically and financially from any abortion activities; and (c) implementing compliance standards for family planning projects under Title X that specifically prohibit certain actions designed broadly to promote or encourage abortion as a method of family planning, such as the use of project funds to lobby for abortion, to develop and disseminate materials advocating abortion, or to take legal action to make abortion available as a method of family planning. While a contemporaneous notice stated that more than separate bookkeeping entries and allocation of funds were necessary to separate Title X project activities from non-Title X abortion activities, it discussed and approved shared facilities, staff, and records, as long as costs were pro-rated and properly allocated. *See* Provision of Abortion-Related Services in Family Planning Service Projects, 65 FR 41281, 41282 (July 3, 2000). The 2000 Regulations also affirmatively required that Title X providers counsel on, and refer for, abortion at the request of a Title X client.

Finally, the 2000 Regulations “incorporated in the regulatory text the policies relating to nondirective counseling and referral of the 1981 Program Guidelines for Project Grants for Family Planning Services [1981 Guidelines].” 65 FR at 41271. Those 1981 Guidelines, for the first time, required nondirective counseling about pregnancy options, including abortion, and did so in a way that “creat[ed] the appearance of treating each option identically,” despite the statutory prohibition on funding programs where abortion is a method of family planning.

*See* 53 FR at 2923 (discussing requirements imposed by 1981 guidelines).

## 3. 2016 Regulation

On December 19, 2016, the Department finalized a rule that amended Title X eligibility requirements, requiring that no grantee/recipient making subawards for the provision of services as part of its Title X project prohibit an entity from receiving a subaward for reasons other than its ability to provide Title X services. 81 FR 91852 (Dec. 19, 2016) (the “2016 Regulation”). The Department’s stated reason for issuing the rule was to respond to new approaches to competing or distributing Title X funds that were being employed by several states. To that end, the Department asserted that “[a]llowing project recipients, including states and other entities, to impose restrictions on subrecipients for reasons other than their ability to provide Title X services has been shown to have an adverse effect on the number of people receiving Title X services and the fundamental goals of the Title X program.”

Yet the 2016 Regulation, if implemented, would have entailed certain adverse consequences. As an initial matter, it would have denied States and other grantees the freedom to choose subrecipients as they saw fit, within the Title X statutory parameters. Moreover, it could have resulted in the discontinuation of funding for entire States. A comment from the chief legal officers and/or governors from nine States explained their opposition to the rule as follows: “[T]he purpose of Title X is] to promote and assist in the establishment of voluntary family planning projects that offer a broad range of acceptable and effective family planning methods and services. The program is also targeted toward services for adolescents. This rule does not further that goal; but rather it is intended to protect funding for certain providers even at the expense of the entire program.”

The 2016 Regulation took effect on January 18, 2017, but was nullified under the Congressional Review Act less than three months later. The President signed Public Law 115–23, “Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the final rule submitted by Secretary of Health and Human Services relating to compliance with Title X requirements by project recipients in selecting subrecipients” on April 13, 2017. As a result, the 2016 Regulation must be “treated as though such rule had never taken effect.” 5

U.S.C. 801(f). Because of the joint resolution of disapproval, the Department is prohibited from reissuing the nullified 2016 Regulation in “substantially the same form” or issuing a “new rule that is substantially the same” as the nullified 2016 Regulation. 5 U.S.C. 801(b).

## II. Need for Change

The Department must consider the effectiveness of its policies enforcing statutory mandates on a continuing basis. As the Supreme Court noted in *Rust v. Sullivan*, an agency is not required to establish rules of conduct to last forever, but rather must be given ample latitude to adapt its rules and policies to the demands of changing circumstances. 500 U.S. 173, 186–87 (1991). “Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016). This “reasoned analysis” requirement does not demand that an agency “demonstrate to a court’s satisfaction that the reasons for the new policy are better than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.” *U.S. Aid Funds, Inc. v. King*, 200 F. Supp. 3d 163, 169–70 (D.D.C. 2016) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)); see also *New Edge Network, Inc. v. FCC*, 461 F.3d 1105, 1112–13 (9th Cir. 2006) (rejecting an argument that “an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”).

The Department now believes the policies outlined in this proposed rule are based on the best interpretation of, and provide appropriate guidance for compliance with, Title X. In particular, the Department believes that the policies outlined in this proposed rule provide for the best interpretation of section 1008 of Title X and of associated provisions, including the appropriations provisos and riders governing the Title X program. The standards proposed here are designed to refocus the Title X program on its statutory mission—the provision of voluntary, preventive family planning services specifically designed to enable individuals to determine the number and spacing of their children—while clarifying that pregnant women must be referred for appropriate prenatal care services, rather than receiving them within a

Title X project, because those services are not part of family planning services within the Title X program. See H.R. Rep. No. 91–1472 (1970), as reprinted in 3 U.S. Code Cong. & Adm. News 5068 (discussing the scope of the program).

### A. Statutory Compliance

As discussed in section II.B. below, the Department interprets section 1008 to establish a broad prohibition on funding, directly or indirectly, activities related to abortion as a method of family planning. Thus, the Department believes that section 1008’s mandate is most clearly met where there is a clear separation between Title X programs and programs in which abortion is presented or provided as a method of family planning. The 2000 regulations are inconsistent with that interpretation insofar as they require referral for abortion, allow the use of funds for infrastructure building that could be used for abortion services, and do not require clear physical and financial separation between Title X activities and abortion-related services. In addition, the regulations do not ensure transparency and accountability in the use of taxpayer funds insofar as they fail to provide the Department information about subrecipients, to ensure monitoring for potential misuse of funds, and to address expressly federal laws (including a Title X specific appropriations proviso) that prohibit the use of taxpayer funds for political activity or lobbying. Finally, the regulations prescribe inadequate grant criteria for selecting recipients of Title X funds who will comply with all of these requirements. If finalized and implemented as proposed, the new regulations would contribute to more clients being served, gaps in service being closed, and improved client care that better focuses on the family planning mission of the Title X program.

### B. Ensuring That Title X Funds Are Not Used in Projects Where Abortion Is a Method of Family Planning

As part of its ongoing obligation to ensure compliance with federal law, the Department has determined that the existing regulations do not ensure compliance with the prohibition in section 1008 that “none of the funds appropriated” for Title X “be used in programs where abortion is a method of family planning.” In the view of the Department, that prohibition includes any action that directly or indirectly facilitates, encourages, or supports in any way the use of abortion as a method of family planning. That interpretation

follows from the text and purpose of the statute.

To begin, section 1008 “broad[ly]” “prohibits the use of Title X funds ‘in programs where abortion is a method of family planning.’” *Rust*, 500 U.S. at 184. Although Title X does not define “method of family planning,” the ordinary meaning of that phrase, coupled with the statutory examples of “natural family planning methods” and “infertility services,” 42 U.S.C. 300(a), suggests decisions about the number and spacing of one’s children. This interpretation is consistent with the Title X regulation’s description of the purpose of the program. See 42 CFR 59.1 (Title X voluntary family planning “projects shall consist of the educational, comprehensive medical, and social services necessary to aid individuals to determine freely the number and spacing of their children.”). And the exclusion of funding for abortion as a method for such decisions “embodies a view that abortion is inappropriate as a method of family planning.” 53 FR 2922, 2922 (Feb. 2, 1988). Congress, thus, chose to fund Title X programs/projects that offer only preconception methods of family planning and “create[d] a wall of separation between” those programs and others where abortion is “a method of family planning.” 53 FR at 2922. The text of Title X’s prohibition is also notably broad in prohibiting funding not only for providing and promoting abortion itself as a method of family planning, but in prohibiting funding for any program “where abortion is a method of family planning”—even if funds spent on such a program could be insulated from the provision or promotion of abortion.

The legislative history confirms this meaning. The Conference Report stated that “[i]t is, and has been, the intent of both Houses that the funds authorized under this legislation be used only to support preventive family planning services, population research, infertility services, and other related medical, information and education activities.” H.R. Conf. Rep. No. 91–1667 at 8 (1970). Congressman John D. Dingell, Jr., the principal sponsor of section 1008, further explained on the floor of the House:

I set forth in my extended remarks the reasons why I offered to the amendment [sic], which prohibited abortion as a method of family planning. . . . With the “prohibition of abortion”, the committee members clearly intended that abortion is not to be encouraged or promoted in any way through this legislation. Programs that include abortion as a method of family planning are



not eligible for funds allocated through this Act.

116 Cong. Rec. 37375 (1970).

To give effect to Section 1008, the Department now considers it important and appropriate to draw a wall of separation between Title X programs and prohibited activities. Title X programs may not directly or indirectly facilitate, promote, or encourage abortion in any way. For example, referral is an integral part of the provision of any method of family planning. When provided for abortion, a referral necessarily treats abortion as a method of family planning and runs afoul of the statute. Similarly, Title X programs that subsidize other programs where abortion is a method of family planning, through infrastructure building, cost sharing, or otherwise, run afoul of the statute. Congress made clear that “none” of the Title X funds should go to support such programs.

The Department previously took the position, in a notice published concurrently with the 2000 Regulations, that section 1008 precluded only funding of activities that “directly facilitate the use of abortion as a method of family planning, such as providing transportation for an abortion, explaining and obtaining signed abortion consent forms from clients interested in abortions, negotiating a reduction in fees for an abortion, and scheduling or arranging for the performance of an abortion, promoting or advocating abortion within Title X program activities, or failing to preserve sufficient separation between Title X program activities and abortion-related activities.” Provision of Abortion-Related Services in Family Planning Services Projects, 65 FR 41281 (July 3, 2000) (“Notice”). The Department mandated that providers provide counseling on and referral for abortion, if requested by the client.

But the Department no longer considers that position appropriate in light of restrictions set forth in the statute. Section 1008 does not merely prohibit “direct” funding for abortion. It prohibits *all* funding for programs “where abortion is a method of family planning.” That broad language captures not just the activities of the program itself, but also any activities facilitated, encouraged, or promoted by the program. Limiting section 1008’s prohibition to only “direct” facilitation of abortion creates confusion about which activities are proscribed by the section, and, in the Department’s view, fails to ensure that Title X funds are not being used in “programs where abortion is a method of family planning.” The

Department’s previous view was erroneous in requiring counseling and referral for abortion, allowing the sharing of physical space, and permitting infrastructure building when physical space could be shared. In these proposed regulations, the Department proposes to correct all three errors.

#### 1. Abortion Counseling and Referral Requirement

As discussed above, the Department has concluded the requirement under 42 CFR 59.5(a)(5) that a project must provide abortion counseling and referrals to pregnant women upon request is inconsistent with section 1008.<sup>7</sup> That requirement appears to be premised on the notion that the statute is neutral on the question whether Title X funds may be used to encourage or promote abortion. But the Department rejects that notion: “Family planning,” as clearly manifested by the text of Title X and bolstered by its legislative history, refers to activities with the purpose of facilitating the initiation of, or preventing, pregnancy, not terminating it.<sup>8</sup> Understood in context, referral activities are integral parts of the provision of any method of family planning. Thus, Section 1008 prohibits a Title X grantee, within the scope of the Title X project, from referring for abortion as a method of family planning. In the 2000 regulation, the Department took the position that the statute’s requirement that pregnancy counseling be nondirective justified imposing a regulatory requirement of abortion referral upon request. The Department now believes this view was erroneous. Referrals for abortion are, by definition, directive. Therefore, such referral activity is inconsistent with the prohibition on abortion as a method of family planning in Section 1008.

In addition, the requirement that Title X projects offer pregnant women the opportunity to be provided information and counseling regarding, and referrals for, abortion is inconsistent with the

conscience protections embodied in the Church, Coats-Snowe, and Weldon Amendments. *See* 42 U.S.C. 300a–7; PHS Act sec. 245, 42 U.S.C. 238n; Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 507(d), 132 Stat. 348, 764 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. 507(d), 131 Stat. 135, 562 (2017). The Department acknowledged this problem in the preamble to 2008 regulations implementing these conscience protections. Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law; Final Rule, 73 FR 78072 (Dec. 19, 2008). Responding to commenters who suggested that enforcing the conscience statutes would be inconsistent with the abortion referral requirements for family planning clinics in the Title X regulations, the Department observed, “[w]ith regards to the Title X program, Commenters are correct that the current regulatory requirement that grantees must provide counseling and referrals for abortion upon request (42 CFR 59.5(a)(5)) is inconsistent with the health care provider conscience protection statutory provisions and this regulation. The Office of Population Affairs, which administers the Title X program, is aware of this conflict with the statutory requirements and, as such, would not enforce this Title X regulatory requirement on objecting grantees or applicants.” 73 FR at 78087.<sup>9</sup> Although those 2008 conscience statute regulations were partially repealed in 2011, 76 FR 9968 (February 23, 2011), the underlying statutes remain valid and in place, and the reasoning in the preamble to the 2008 regulations on this point remains persuasive. The abortion referral and counseling requirements in the current Title X regulations, thus, cannot be enforced against objecting grantees or applicants, and such requirements cannot be used to deny participation in the Title X program or a Title X project of objecting family planning providers.<sup>10</sup>

<sup>7</sup> As described in the preamble to the 1988 Regulations, 53 FR at 2923, prior to issuance of any regulations pursuant to Title X, the Department had, since 1972, interpreted section 1008 not only as prohibiting the provision of abortion but also as prohibiting Title X projects from in any way promoting or encouraging abortion as a method of family planning. Further, based on the legislative history, the Department had also, since 1972, interpreted section 1008 as requiring that the Title X program be “separate and distinct” from any abortion activities of a grantee. However, in such interpretations, the Department generally took the view that activity that did not have the immediate effect of promoting abortion, or which did not have the principal purpose or effect of promoting abortion, was permitted. *Id.*

<sup>8</sup> Put differently, the family planning services covered by Title X are almost exclusively preconception services, while abortion is not.

<sup>9</sup> In January 2018, the Department issued a notice of proposed rulemaking to revise and expand these regulations. *See* Protecting Statutory Conscience Rights in Health Care; Delegation of Authority, 83 FR 3880 (Jan. 26, 2018).

<sup>10</sup> We note that the Department has recently received a letter from the Attorney General of the State of Texas alleging discrimination against the State of Texas with respect to Title X, contending that the Department had improperly removed Texas from the list of eligible Title X grant recipients and referencing the protections embodied in the Church, Hyde/Weldon, and Coats/Snowe Amendments. Attorney General of Texas, Letter on Discrimination Against Texas Regarding Title X

For these reasons, the Department proposes to change the Title X regulations to eliminate the requirement that Title X projects provide abortion referral and counseling. In addition, consistent with the purpose of the program, the proposed rule would prohibit recipients from using Title X funds to perform, promote, refer for, or support abortion as a method of family planning. This rule would better align with both the best reading of section 1008 and with the Federal conscience statutes. Recognizing, however, the duty of a physician to promote patient safety, a doctor would be permitted to provide nondirective counseling on abortion.<sup>11</sup> Such nondirective counseling would not be considered encouragement, promotion, or advocacy of abortion as a method of family planning, as prohibited under section 59.16 of this proposed rule. Moreover, as permitted by the 1988 Regulations, a doctor would be permitted to provide a list of licensed, qualified, comprehensive health service providers, some (but not all) of which provide abortion in addition to comprehensive prenatal care. Providing such a list would be permitted only if a woman who is currently pregnant clearly states that she has already decided to have an abortion. This is discussed in more detail below, and the Department seeks public comment on this issue.

## 2. Possible Co-Mingling of Funds Between Title X Projects and the Abortion Activities of the Title X Grantee/Subrecipient

A second statutory problem is raised by the fact that the 2000 Regulations required financial, but not physical, separation between Title X Projects and the abortion activities of the Title X grantee/subrecipient. Organizations that actively include abortion as a method of family planning have consistently received Title X funding. The 2000 regulations permit shared facilities, common staff, and single file systems between Title X supported activities and non-Title X abortion-related activities in the following ways:

(a) A common waiting room is permissible, as long as the costs [are] properly pro-rated; (b) common staff is permissible, so long as salaries are properly allocated and all abortion related activities of the staff

members are performed in a program which is entirely separate from the Title X project; (c) a hospital offering abortions for family planning purposes and also housing a Title X project is permissible, as long as the abortion activities are sufficiently separate from the Title X project; and (d) maintenance of a single file system for abortion and family planning patients is permissible, so long as costs are properly allocated. 65 FR 41281, 41282 (July 3, 2000).

These shared facilities create a risk of the intentional or unintentional use of Title X funds for impermissible purposes, the co-mingling of Title X funds, and the appearance and perception that Title X funds being used in a given program may also be supporting that program's abortion activities. Even with the strictest accounting and charging of expenses, a shared facility greatly increases the risk of confusion and the likelihood that a violation of the Title X prohibition will occur.

This concern is particularly acute in light of more recent evidence that abortions are increasingly performed at sites that focus primarily on contraceptive and family planning services—sites that could themselves be recipients of Title X funds. The Guttmacher Institute's recent report, *Abortion Incidence and Service Availability in the United States, 2014*, provides detail about the various types of facilities at which abortions are performed. It notes that “nonspecialized clinics”—i.e., “nonhospital sites in which fewer than half of patient visits are for abortion services,” including physicians' offices—may provide 400 or more abortions per site per year. The report notes that, “[w]hile many of these [nonspecialized] clinics primarily serve contraceptive and family planning clients, about half provided 400 or more abortions per year.” It defines “abortion clinics” as “nonhospital facilities in which half or more of patient visits are for abortion services, regardless of annual abortion caseload.” According to the Guttmacher Institute, nonspecialized clinics accounted for 24% of all abortions in 2008;<sup>12</sup> 31% in 2011;<sup>13</sup> and 36% in 2014.<sup>14</sup> In addition,

nonspecialized clinics represented 26% of abortion providers in 2008; 30% in 2011; and 31% in 2014. Further, despite a 3% drop in the total number of abortion facilities between 2011 and 2014, the number of abortion clinics dropped by 17%, while the number of nonspecialized clinics performing abortions remained stable. The performance of abortions at nonspecialized clinics that also may provide Title X services increases the risk and potential both for confusion and for the co-mingling or misuse of Title X funds.

Together, these circumstances create a risk of intentional or unintentional misuse of Title X funds and have created public confusion over the scope of Title X services, whether Title X projects provide abortion services, and whether the Federal government (and, ultimately, Federal taxpayers), is funding abortion services provided by organizations that are recipients (or subrecipients) of Title X grants/funds. The Department believes that such potential co-mingling and confusion is evidence that the 2000 Regulations neither adequately reflect nor further the text and purpose of section 1008. As discussed above, the Department interprets section 1008 to require Title X project activities to be separate and distinct from non-Title X abortion activities. Thus, when a grantee conducts abortion activities that are not part of the Title X project, and would not be permissible if they were, the grantee must ensure that the Title X-supported project is separate and distinguishable from those other activities.

The proposed regulation would reduce, and potentially eliminate, any confusion—actual or potential—as to the scope of services supported by Title X funds by requiring Title X projects to maintain clear physical and financial program separation from programs that use abortion as a method of family planning. This bright-line rule would create a clearer, more transparent system of separation and accountability, similar to that established by the 1988 Regulations and affirmed by the Supreme Court in *Rust*. It would also assure fidelity to the text and purpose of section 1008, and facilitate auditing and enforcement of program requirements. The proposed rule would not, however, restrict the use of non-Title X funds outside the Title X program, nor would it impose restrictions on funds provided by other

Grants (March 22, 2018), [https://www.texasattorneygeneral.gov/files/epress/Texas\\_AG\\_letter\\_to\\_HHS\\_regarding\\_Title\\_X.pdf?cachebuster=96](https://www.texasattorneygeneral.gov/files/epress/Texas_AG_letter_to_HHS_regarding_Title_X.pdf?cachebuster=96).

<sup>11</sup> That counseling on abortion be nondirective is required by the appropriations law applicable to Title X. See Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. at 716–17 (“all pregnancy counseling shall be nondirective”).

<sup>12</sup> Jones, R.K., Kooistra, K., Abortion incidence and access to services in the United States, 2008, *Guttmacher Institute Perspectives on Sexual and Reproductive Health* (Jan. 10, 2011), [https://www.guttmacher.org/sites/default/files/article\\_files/4304111.pdf](https://www.guttmacher.org/sites/default/files/article_files/4304111.pdf).

<sup>13</sup> Jones, R.K., Jerman, J., Abortion incidence and service availability in the United States, 2011, *Guttmacher Institute Perspectives on Sexual and Reproductive Health* (Feb. 3, 2014), [https://www.guttmacher.org/sites/default/files/article\\_files/abortion\\_incidence\\_in\\_the\\_united\\_states\\_2011.pdf](https://www.guttmacher.org/sites/default/files/article_files/abortion_incidence_in_the_united_states_2011.pdf).

<sup>14</sup> Jones, R.K., Jerman, J., Abortion incidence and service availability in the United States, 2014, *Guttmacher Institute Perspectives on Sexual and*

*Reproductive Health* (Jan. 17, 2017), [https://www.guttmacher.org/sites/default/files/article\\_files/abortion-incidence-us.pdf](https://www.guttmacher.org/sites/default/files/article_files/abortion-incidence-us.pdf).

Federal programs. And it would not prevent a woman from seeking and obtaining an abortion. It would only draw a bright line between permissible services provided with Title X funds and services that cannot be so provided.

### 3. Infrastructure Building That Creates Fungibility Concerns Related to Abortion Services

The current flexibility in the use of Title X funds raises additional concerns about the fungibility of assets that could be used—sometimes with an attendant increase in marginal cost—to build infrastructure for abortion services. By law, Title X providers must secure other sources of revenue to leverage Title X grants. *See* 42 CFR 59.7(c) (“No grant may be made for an amount equal to 100 percent for the project’s estimated costs.”). Medicaid is the primary source of additional revenue. But unlike Title X, which is a grant program, Medicaid is a reimbursement program. By their very nature, grants afford considerably greater latitude and versatility to grantees on how funds are used. If an organization receives both Medicaid and Title X funding, for example, Medicaid reimbursement payments might be used to cover many family planning services, freeing up Title X funds to be used for infrastructure-building and support. In its *Moving Forward: Family Planning in the Era of Health Reform* report, the Guttmacher Institute reported that providers do in fact use Title X funds in this way:

Up-front funding helps supply a cash-flow cushion for providers who are often operating on tight and uncertain budgets. More specifically, Title X recipients use the program’s flexible grant funding in a variety of ways to address staff-related issues, including hiring individuals capable of meeting communities’ need for linguistic or culturally appropriate care, training staff on the latest medical techniques or to provide tailored counseling for clients with special needs, maintaining sufficient staff to operate outside regular business hours and paying sufficient wages to staff at all levels to reduce high turnover rates that often plague health centers. Providers may also use Title X funds for operational investments, such as utilizing advanced technologies and facilitating more accessible and efficient client care . . . . Finally, Title X undergirds the infrastructure and general operations of the health centers themselves in ways that Medicaid and private insurance simply cannot. Title X funds go to centers up front as grants, rather than after the fact as reimbursement for services centers have provided to individual enrollees. Providers have long relied on that flexibility to hire, train and maintain their staff to meet the diverse needs of their clients and community. They have also depended on these grants to keep their lights on and their doors open, to adapt to unexpected budget shortfalls and to make improvements to their

facilities. Such versatility is even more vital in the era of health reform. The up-front investments in staffing, training and infrastructure needed to work effectively with health plans—and to thereby draw in new revenue to serve more clients—are substantial, and flexible funds like those provided through Title X are ideal for such investments. Those expenses include upgrading health information technology systems and training staff on their use, training clinicians and front-line staff to properly code and bill for services provided, obtaining the appropriate credentials to ensure third-party reimbursement, and devoting time and resources to researching available health plans and negotiating contracts with them. They may also include expenses related to outsourcing some administrative functions to private contractors or as part of collaborations with other health care providers.<sup>15</sup>

In another report, Guttmacher expanded upon the infrastructure support afforded by Title X funding:

Title X can subsidize the intensive outreach necessary to encourage some individuals to seek services. Furthermore, by paying for everything from staff salaries to utility bills to medical supplies, Title X funds provide the essential infrastructure support that enables clinics to go on and claim Medicaid reimbursement for the clients they serve.<sup>16</sup>

Infrastructure building may include securing physical space, developing or acquiring health information technology systems (including electronic health records), bulk purchasing of contraceptives or other clinic supplies, clinical training for staff, and community outreach and recruiting. An anecdotal story from Guttmacher in the report *Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort* reinforces the point:

Ibarra of California’s Venice clinic says her agency sends street outreach teams into the community with backpacks of condoms and basic educational materials, while other teams make regular visits to homeless shelters. Often, it will take multiple visits to a shelter or street-corner conversations until someone feels safe enough to come to a clinic. According to Ibarra, Title X will fund and train the outreach workers, purchase the condoms and often even develop the educational materials they distribute. Only when a client actually comes to the clinic is reimbursement available (through Medicaid or any other source), and then only if the

client qualifies. According to Annette Amey, director of program evaluation for CFHC, “it’s all about getting people to the inside of the clinic door, and for that Title X dollars are indispensable.”

The Department is concerned about this infrastructure building on both statutory and policy grounds. As a statutory matter, the use of Title X funds to build infrastructure that can be used for purposes prohibited with these funds, such as support for the abortion business of a Title X grantee or subrecipient, clearly violates section 1008. As a policy matter, Title X is the only discrete, domestic, Federal grant program focused solely on the provision of cost-effective family planning methods and services. As the number of Americans at or below the poverty level has increased, the need to prioritize the use of Title X funds for the provision of family planning service has as well.

The proposed physical and financial separation of Title X projects from all activities that could not be funded by those programs, as well as the separate provision addressing the use of Title X funds for infrastructure purposes, would address this concern. Because Title X projects would not share any infrastructure with abortion-related activities, direction of Title X funds toward such infrastructure would no longer threaten to divert funds to impermissible activities. That separation would thus ensure that Title X funds are used for the purposes expressly mandated by Congress, that is, to offer family planning methods and services—and that any infrastructure built with Title X funds would not be used for impermissible purposes.

### C. Ensuring Responsible Use of Taxpayer Funds

In addition to ensuring compliance with section 1008, the Department seeks to address three additional concerns posed by the 2000 regulations with respect to the responsible use of taxpayer funds.

#### 1. Ensuring Transparency of Subrecipients of Funds To Assist Oversight and Enforcement Efforts

Transparency in the use of governmental funds is an important principle for responsible government. This transparency helps to ensure accountability for, and wise use of, taxpayers’ money. Current Title X regulations, however, do not require grantees to submit information to the government about their subrecipients, referral agencies, or other partners to whom Title X funds may flow. This lack of information is a barrier to OPA’s oversight of the activities of its program

<sup>15</sup> Sonfield, A., Hasstedt, K., Gold, R. B., *Moving forward. Family planning in the era of health reform*, Guttmacher Institute (March 2014), <https://www.guttmacher.org/report/moving-forward-family-planning-era-health-reform>.

<sup>16</sup> Gold, R. B., *Stronger Together: Medicaid, Title X Bring Different Strengths to Family Planning Effort*, Guttmacher Institute (May 17, 2007), <https://www.guttmacher.org/gpr/2007/05/stronger-together-medicaid-title-x-bring-different-strengths-family-planning-effort>.

and project subrecipients and, ultimately, to governmental accountability for those funds.

Therefore, under the new regulations, Title X grant applicants would be required to share the following within their applications and, if funded, in required reports and responses to performance measures, wherever practicable:

- Names and locations of subrecipients, referral individuals and agencies, as well as services provided and to be provided by those entities;
- Detailed descriptions of any partnerships, including the extent of collaboration, with subrecipients, referral individuals and agencies, as well as less formal partners within the community, in order to demonstrate a seamless continuum of care for clients;
- A clear explanation of how the grantee will ensure adequate oversight and accountability for quality and effectiveness outcomes among subrecipients and those who serve as referrals for ancillary or core services.

## 2. Expanding Monitoring of the Use of Title X Funds

The Department has additional concerns about the potential for misuse of Title X funds and misbilling or overbilling of other Federal or state programs by Title X grantees under the current regulatory scheme. Although Title X is the only discrete domestic family planning grant program, other programs also fund family planning. In fact, 75% of all family planning services are funded through Medicaid; only 10% are funded through Title X.<sup>17</sup> Not infrequently, Title X grant recipients also claim Medicaid reimbursement for services they provide to clients. In fact, according to the National Family Planning & Reproductive Health Association, “Medicaid is by far the largest revenue stream for the Title X provider network, comprising 40% of an average funding mix [and] is also the fastest growing revenue stream.”<sup>18</sup> It is not inconsequential, then, to note cases of misuse/overbilling with respect to reimbursement for family planning services.

Numerous studies have documented misuse/overbilling for family planning services. The HHS Office of Inspector General (OIG) conducted a Federal audit

of Medicaid-reimbursed claims for family planning services in New York State and found that about 25% of a sample of such claims were not eligible for Family Planning Benefit Program (FPBP) reimbursements.<sup>19</sup> Overall, 61 Federal audits conducted by the Department’s OIG found overbilling among Medicaid providers. On average, at least 14% of the Federal share of funding was overbilled by providers, with one provider overbilling at least 54% of the Federal share.<sup>20</sup> Although misuse among Medicaid recipients does not necessarily predict or imply misuse of grant funds among Title X grantees, the Department is aware of specific examples of misuse/overbilling by such grantees. For example:

- In New York State, one Medicaid provider was found to have received significant overpayments for family planning services.<sup>21</sup> The same provider, also a Title X grantee,<sup>22</sup> was found by the Health Resources and Services Administration (HRSA) to be in billing violation during a program integrity audit.<sup>23</sup>
- A Medicaid provider, under threat of being terminated from the Illinois Medicaid program, was charged with overbilling for birth control.<sup>24</sup> This same provider is a current Title X grant recipient.<sup>25</sup>

<sup>19</sup> HHS OIG, Review of Federal Medicaid Claims Made for Beneficiaries in the Family Planning Benefit Program in New York State, Report No. A-02-07-01001 (May 22, 2008), <https://oig.hhs.gov/oas/reports/region2/20701001.htm>.

<sup>20</sup> Foster, C.G., Profit. No Matter What, 2017 Report on Publicly Available Audits of Planned Parenthood Affiliates and State Family Planning Programs, *Charlotte Lozier Institute Special Report Series 3* (Jan. 4, 2017), <https://lozierinstitute.org/profit-no-matter-what>.

<sup>21</sup> Letter, State of New York Office of the Medicaid Inspector General, “Letter on Family Planning Chargeback to Managed Care Network Providers, Final Report, Audit # 09-1415, Provider #---,” --- (June 10, 2009).

<sup>22</sup> Philipson, D., Letter to the editor: Title X initiative threatens to affect the well-being of our communities, *The Rivertowns Enterprise* (Apr. 1, 2011), <https://www.plannedparenthood.org/planned-parenthood-hudson-peconic/newsroom/letter-editor-title-x-initiative-threatens-affect-well-being-our-communities-rivertowns-enterpr>.

<sup>23</sup> HRSA, Program Integrity: FY13 audit results (2017), <https://www.hrsa.gov/opa/programintegrity/auditresults/fy13results.html>.

<sup>24</sup> Wang, A., Planned Parenthood Settles with Illinois on Medicaid Payments, *Modern Healthcare* (Sept. 6, 2012), <http://www.modernhealthcare.com/article/20120906/INFO/309069993>; Wang, A., Medicaid Probes Planned Parenthood Fees, *Crain’s Chicago Business* (July 9, 2012), <http://www.chicagobusiness.com/article/20120707/ISSUE01/307079977/mcicaid-probes-planned-parenthood-of-illinois>.

<sup>25</sup> Wang, A.L., Planned Parenthood settles with Illinois on Medicaid payments, *Modern Healthcare* (Sept. 6, 2012) <http://www.modernhealthcare.com/article/20120906/INFO/309069993>; HHS Office of Population Affairs, Title X family planning directory of grantees (2017), <https://www.hhs.gov/>

- Another Title X recipient and Medicaid provider in Pennsylvania was found out of compliance by HRSA for overbilling.<sup>26</sup>

• A Medicaid provider (and Title X grantee) in Washington State was audited following charges that it engaged in improper billing practices. The Washington Medicaid Fraud Control Unit investigated; as a result of the investigation, the grantee reimbursed the Medicaid program.<sup>27</sup>

• The state of Nebraska found that significant abortion-related expenses were charged against the Title X grant by a subrecipient.<sup>28</sup> The same subrecipient, also a Medicaid provider, was also charged with “false, fraudulent, and/or ineligible claims for reimbursement” to Medicaid.<sup>29</sup> In addition, a sample of 10 payments to subrecipients was reviewed by the state of Nebraska; nine of the ten lacked documentation to support Title X reimbursement. The report stated: “The Agency did not have adequate monitoring procedures to ensure payments to subrecipients were for allowable activities and costs.”<sup>30</sup>

• In Wisconsin, an audit of a Title X grantee found Medicaid overbilling problems, including no proof of prescription, excessive reimbursements beyond what is allowable, and other irregularities.<sup>31</sup>

• In Massachusetts, a Title X grantee was subject to an OIG investigation, where the grantee admitted to comingling Title X expenses with all

[opa/title-x-family-planning/title-x-grantees/index.html](https://www.hhs.gov/opa/title-x-family-planning/title-x-grantees/index.html).

<sup>26</sup> HRSA, Program Integrity: FY2012 audit results (2017), <https://www.hrsa.gov/opa/programintegrity/auditresults/fy12results.html>.

<sup>27</sup> Stucke, J., Planned Parenthood undergoes leadership changes, audit, *The Spokesman-Review* (May 21, 2009), <http://www.spokesman.com/stories/2009/may/21/planned-parenthood-undergoes-leadership-changes/>. Referenced Audit # 09-04-08 of Yakima County, Washington.

<sup>28</sup> Nebraska Auditor of Public Accounts, State of Nebraska Statewide single audit: Year ended June 20, 2015 (2016), [http://www.auditors.nebraska.gov/APA\\_Reports/2016/SA200-03242016-July\\_1\\_2014\\_through\\_June\\_30\\_2015\\_Statewide\\_Single\\_Report.pdf](http://www.auditors.nebraska.gov/APA_Reports/2016/SA200-03242016-July_1_2014_through_June_30_2015_Statewide_Single_Report.pdf).

<sup>29</sup> Second Amended Complaint, *Thayer v. Planned Parenthood of the Heartland*, No. 4:11-cv-00129 (S.D. Iowa, filed July 26, 2012).

<sup>30</sup> Nebraska Auditor of Public Accounts, State of Nebraska Statewide single audit: Year ended June 20, 2015 (Mar. 24, 2016), [http://www.auditors.nebraska.gov/APA\\_Reports/2016/SA200-03242016-July\\_1\\_2014\\_through\\_June\\_30\\_2015\\_Statewide\\_Single\\_Report.pdf](http://www.auditors.nebraska.gov/APA_Reports/2016/SA200-03242016-July_1_2014_through_June_30_2015_Statewide_Single_Report.pdf).

<sup>31</sup> Wisconsin Department of Health Services, Audit Reveals Significant Overpayments to Family Planning Clinics (Aug. 3, 2016), <https://www.dhs.wisconsin.gov/news/releases/fp-summary-results.pdf>.

<sup>17</sup> Hasstedt, K., Sonfield, A., Gold, R.B. Public funding for family planning and abortion services, FY 1980–2015, *Guttman Institute* (April 2017), <https://www.guttman.org/report/public-funding-family-planning-abortion-services-fy-1980-2015>.

<sup>18</sup> Hays B., Title X in Context, *National Family Planning & Reproductive Health Association* (July 2016), <https://www.nationalfamilyplanning.org/file/documents---policy-briefs/Title-X-in-Context.pdf>.

other family planning expenses, a clear violation of Federal requirements.<sup>32</sup>

These examples raise concerns about the integrity of the Title X program. While only a few of these cases involve documented misuse of Title X funds or violation of Title X's financial requirements, the Department is concerned these instances suggest that at least some recipients or subrecipients of Title X funds may not understand, and/or may not be in compliance with, requirements regarding the receipt or use of Federal funds, including Title X funds.

More broadly, grantees from a variety of federal programs commonly fail to verify personnel costs with the actual time spent on the grant-supported activities compared to time spent on non-grant functions by fully documenting time with personnel activity reports. In addition, it is not uncommon for project costs in federal reports to be inconsistent with time and status reports or bookkeeping ledgers, or for grantees to lack adequate documentation for the amount allocated to the grant for indirect costs. Yet infrastructure costs can benefit the organization generally, rather than only as it pertains to activities permitted under the grant project.<sup>33</sup>

The Department believes it necessary to address this issue with expanded monitoring, reporting, transparency, and accountability requirements. Because of the specific statutory prohibitions and requirements imposed on Title X projects, and the regulatory requirement—both currently and as proposed—for financial separation, the Department does not believe that the general grants management requirements are sufficient to address the issue. Rather, the Department proposes specific requirements to ensure legal and ethical usage of taxpayer dollars. These requirements are discussed in greater detail below, but they include requiring programs to: Ensure compliance with statutory requirements; have a plan in place to demonstrate that grantees and subrecipients are aware of certain reporting requirements that apply in their state; provide adequate training with respect to those requirements; maintain records about clients for whom state reporting requirements apply;

receive approval for any change in the usage of grant funds; and fully account for and justify charges against the Title X grant.

### 3. Enforcing Other Statutory Requirements on the Use of Title X Funds

The current regulations also raise concerns about compliance with other federal laws that govern expenditures of taxpayer funds.

In addition to the Anti-Lobby Act, 18 U.S.C. 1913, the Department's annual appropriations act establishes a comprehensive framework prohibiting the use of Federal funding, including Title X funds, for publicity and propaganda. One set of prohibitions applies across the Executive Branch: "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."<sup>34</sup> Another provision applies to federal contractors: "No part of any appropriation . . . shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress."<sup>35</sup>

Yet another provision, which expressly applies to the Departments of Labor, Health and Human Services, and Education, adds "electronic communication" and substitutes "video" for "film" in the list of prohibited media, sweeps into its ambit "any State or local legislature or legislative body," and adds "any proposed or pending legislation, administrative action, or order issued by the executive branch of any State or local government" to the prohibited targets.<sup>36</sup> This prohibition is coupled with the directive that no part of the Labor, HHS, and Education appropriation "shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient" who engages in a

similar list of lobbying activities.<sup>37</sup> The Appropriations Act also contains an explicit prohibition against the use of Title X funds "for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office."<sup>38</sup>

Finally, the Byrd Amendment applies to the recipients of Federal contracts, grants, or loans, as well as the funded parties to cooperative agreements. It prohibits them from using such funds to lobby in connection with the award, extension, continuation, renewal, amendment, or modification of the funding mechanism under which monetary assistance was received.<sup>39</sup>

The current regulations offer no guidance on the application of these restrictions to the Title X program. Yet these restrictions on the use of appropriated funds clearly prohibit the use of Title X funds to encourage, promote, or advocate for abortion, to support any legislative proposal that encourages abortion, or to support or oppose any candidate for public office. Without guidance from the Department, it is possible that Title X grantees could intentionally, or unintentionally and unknowingly, use Title X funds for prohibited lobbying or political activities, or use such funds to support or pay dues/association fees to organizations where a majority of funds are used for such purposes. Indeed, issues surrounding family planning and abortion are highly controversial and routinely the subject of debate and policy consideration in the political and legislative processes at the national, state and local levels. As a consequence, and even without consideration of violations of these requirements, it is important that recipients of Title X funds fully understand the statutory prohibition on the use of Federal funds for lobbying and political activity.

The proposed rule would provide more explicit direction, in requiring Title X grantees to provide a written assurance that they both understand and agree to the prohibitions related to lobbying and political activity with the use of grant funds. Because of the specific statutory prohibitions applicable to Title X, and the regulatory requirement—both currently and as

<sup>32</sup> HHS OIG, Audit of Tapestry Health Systems, Inc. Title X Financial Management Systems, Report No. A-01-99-01504 (May 2000), <https://oig.hhs.gov/oas/reports/region1/19901504.pdf>.

<sup>33</sup> National Historical Publications and Records Commission, An introduction to financial management for grant recipients, National Archives (June 17, 2015) <https://www.archives.gov/files/nhprc/pdfs/grant-financial-management.pdf>.

<sup>34</sup> Consolidated Appropriations Act, 2018, Public Law 115-141, Div. E, sec. 715, 132 Stat. 348, 590 (2018).

<sup>35</sup> Consolidated Appropriations Act, 2018, Public Law 115-141, Div. E, sec. 718, 132 Stat. 348, 591 (2018).

<sup>36</sup> Consolidated Appropriations Act, 2018, Public Law 115-141, Div. H, sec. 503(a), 132 Stat. 348, 762 (2018).

<sup>37</sup> Consolidated Appropriations Act, 2018, Public Law 115-141, Div. H, sec. 503(b), 132 Stat. 348, 763 (2018).

<sup>38</sup> Consolidated Appropriations Act, 2018, Public Law 115-141, Div. H, Title II, 132 Stat. 348, 716-717 (2018); Consolidated Appropriations Act, 2017, Pub. L. 115-31, Div. H, Title II, 131 Stat. 135, 521 (2017).

<sup>39</sup> 31 U.S.C. 1352(a).

proposed—of financial separation, the Department does not believe that the general grants management requirements would be sufficient to address the issue.

#### *D. Inadequate Grant Review Criteria*

The current Title X regulations set forth application review criteria that give HHS significant flexibility in determining awards, but need to be updated to more fully ensure that successful applicants both meet the statutory requirements of the Title X program and are adequately responsive to the statutory goals and purposes of the Title X program. The statute sets forth several factors that HHS shall take into account in making grants and contracts,<sup>40</sup> but these factors are nonexclusive: The statute does not prohibit HHS from taking other factors into account and does not specify how much weight to attribute to each factor. The current regulations similarly contain a non-exclusive list of application review criteria—which include, but go beyond the statutory criteria—and do not specify how much weight to attach to each factor, giving HHS discretion to vary the weighting of the criteria in its competitions.

As a result, while the statute and current regulations give HHS discretion in considering and weighting factors, the application review criteria in the regulation could be more comprehensive and rigorous, so that the strongest prospective grantees are more likely to be selected, and less qualified applicants would be less likely to garner high scores. The Department is focused on ensuring compliance with the statutory Title X requirements (*see* 42 U.S.C. 300–300a–6; Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, secs. 207–08, 132 Stat. 348, 716–17, 736), including the program integrity provisions referenced elsewhere herein; expanding the type and nature of the Title X providers and ensuring the diversity of such providers, so as to fill gaps in and expand family planning services offered through Title X; and using review criteria as a meaningful instrument to assess the quality of the applicant and the application. These goals, which are consistent with the statute and permissible under the existing regulations, would be best achieved by

amending the regulations to more fully specify the application criteria, while still adhering to the statutory requirement that certain factors be considered and maintaining the Department's flexibility to consider other factors in making awards.

Therefore, through the proposed rule, the Department seeks to achieve a two-fold goal:

1. Update application review criteria to better achieve the statutory requirements and goals of Title X.

2. Increase competition and rigor among applicants, encouraging broader and more diverse applicants and better ensuring the selection of quality applicants.

The Department and OPA desire to award grants for the establishment and operation of those Title X projects that would best promote the purposes of Title X and meet the statutory requirements.

The Department proposes revising the current application review criteria at 45 CFR 59.7 through this rulemaking process to establish the following criteria for selection of Title X grantees. Under this proposed regulation, any grant applications that do not clearly address how the proposal will satisfy the requirements of the regulation would not proceed to the competitive review process, but would be deemed ineligible for funding. The Department would explicitly summarize each provision of the regulation (or include the entire regulation) within the Funding Announcement, and would require applicants to describe their affirmative compliance with each provision. If a proposal is deemed compliant with the regulation, then applicants would be rated based on at least the following criteria for selection within the competitive grant review process:

- (1) The degree to which the applicant's project plan adheres to the Title X statutory purpose and goals for the "establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)" (PHS Act Sec. 1001(a), 42 U.S.C. 300(a)), which meet all of the statutory and regulatory requirements and restrictions, and where "none of the funds . . . shall be used in programs where abortion is a method of family planning." (PHS Act Sec. 1008, 42 U.S.C. 300a–6).

- (2) The degree to which "the relative need of the applicant" (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)) is

demonstrated in the proposal, and the applicant shows capacity to "make rapid and effective use" (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)), of grant funds, including and especially among a broad range of partners and diverse subrecipients and referral individuals and organizations, and among non-traditional Title X partnering organizations.

- (3) The degree to which the applicant takes into account "the number of patients to be served" (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)), while also targeting areas that are more sparsely populated and/or places in which there are not adequate family planning services available.

- (4) "The extent to which family planning services are needed locally" (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)) and the applicant proposes innovative ways to provide services to unserved or underserved patients.

The Department seeks public comment as to whether additional regulatory application review criteria may be necessary or advisable to implement the Department's interpretation of the statutory provisions applicable to Title X, in particular section 1008; to protect the rights of individuals and entities who decline to participate in abortion-related activities; or to ensure that all services funded through Title X offer optimal health benefits to clients of all ages. The Department also seeks public comment as to whether the protections and services funded through Title X are adequately implemented and clearly understood throughout the Title X program, in order to alleviate the current confusion, and avoid future confusion, among clients and the general public.

### **III. Statutory Authorities**

The Department has legal authority to amend Title X regulations on the requirements applicable to projects for family planning services under section 1006 of the Public Health Service Act, 42 U.S.C. 300a–4. Section 1006 of the Act states that "[g]rants and contracts made under this title shall be made in accordance with such regulations as the Secretary may promulgate." The Department has repeatedly exercised that authority to issue regulations to guide Title X grantees in carrying out the program.

The proposed regulations described below in the section-by-section discussion of the proposed rule would clarify, require compliance with, and provide for the enforcement of, statutory limitations and requirements placed on Title X projects and grantees. These

<sup>40</sup> Title X provides that, "[i]n making grants and contracts under this section the Secretary shall take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant and its capacity to make rapid and effective use of such assistance." PHS Act Sec. 1001(b); 42 U.S.C. 300(b).



include section 1008 of the Act, which prohibits “funds appropriated under this subchapter” from being “used in programs where abortion is a method of family planning” and has been reiterated through annual appropriations provisos that “amounts provided to said [voluntary family planning] projects, under such title shall not be expended for abortions.” *See, e.g., Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. 348, 716 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, Title II, 131 Stat. 135, 521 (2017); Consolidated Appropriations Act, 2016, Public Law 114–113, Div. H, Title II, 129 Stat. 2242, 2602 (2015).* They also include annual appropriations provisions directing that “all pregnancy counseling shall be nondirective”<sup>41</sup> and that Title X funds “shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office.”<sup>42</sup> *See, e.g., Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. 348, 716–717 (2018).*

The proposed regulations also would require compliance with, and provide for the enforcement of, statutory provisions applicable to the provision of family planning services to minors and other vulnerable populations. Title X itself requires that, “[t]o the extent practicable, entities which receive grants or contracts under this subsection shall encourage family [sic] participation in projects under this subsection.” Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, sec. 931(b)(1), 95 Stat. 375, 570 (1981); 42 U.S.C. 300(a). A rider in HHS’s annual appropriations act adds

that “[n]one of the funds appropriated in this Act may be made available to any entity under title X of the PHS Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services.” Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 207, 132 Stat. 348, 736 (2018). It also requires an applicant to certify that it “provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.” *Id.* And another provision in the annual HHS appropriations act states that, “[n]otwithstanding any other provision of law, no provider of services under title X of the PHS Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.” Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 208, 132 Stat. 348, 736 (2018).

Finally, the proposed regulations would require compliance with, and provide for the enforcement of, several additional laws that protect the conscience rights of individuals and entities who decline to perform, participate in, or refer for abortions, including the Church Amendments (42 U.S.C. 300a–7), the Coats-Snowe Amendment (section 245 of the Public Health Service Act, 42 U.S.C. 238n), and the Weldon Amendment, *see, e.g., Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 507(d), 132 Stat. 348, 764 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, sec. 507(d), 131 Stat. 135, 521 (2017) (collectively, the “conscience statutes”).* The Church Amendments, for example, prohibit grantees from discriminating in the employment of, or the extension of staff privileges to, any health care professional because she refused, because of her religious beliefs or moral convictions, to perform or assist in the performance of any lawful sterilization or abortion procedures. They also prohibit individuals from being required to perform or assist in the performance of any health service program or research activity funded in whole or in part under a program administered by the Secretary contrary to her religious beliefs or moral convictions.<sup>43</sup> The

Coats-Snowe Amendment prohibits the Federal government and any State or local government that receives Federal financial assistance from discriminating against any health care entity (including individual providers) on the basis that the entity refuses to, among other things, (1) receive training in induced abortion; (2) require or provide abortion training; (3) perform abortions; (4) provide referral for such abortions or abortion training; or (5) make arrangements for any such activities. *See* 42 U.S.C. 238n(a). And the Weldon Amendment prohibits funds made available in HHS’s annual appropriations act from being “made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.” It provides that “‘health care entity’ includes an individual physician or other health care professional . . . .” *See, e.g., Consolidated Appropriations Act, 2018,*

because he refused to perform or assist in the performance of . . . [an] abortion” on the grounds that doing so “would be contrary to his religious beliefs or moral convictions . . . .” 42 U.S.C. 300a–7(c)(1). Section 300a–7(c)(2) provides that “[n]o entity which receives . . . a grant or contract for biomedical or behavioral research under any program administered by [HHS]” may discriminate in the employment of or the extension of staff privileges to any health care professional “because he refused to perform or assist in the performance of” “any lawful health service” based on religious belief or moral conviction. 42 U.S.C. 300a–7(c)(2). Section 300a–7(d) provides that “[n]o individual [may] be required to perform or assist in the performance of any part of a health service program . . . funded in whole or in part under a program administered by the Secretary of Health and Human Services” if doing so “would be contrary to his religious beliefs or moral convictions.” 42 U.S.C. 300a–7(d). Section 300a–7(e) prohibits any entity that receives funding under the PHS Act from denying admission to, or otherwise discriminating against, “any applicant (including for internships and residencies) for training or study because of the applicant’s reluctance . . . to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions . . . contrary to or consistent with the applicant’s religious beliefs or moral convictions.” 42 U.S.C. 300a–7(e). In addition, section 300a–7(b) provides in part that “[t]he receipt of any grant, contract, loan, or loan guarantee under the [PHS Act] . . . by any individual or entity does not authorize any court or any public official or other public authority to require” (1) the individual to perform or assist in an abortion if it would be contrary to his/her religious beliefs or moral convictions; or (2) the entity to make its facilities available for abortions, if the performance of abortions in the facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or provide personnel for the performance of abortions if it would be contrary to the religious beliefs or moral convictions of such personnel. 42 U.S.C. 300a–7(b).

<sup>41</sup> Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. 348, 716 (2018). Nondirective counseling has been described in Congressional proceedings and debates throughout the years. For example, “nondirective counseling is the provision of information on all available options without promoting, advocating, or encouraging one option over another.” Congressional Record (1992, April 30). Family Planning Amendments Act of 1991, House of Representatives. 138 Cong. Rec. H2822–02, 1992 WL 86830. Non-directive counseling does not mean the Title X provider or counselor is uninvolved in the process, nor does it mean that counseling and education offer no direction, but that clients take an active role in processing their experiences and identifying the direction of the interaction. The Title X provider/counselor promotes the client’s self-awareness and empowers the client to change and develop agency over personal circumstances, offering a range of options, consistent with the client’s expressed need and with the statutory and regulatory requirements governing the Title X program.

<sup>42</sup> Public Law 107–116, Title II, 115 Stat. 2177, 2186 (2002). .

<sup>43</sup> In addition, section 300a–7(c)(1) provides that “[n]o entity which receives a grant, contract, loan, or loan guarantee under the [Act] . . . may (A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or (B) . . . in the extension of staff or other privileges to any physician or other health care personnel . . .

Public Law 115–141, Div. H, sec. 507(d), 132 Stat. 348, 764 (2018).

#### IV. Provisions of the Proposed Rule

##### A. Section 59.1 To what programs do these regulations apply?

Under federal law, including Title X, subrecipients of federal funds who agree to assist a primary grantee in implementing the grant project are required to comply with the same requirements that are imposed on the grantee. In order to ensure clarity and full implementation of the requirements of Title X and its implementing regulations, the Secretary proposes to amend § 59.1 to make it clear that these regulatory requirements apply equally to subrecipients and to grantees, that grantees are responsible for requiring that their subrecipients (and the subrecipients of such subrecipients) agree to comply with such requirements, and that grantees are responsible for ensuring that their subrecipients so comply.

Title X authorizes the Secretary to not only award grants but also enter into contracts to establish and operate voluntary family planning projects. 42 U.S.C. 300(a). Although contracts are used for Title X training, the Department is not aware of a history of establishing or operating Title X family planning projects by use of contracts instead of grants. Nevertheless, because the use of contracts to establish and operate family planning projects is explicitly authorized in the statute, the Department believes that the regulations should state that the substantive requirements for Title X family planning projects apply to projects whether they are established by grants or contracts. Therefore these rules propose to specify in § 59.1 that, except for §§ 59.3, 59.4, 59.8, and 59.10, the regulations of this subpart would also be applicable to the execution of contracts under Title X to assist in the establishment and operation of voluntary family planning projects. Applicable regulations would be applied in accordance with the statutes, procedures, and regulations that apply to the execution of a Federal contract, as distinct from a grant. Section 59.1 would specify that the use of the terms “grant,” “award,” “grantee,” and “subrecipient” in applicable regulations of this subpart would apply similarly to contracts, contractors and subcontractors, and the use of the term “project” or “program” would also apply to a project or program established by use of a contract. The Departments would specify that §§ 59.3, 59.4, 59.8, and 59.10 would not apply to contracts, because those sections

generally describe processes specifically applicable to grants and grant applications, as distinct from the substantive requirements of the other sections of this subpart. Because of the lack of a history of using contracts to establish or operate Title X projects, and because Title X funds used for a contract would offset funds used for a grant, the Department does not believe that specifying that these regulations also generally apply to Title X contracts would affect the regulatory or economic impact of these proposed rules. The Department invites comment on the applicability of these regulations to contracts for the provision of family planning services under Title X.

##### B. Section 59.2 Definitions

The current Title X regulations include a limited number of definitions that are very general in scope including “Act,” “family,” “low-income family,” “nonprofit,” “Secretary,” and “state.” Important terms, such as “family planning,” “grantee,” and “subrecipient,” are not defined. The Department believes that, as a result of these omissions, the Title X regulations fail to provide sufficient clarity for prospective grantees and subrecipients, current grantees and subrecipients, and the general public. To ensure greater clarity and accountability in the use of Title X funds, the Secretary proposes the addition of four new definitions to the Title X regulations, 42 CFR 59.2:

- Family Planning
- Grantee
- Program or Project
- Subrecipient

Under the proposed regulations, “family planning” would be defined as the voluntary process of identifying goals and developing a plan for the number and spacing of children and the means by which those goals may be achieved. These means include a broad range of acceptable and effective choices, which may range from choosing not to have sex to the use of other family planning methods and services to limit or enhance the likelihood of conception (including contraceptive methods, and natural family planning or other fertility awareness-based methods), and the management of infertility (including adoption). Family planning services include preconceptional counseling, education, and general reproductive and fertility health care to improve maternal and infant outcomes, and the health of women, men, and adolescents who seek family planning services. Family planning and family planning services are never coercive and are strictly

voluntary. Family planning does not include post-conception care (including obstetric or prenatal care) or abortion as a method of family planning. Family planning, as supported under this subpart, should reduce the incidence of abortion.

The Department believes that this proposed definition, which largely tracks the definition of “family planning” in the 1988 Regulations, would provide greater clarity to grantees and subrecipients as to the type of activities that can be provided by projects funded under Title X. It is clear that Congress intended the term “family planning” to be broader in scope than simply contraception; natural family planning and infertility services are included as mandatory services explicitly enumerated in section 1001(a). Physical examinations, breast and cervical cancer screenings, sexually transmitted disease (STD) and human immunodeficiency virus (HIV) testing, and pregnancy testing and counseling would continue to be authorized by this definition under the rubric of “general reproductive and fertility health care.” The proposed definition includes concepts from the 1988 rule identifying family planning as a process of establishing objectives for the number and spacing of children and the means of achieving those objectives. The proposed definition elaborates on “objectives” by specifying they involve both goals and plans, as inherent in the term family “planning.” The definition specifies that the process is “voluntary,” “strictly voluntary,” and “never coercive,” consistent with the statutory requirement that Title X apply only to “voluntary” family planning. The definition specifies that family planning includes management of infertility (including adoption). Both this definition and the 1988 definition include general reproductive health care.<sup>44</sup> The 1988 definition elaborated that it included diagnosis and treatment of infections which threaten reproductive capability. This proposed definition would include that aspect of reproductive health care, as well as the goal of improving maternal and infant

<sup>44</sup> The Department is aware that, in the international context, the term “reproductive health care” is often used to encompass abortion and related services. Given the long-standing prohibition on the use of Title X funds for programs/projects where abortion is a method of family planning and the focus of the Title X program on pre-conception care, the Department does not use the term in such a manner; in the Title X context, “reproductive health” or “reproductive health care” does not encompass abortion or abortion-related services.



outcomes and the health of those who seek family planning services.

The other newly proposed definitions are designed to provide greater clarity concerning which entities are subject to the provisions of Title X.

The Department proposes that “project” or “program” be defined as a plan or sequence of activities that fulfills the requirements elaborated in a Title X funding announcement and may be comprised of, and implemented by a single grantee or subrecipient, or a group of partnering providers who, under a grantee or subrecipient, deliver comprehensive family planning services that satisfy the requirements of the grant within a service area. These proposed definitions are consistent with current Title X program practices.<sup>45</sup>

The Department proposes definitions of “grantee” and “subrecipient” because confusion surrounds their meanings. In this proposed rule, “grantee” would mean the entity that receives Federal financial assistance through a grant and assumes legal and financial responsibility and accountability for the awarded funds and for the performance of the activities approved for funding and for making the required reports to OPA.

A clear definition of “subrecipient” is necessary to ensure program integrity related to both financial and programmatic requirements. Title X service sites (*i.e.*, clinics) that provide Title X services directly to individuals may receive Title X grant monies from the grantee (or another subrecipient) as a secondarily named provider or as an agency that provides services, but may not be specifically named within the grant application. There is a need for transparency that currently does not exist. The Department does not have an accurate understanding of any grantee’s subrecipients, of what role each subrecipient plays in the overall function of the Title X project, or of the extent to which Title X funding supports the efforts of the subrecipient. Additional transparency would help to ensure accountability for, and wise use of, taxpayers’ money. Current Title X regulations, however, do not require grantees to submit information to the government about their subrecipients, referral agencies, or other partners to whom Title X funds may flow. This lack of information is a barrier to OPA’s oversight of the activities of its program and project subrecipients and,

ultimately, to governmental accountability for those funds.

Therefore, the Department proposes to define “subrecipient” as any entity that provides family planning services with Title X funds under a written agreement with a grantee or another subrecipient. These subrecipients have entered into binding agreements or other financial relationships with Title X grantees to provide Title X services in a given State or community. A “[s]ubrecipient” may also be referred to as a “delegate” or “contract agency.” These entities receive Title X funds to provide Title X services, and are subject to the Title X statute and regulations. This proposed definition would help clarify the entities that receive Title X monies, how they use these funds, and how their services comply with the purpose of the Title X program. In addition, the definition would elucidate the relationship between the grantees and their subrecipients, and would convey, along with the proposed changes to § 59.1, that grantees are responsible for ensuring that their subrecipients (and the subrecipients of such subrecipients) comply with all statutory and regulatory requirements.

To the extent an entity receives Title X funds from a grantee or a subrecipient, it receives funds to provide Title X services, and is thus a subrecipient subject to the Title X statute and regulations. By contrast, some referral agencies do not receive funds from the Title X grant program, but may nevertheless provide information, counseling, or services to a Title X client. A referral agency or individual is a person or entity which is a specialist in a certain field of service and to whom the Title X project refers patients for additional services not available at the Title X clinic site, or not adequately available at the site, to serve the immediate needs of the patient. For example, an individual may visit the Title X clinic for contraceptive services, but in the course of conversation, it may be revealed that the individual wants to end a current intimate and unhealthy relationship. In this case, a referral could then be made to an entity that has expertise in relationship counseling beyond what is available in this Title X clinic. In this and similar cases, the referral agencies would not be considered subrecipients, since they do not receive Title X funds. But because such services are an extension of the overall Title X service provision, in certain cases referral agencies participate in, and receive intrinsic non-monetary benefits as a result of, a formal or informal partnership with a Title X project. Accordingly, we seek comment

on whether such a referral agency should be subject to the same reporting requirements as a grantee or subrecipient—by means of requiring grantees and subrecipients to use referral agencies only if they require the referral agencies to submit the required information. This could apply if the referral agency:

- Has a written agreement with the grantee or another subrecipient;
- specifically uses its inclusion in the Title X project to expand its influence in the community; or
- conducts its services, activities, or communications in such a way that its participation in the Title X project is central, or very important, to its existence.

Finally, this proposed rule would amend the definition of “low income family” to include women who are unable to obtain certain family planning services under their employer-sponsored health insurance policies due to their employers’ religious beliefs or moral convictions. This would preserve conscience protections for entities and individuals whose health plans are subject to a mandate of contraceptive coverage through guidance issued pursuant to the Patient Protection and Affordable Care Act, while providing free or low-cost family planning services for such women at risk of unintended pregnancy or who otherwise desire comprehensive, holistic, family planning services.

The proposed definition of “low income family” would maintain the ability of a Title X project to determine whether unemancipated minors who desire confidential services are low income based on their own resources. However, to ensure compliance with the statutory requirement that Title X projects encourage family participation in the decision of minors to seek family planning services, Title X clinics would be required to document in the minor’s medical records the specific actions taken with respect to each minor to encourage such family participation. Documentation of such encouragement would not be required if the Title X clinic documents in the medical record that (1) the minor is suspected to be the victim of child abuse or incest and (2) it has, consistent with and if permitted or required by applicable State or local law, reported the situation to the relevant authorities.

*C. Section 59.3 Who is eligible to apply for a family planning services grant or to participate as a subrecipient as part of a family planning project?*

Consistent with the requirements of the Joint Resolution of Disapproval,

<sup>45</sup> See, e.g., “Definitions” section of the “Program Requirements for Title X Funded Family Planning Projects,” Version 1.0 (April 2014), <https://www.hhs.gov/opa/sites/default/files/ogc-cleared-final-april.pdf>.

signed by the President on April 13, 2017 (referenced above), the Department proposes to revise the heading and remove paragraph (b) of § 59.3. Because of the joint resolution of disapproval, the Department is prohibited from reissuing the nullified 2016 Regulation in “substantially the same form” or issuing a “new rule that is substantially the same” as the nullified 2016 Regulation. 5 U.S.C. 801(b). This proposed rule does not seek to re-issue the nullified provision at all, much less in substantially the same form, nor does the Department seek to issue, in this rulemaking, a new rule that is substantially the same as the nullified provision.

*D. Section 59.5 What requirements must be met by a family planning project?*

Section 1001(a) of the Title X statute requires Title X projects to “offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods . . .).” The current regulations state, somewhat differently, that projects must “[p]rovide a broad range of acceptable and effective medically approved family planning methods (including natural family planning methods) and services (including infertility services and services for adolescents),” and note that “[i]f an organization offers only a single method of family planning, it may participate as part of a project as long as the entire project offers a broad range of family planning services.” 42 CFR 59.5(a)(1).

The current regulation, while worded differently than the statute, does not override the statutory requirement that projects offer “a broad range of acceptable and effective family planning methods and services (including natural family planning methods . . .).” 42 U.S.C. 300(a). Although the current regulations require that projects provide, at a minimum, a broad range of “medically approved” family planning methods, they do not preclude the Department from requiring more, namely, as the statute provides, “a broad range of acceptable and effective family planning methods and services (including natural family planning methods . . .).” Moreover, the current regulations do not define “medically approved,” and have not required that a family planning method be regulated, approved, or certified by any particular agency or accreditation body. If a family planning method is, as required by the statute, “acceptable and effective,” it is likely to be approved by at least some medical sources. For example, in March 2016, the American College of Obstetricians and Gynecologists (ACOG)

launched the “Women’s Preventive Services Initiative.” In its “Clinical Recommendations,” ACOG recommended that instruction in fertility awareness-based methods of family planning, and counseling, initiation of use, follow-up care, management, and evaluation of the same, be provided with no cost-sharing in health coverage.<sup>46</sup> The Health Resources and Services Administration (HRSA), a component of HHS, adopted this recommendation on December 20, 2016, and added coverage of fertility awareness based methods of family planning to its women’s preventive services guidelines, issued pursuant to Section 2713(a)(4) of the Affordable Care Act (42 U.S.C. 300gg–13(a)(4)).<sup>47</sup> On this basis, fertility awareness-based methods of family planning could be said to be “medically approved.” Medical doctors and professional organizations can differ on which methods of health care they approve, including different methods of family planning. Such differences may be based on differing areas of expertise, or differing views of the health care method.

Similarly, certain family planning methods or services may not fall under the regulatory jurisdiction or expertise of some government agencies. The Food and Drug Administration has regulatory jurisdiction over drugs, biologics, and medical devices. As such, while it has regulatory authority over and approves or clears contraceptive drugs and devices, FDA would not necessarily have regulatory jurisdiction over, or an approval process for, other family planning methods. Some fertility awareness-based methods of family planning might be a drug or device, such as certain fertility awareness kits that are or contain a medical device.<sup>48</sup> Other fertility awareness-based methods of family planning might not be drugs or devices, use drugs or devices, or be sold in conjunction with drugs or devices. Some methods might be merely instructional, or might include the recommendation that certain kinds of drugs or devices be used, without the “method” itself being a drug or device. When HRSA added fertility awareness-

based methods of family planning and counseling to its women’s preventive services guidelines, it did so even though the guidelines already included all FDA-approved contraceptive and sterilization methods, because the birth control methods FDA has approved or cleared are all drugs and devices.<sup>49</sup> The fact that non-drug and non-device fertility awareness-based methods of family planning are not on FDA’s list of approved birth control methods does not mean that such fertility awareness-based methods are not “medically approved,” but rather means that they are not drugs or medical devices, and, thus, not under FDA’s jurisdiction and not subject to FDA’s approval or clearance.

The Department proposes to revert to the statutory language that Title X projects “offer a broad range of acceptable and effective family planning methods and services.” In so doing, the proposed rule would remove the language specifying that the family planning methods and services offered by a Title X project be “medically approved.” That language does not appear in the statute and may cause confusion about the type of family planning methods or services that a project may or should provide, and the type of approvals (if any) necessary before a Title X project can provide such method or service. The statutory language of “acceptable and effective family methods or services” provides better guidance for the types of methods and services that Congress sought to fund.

The proposed rule would also make it more explicit that the requirement to provide a “broad range” of acceptable and effective family planning methods and services does not require a project to provide every acceptable and effective family planning method or service. The meaning of “broad range” has been the subject of inquiries from grantees and lawmakers at all levels of government, as well as from members of the public, and has resulted in potentially inconsistent interpretations of the “broad range” mandate. Some have interpreted the “broad range” requirement of section 1001(a), as well as of 42 CFR 59.5(a)(1), to require that a project provide all forms of family planning approved or cleared by the Food and Drug Administration (FDA). The plain language of the statutory (and regulatory) requirements, however, does not require projects to provide every acceptable and effective family planning

<sup>46</sup> See Women’s Preventive Services Initiative, Clinical Recommendations, American College of Obstetricians and Gynecologists, <https://www.womenspreventivehealth.org/recommendations/contraception>.

<sup>47</sup> See HRSA, Women’s Preventive Services Guidelines, <https://www.hrsa.gov/womens-guidelines-2016/index.html>.

<sup>48</sup> See FDA Enforcement History, <https://www.fda.gov/iceci/enforcementactions/enforcementstory/enforcementstoryarchive/ucm106947.htm> (“Warning Letter Issued for ‘Fertility Awareness Kit’”).

<sup>49</sup> See FDA, <https://www.fda.gov/ForConsumers/ByAudience/ForWomen/FreePublications/ucm313215.htm>.

method or service (or, under the current regulation, acceptable and effective medically approved family planning methods and services), but rather a broad range of such methods and services.

Not every grantee or subrecipient can provide—or should be required to provide—all services. The proposed rule would also make it more explicit that the requirement to provide a “broad range” of acceptable and effective family planning methods and services does not require a project to provide every acceptable and effective family planning method or service. This proposed change reflects the fact that, as the range of available family planning methods has significantly increased over the last few decades, it has become increasingly difficult and expensive for a Title X project to offer all acceptable and effective forms of family planning. Indeed, family planning projects are confronted with a variety of pharmacological, technological, or medical device options to consider in service delivery, with widely varying costs. Staffing limitations, technological capacity, economics (including costs and demand), and conscience concerns may be taken into account when grantees or subrecipients determine which methods they will offer within their scope of services. For example, natural family planning (NFP) services (and other fertility-awareness based methods) are a recognized form of family planning services under the statute, but many couples or families seeking these services may prefer specialized, single-method NFP service sites. Other sites serving men may offer only family planning methods relevant to that population. Another site may be a hospital satellite location which is primarily diagnostic in function, although it also offers some on-site family planning services. Such sites are permissible as components of a Title X family planning project, as long as the overall project provides a broad range of acceptable and effective family planning methods and services. In these examples, some participants in the Title X project offer specialized services, but not a broad range of family planning methods and services. However, such limited family planning service offering is permissible as long as the overall Title X project offers a broad range of family planning services, including contraceptives.<sup>50</sup>

<sup>50</sup> The Department notes that the Title X statute would not permit a Title X project to provide only one (or a limited number of) family planning methods and services.

Thus, under the proposed rule, no Title X project would be required to provide every acceptable and effective family planning method or service, but all Title X projects would be required to provide a broad range of family planning methods. Family planning methods which are permitted with Title X funds include (but are not limited to): Male condom, spermicide, cervical cap, fertility awareness based methods, female condom, diaphragm, vaginal contraceptive ring, IUD, oral contraceptives, shot/injection, implantable rod, vasectomy, and sexual risk avoidance (or avoiding sex). Under the proposed rule, any organization that desires to provide only a single method, or limited number of methods of family planning, may participate, as long as the Title X project as a whole offers a broad range of family planning methods and services. Title X specifically identifies natural family planning, infertility services, and services for adolescents, as voluntary family planning services that Title X projects “shall offer,” 42 U.S.C. 300(a), making these family planning methods and services mandatory for each Title X project (although, as discussed elsewhere herein, it is not required that each provider within a project offer each method). That is, included in the broad range of acceptable and effective family planning methods and services that each Title X project must offer are natural family planning methods, infertility services, and services for adolescents.

The proposed rule would also remove the requirement that past grantees be consulted for new services or projects in their locale as set forth in paragraph (a)(10)(i) of the current regulation. We believe that removing this requirement would encourage a broader range of applicants and permit innovative approaches that may not have been envisioned or supported by past grantees. While communication and coordination is often beneficial and encouraged, removing the requirement for consultation is intended to have the effect of loosening the status quo for service provision in a community in favor of a broader reach in order to previously underserved populations.

The proposed rule would make it clear that, as contemplated by the statute, family planning is not limited to, or synonymous with, access to various methods of contraception, but includes a broader understanding of family planning methods and services. Family planning services should fit the family planning needs of the individual, and/or couple (if applicable). And in order to promote a holistic approach to family planning and reproductive

health, the proposed rule would inform Title X service providers that they should offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in physical proximity to the Title X site. This provision decreases the overall cost and transportation challenges related to access for vital health care services that may be discovered as a result of routine family planning screening and consultation. Title X service providers should ensure that they have a broad range of partners and diverse subrecipients in order to make it easier for all clients, particularly low income clients, to access necessary medical services and related educational and counseling services, as stipulated by the statute and as necessary to ensure that screening, diagnosis, and treatment can be provided within close proximity of the clinic, and to ensure that the most needy have access to care.<sup>51</sup>

To expand transparency surrounding Title X services, the proposed rule would require applicants to provide the following within their applications (to the extent secured at the time of application) and, if funded, in required reports, and in response to performance measures, wherever practicable:

- Names and locations of subrecipients, referral individuals and agencies, as well as services provided and to be provided by those entities;
- Detailed descriptions of all partnerships with such entities, including the extent of any

<sup>51</sup> A 2013 Child Trends Research Brief, “The Health of Women Who Receive Title X supported family Planning Services” found that 60% of women receiving care at Title X clinics report that the clinic is their primary source for health care, yet many fear they cannot address other health concerns with their family planning provider, making the need for a linkage to comprehensive primary care providers essential for women’s health. The report also found that women who receive care at Title X clinics generally have worse health than women who receive services elsewhere, and that of such women, (1) over 25% report at least 3 health concerns; and (2) one-third are obese, with an additional 29% being overweight. Since Title X family planning services are generally limited to preconception services, it is important that Title X sites assist clients to achieve optimal preconception health. A large number of women experience unintended pregnancies, making the inclusion of preconception health screenings in the continuum of family planning care all the more important for all clients (male and female), not only those seeking pregnancy. Preconception health care is important because pregnancy may stress and affect extant health conditions; linkages to comprehensive primary health care may be critical to ensuring that pregnancy does not negatively impact such conditions. In addition, the greatest risks affecting the health of a baby occur early in a pregnancy—often before a woman realizes she is pregnant—such that helping women achieve optimal preconception health is important to ensure healthy pregnancies (as well as healthy babies) should conception occur.

collaboration with subrecipients, referral individuals and agencies—as well as with less formal partners within the community—in order to demonstrate a seamless continuum of care for clients;

- A clear explanation of how the grantee will ensure adequate oversight and accountability for quality and effectiveness outcomes among subrecipients and those who serve as referrals for ancillary or core services.

In addition, in order to promote compliance with a requirement present in both Title X itself and the Title X appropriations provisions,<sup>52</sup> the proposed rule would require Title X service providers to encourage family participation in the decision of minors to seek family planning services and to document, in the records maintained with respect to each minor, the specific actions taken to encourage such family participation (or the specific reason why such family participation was not encouraged).<sup>53</sup>

#### *E. Section 59.7 Criteria for Selection of Grantees*

As discussed above, the Department is focused on achieving better integration of primary and preventive care among a diverse group of applicants, using review criteria as a meaningful instrument to assess the quality of the applicant and the application. The current regulations give HHS flexibility in selecting grantees and determining awards, but could better ensure that review criteria are geared to achieving the selection of grantees that can best achieve the goals and purposes of the Title X program. Therefore, through the proposed rule, we would seek to achieve a two-fold goal:

- Update application review criteria to better achieve the statutory requirements and goals of Title X.
- Increase competition and rigor among applicants, encouraging broader and more diverse applicants, and better ensuring quality applicants will be selected.

The Department desires to award grants for the establishment and operation of those Title X projects that would best promote the purposes of Title X and meet the statutory requirements imposed on Title X projects.

We propose revising the current application review criteria at § 59.7 through this rulemaking process to update and expand criteria for selection of Title X grantees as follows. Any grant applications that do not clearly address how the proposal will satisfy the requirements of this regulation would not proceed to the competitive review process, but would be deemed ineligible for funding. The Department would explicitly summarize each provision of the regulation (or include the entire regulation) within the Funding Announcement, and would require each applicant to describe their affirmative compliance with each provision. If the proposal is deemed compliant with the regulation, then applicants would be subject to criteria for selection within the competitive grant review process, including:

(1) The degree to which the applicant's project plan adheres to the Title X statutory purpose and goals for the “establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents,” (PHS Act Sec. 1001(a), 42 U.S.C. 300(a)), which meet all of the statutory and regulatory requirements and restrictions, and where “none of the funds . . . shall be used in programs where abortion is a method of family planning.” (PHS Act Sec. 1008, 42 U.S.C. 300a–6.)

(2) The degree to which “the relative need of the applicant” (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)) is demonstrated in the proposal and the applicant shows capacity to “make rapid and effective use” (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)) of grant funds, including and especially among a broad range of partners and diverse subrecipients and referral individual and organizations, and among non-traditional Title X partnering organizations.

(3) The degree to which the applicant takes into account “the number of patients to be served” (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)), while also targeting areas that are more sparsely populated and/or places in which there are not adequate family planning services available.

(4) “The extent to which family planning services are needed locally” (PHS Act Sec. 1001(b), 42 U.S.C. 300(b)) and the applicant proposes innovative ways to provide services to unserved or underserved patients.

These proposed criteria would advance compliance with the text and

purpose of Title X by seeking grantees to better serve the targeted population with services that are needed, focused on family planning in the context of holistic health in both the short and long term.

The Department seeks public comment as to whether additional regulatory application review criteria may be necessary or advisable to reflect the text and purpose of the statutory provisions applicable to Title X, in particular section 1008; to protect the rights of individuals and entities who decline to participate in abortion-related activities; or to ensure that all services funded through Title X offer optimal health benefits to clients of all ages. The Department also seeks public comment as to whether the protections and services funded through Title X are adequately implemented and clearly understood throughout the Title X program, in order to alleviate the current confusion, and avoid future confusion, among clients and the general public.

#### *F. Section 59.11 Confidentiality*

As discussed above, Title X grantees and subrecipients are required to comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, and the like. Section 59.11 currently provides that personal information may not be disclosed absent consent by the individual, except to provide treatment, or as required by law, “with appropriate safeguards for confidentiality.” To ensure that Title X grantees and subrecipients comply with applicable reporting requirements, the proposed rule would clarify that concerns about confidentiality of information may not be used as a rationale for noncompliance with such reporting laws.

#### *G. Section 59.13 Standards of Compliance With Prohibition on Abortion*

Current Title X regulations at 42 CFR 59.5(a)(5) state that “[e]ach project supported under this part must . . . not provide abortion as a method of family planning.” However, the Department has determined that such regulations do not provide sufficient guidance to ensure that Title X projects comply with section 1008 and do not encourage or promote abortion as a method of family planning. Proposed § 59.13 would accordingly require that programs seeking Title X funding provide assurance satisfactory to the Secretary that, as Title X grantees, they do not provide abortions and do not include abortion as a method of family planning.

<sup>52</sup> See 42 U.S.C. 300(a); Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 207, 132 Stat. at 736.

<sup>53</sup> Of course, as noted above, the fact that child abuse, child molestation, incest, or the like is suspected and has been reported to the appropriate authorities, consistent with State or local reporting or notification laws, would constitute such reason.

The proposed rule would also require assurance that grantees are in compliance with the prohibition on promoting abortion as a method of family planning; the maintenance of separation of the Title X project from prohibited activities; and the prohibition on activities that encourage, promote, or advocate for abortion. These specific requirements are designed to enable the Secretary to obtain, at the application stage, information relevant to determining whether a program or project will, in fact, comply with the statutory prohibition. Therefore, under the proposed rule, an applicant for Title X funds would be ineligible for those funds if it is unable to demonstrate to the satisfaction of the Secretary that it (and its subrecipients, if applicable) would comply with the regulations implementing section 1008.

#### *H. Section 59.14 Prohibition on Referral for Abortion*

Proposed § 59.14 would expressly prohibit Title X projects from performing, promoting, referring for, or supporting, abortion as a method of family planning.<sup>54</sup> As discussed above, the Department believes that the current requirement under 42 CFR 59.5(a)(5)(ii) that a project provide abortion referrals to pregnant women upon request is inconsistent with section 1008, premised on an erroneous notion that the statute is neutral on the question whether Title X funds may be used to encourage or promote abortion as a method of family planning, and violative of Federal health care conscience statutes. The proposed provision would better implement section 1008 and better align the regulations implementing Title X with those Federal health care conscience statutes. It would also promote grantee diversity by expanding the number of qualified entities that would be willing and able to apply to provide Title X services, since potential grantees and subrecipients that refuse to provide abortion referrals may have been ineligible or discouraged from applying for Title X grants or seeking to provide family planning services under a Title X project by the requirements of the current regulations.

<sup>54</sup> In the case of rape and/or incest, it would not be considered a violation of the proposed prohibition on referral for abortion as a method of family planning if a patient is provided a referral to a licensed, qualified, comprehensive health service provider who also provides abortion, provided that the Title X provider has complied with all State and/or local laws requiring reporting to, or notification of, law enforcement or other authorities and such reporting or notification is documented in the patient's record.

Proposed § 59.14 would prohibit referral for abortion as a method of family planning or any other affirmative action to secure such an abortion in a Title X project. Under the proposed provision, referrals could not be used as an indirect means to encourage or promote abortion. In addition, Title X projects do not themselves provide post-conception care. Thus, proposed § 59.14 would require that pregnant women be referred outside of the Title X project for prenatal care and other related medical and social services, as well as for other services relating to pregnancy after pregnancy is confirmed. In no case would the proposed provision permit a Title X-funded family planning program to make a referral for, or determine the appropriateness of, abortion as a method of family planning. As discussed above, a doctor, though not required to do so, would be permitted to provide nondirective counseling on abortion.<sup>55</sup> Such nondirective counseling would not be considered encouragement, promotion, or advocacy of abortion as a method of family planning, as prohibited under section 59.16 of this proposed rule. Moreover, a doctor would also be permitted to provide a list of licensed, qualified, comprehensive health service providers, some (but not all) of which provide abortion in addition to comprehensive prenatal care. Providing such a list would be permitted only in cases where a program client who is currently pregnant clearly states that she has already decided to have an abortion.<sup>56</sup> No participant in the Title X program may promote or support abortion as an acceptable mechanism of family planning through that Title X program. Thus, all other patients would be provided a list of licensed, qualified, comprehensive health service providers (including providers of prenatal care) who do not provide abortion as a part of their services, along with referrals for prenatal care and social services.

It is important to recognize that proposed § 59.14 would not prohibit Title X projects from providing the factual information necessary to assess risks of a particular family planning or contraceptive method as set out in the patient package inserts. Neither would proposed § 59.5, or § 59.14 preclude a health care professional from disclosing

<sup>55</sup> That counseling on abortion be nondirective is required by the appropriations law applicable to Title X. See Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, Title II, 132 Stat. at 716–17 (“all pregnancy counseling shall be nondirective”).

<sup>56</sup> The list may not identify in any way the providers that perform abortions in addition to comprehensive prenatal care.

to a woman any physical findings the professional has made regarding the woman's condition; communicating an assessment of the urgency of the need for treatment; or ensuring that the woman is referred to the appropriate specialist for treatment of the condition, including emergent conditions, with adequate follow-up provided. Further, the proposed provision does not propose to alter the current requirement that Title X grantees and subrecipients provide for “necessary referral to other medical facilities when medically indicated,” 42 CFR 59.5(b)(1); *see also* 42 CFR 59.5(b)(8); rather, to further emphasize this requirement, we are proposing to include consistent language in § 59.14. Under this current provision of the Title X regulation, Title X projects must refer patients directly to a provider of emergency medical services (*i.e.*, hospital emergency room), when such services are medically indicated. To ensure that such provisions are not abused in order to provide referral for abortion as a method of family planning, we propose conforming amendments to § 59.5(b)(1) and (8), which make such referrals subject to the requirements and prohibitions contained in proposed § 59.14(a).

Further, it is not the intent of the proposed regulatory provision at § 59.14 to restrict the ability of health professionals to communicate to a patient any information they discover in the course of physical examination or otherwise about her medical condition, such as a condition that might make her extant pregnancy high risk. Nor would the provision preclude a health professional from disclosing to the woman any physical findings he or she has made regarding her condition and communicating his or her assessment of the urgency of her need for treatment or action, consistent with the exercise of his or her professional judgment, although the treatment or action might fall outside the parameters of the Title X program. Read together, proposed § 59.14 and current § 59.5(b)(1) would require that, if a woman who comes to a Title X-funded family planning program is confirmed to be pregnant, she must be referred externally for services related to her pregnancy. The program would be permitted to provide her with a listing of licensed health care providers of appropriate prenatal medical care and delivery services, from which she may choose. But Title X projects would not directly or indirectly encourage or promote abortion as a method of family planning through the manner in which referrals are made, or

the manner in which such list is constructed. As noted above, we propose conforming changes to § 59.5(a)(5).

#### *I. Section 59.15 Maintenance of Physical and Financial Separation*

Proposed § 59.15 would create a requirement of both physical and financial separation between Title X services and any abortion services provided by the Title X grantee or subrecipient. As noted above, the current Title X program only requires financial (or bookkeeping) separation between Title X services and any abortion services provided by the Title X grantee or subrecipient. In accordance with section 1008, the Department wishes to ensure, among other things, that there is a clear separation between Title X services and any abortion services provided by a Title X grantee or subrecipients and that Title X funds are not being used to build infrastructure that supports, or may be used to support, the separate abortion business of a Title X grantee or subrecipient.

Proposed § 59.15 would require that Title X projects be physically and financially separate from programs in which abortion is provided or presented as a method of family planning, including programs that refer for abortions and programs that encourage, promote or advocate abortion as a method of family planning. It would describe relevant criteria that the Secretary proposes to use in determining whether a project has demonstrated sufficient separation from prohibited activities. Thus, proposed § 59.15 would prohibit locating a Title X supported family planning program in a fashion which would not be physically and financially separate. This proposed standard would take into account the degree of separation of, among other things, waiting, consultation, examination, and treatment areas—as well as telephone numbers, email addresses, any official communication devices, including social media, or websites. Thus, under the proposed provision, an impermissible use of Title X funds might occur when the physical facility of a grantee or subrecipient organization's Title X-funded family planning program shares space with any abortion-related operations.

By requiring that Title X projects be physically and financially separate from abortion-related activities conducted by the grantee or subrecipient, proposed § 59.15 would help facilitate compliance with Section 1008's prohibition on abortion as a method of family planning. It would also facilitate the Department's

enforcement against grantees or subrecipients that do not comply with the statutory requirement that abortion not be a method of family planning in a Title X project. In particular, proposed § 59.15 would allow the Department (and grantees) to make better case-by-case determinations about whether particular Title X projects or clinic locations have sufficient physical and financial separation from prohibited activities. To determine whether sufficient separation exists in a particular case, the Department would weigh all relevant factors, including:

- The existence of separate, accurate accounting records;
- The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;
- The existence of separate personnel, electronic or paper-based health care records, and workstations;
- The extent to which signs and other forms of identification of the Title X project are present, and signs and materials referencing or promoting abortion are absent.

Because circumstances or site-specific factors are complex and organizational realities are varied, the Department would consider individual circumstances unique to a grantee or Title X provider. We intend to take a case-by-case approach in order to ensure program integrity, with sensitivity to individual projects and providers, and without imposing unnecessary requirements. We seek comment on whether additional factors should be considered, or whether any of the proposed factors should be omitted.

The Department also seeks public comment as to whether additional regulatory provisions are necessary to reflect the text and purpose of section 1008. Even with a bright line rule of actual physical separation, confusion could still arise if the separate facilities—one facility providing Title X services and one providing abortion as a method of family planning—are operated under the same name. Similarly, the lack of a requirement of organizational separation could continue to blur the line between permitted and prohibited Title X services and activities, making enforcement more difficult. For example, individuals seeking Title X services may mistakenly visit non-Title X sites engaged in activities such as abortion which are actually prohibited by Title X, but that have the same names

and are part of the same organization as the Title X site. The Department, therefore, seeks public comment as to whether additional regulatory provisions, such as a requirement for a Title X clinic to operate under a distinct name from a facility that provides abortion as a method of family planning, or for organizational separation, are necessary to ensure compliance with section 1008.

#### *J. Section 59.16 Prohibition on Activities That Encourage, Promote or Advocate for Abortion*

Consistent with the statutory provisions discussed above, and the prohibition in section 1008 on the use of Title X funds in programs where abortion is a method of family planning, proposed § 59.16 sets out a number of restrictions designed to ensure that Title X grantees and subrecipients do not promote or encourage abortion as a method of family planning using Title X funds. The proposed rule would prohibit the following actions when undertaken with Title X funds: Lobbying, providing speakers that promote abortion in the project or by the use of project funds, attending events or conferences during which such lobbying takes place, paying dues to organizations that advocate for the availability of abortion services, taking legal action to make abortion available as a method of family planning, and developing or disseminating materials advocating abortion as a method of family planning or otherwise promoting a favorable attitude toward abortion. Thus, consistent with proposed § 59.15, any grantee or subrecipient engaging in these activities with non-Title X funds, would be required to give evidence that such use of funds is physically and financially separate from the use of Title X funds.

#### *K. Section 59.17 Compliance With Reporting Requirements*

New provision § 59.17 would address explicitly the requirement for Title X projects to comply with all State and local laws regarding the notification or reporting of crimes involving sexual exploitation, child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking. The Consolidated Appropriations Act, 2018 included the following provision: "Notwithstanding any other provision of law, no provider of services under Title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest." See Consolidated

Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 208, 132 Stat. 348, 736 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, sec. 208, 131 Stat. 135, 539 (2017); Consolidated Appropriations Act, 2016, Public Law 114–113, Div. H, sec. 208, 129 Stat. 2242, 2620 (2015). This provision is consistent with language that has been included in appropriations acts for HHS since fiscal year 1999. *See, e.g.*, Department of Health and Human Services Appropriations Act, 1999, Public Law 105–277, Title II, sec. 219, 112 Stat. 2681, 2681–363 (1998). The Department interprets this statutory notification/reporting requirement as encompassing not only any State or local law requiring reporting or notification dealing with child abuse, child molestation, sexual abuse, rape, or incest, but also those State or local laws respecting intimate partner violence and human trafficking because such criminal activities would be encompassed within the categories of crime enumerated in the Appropriations Act (“child abuse, child molestation, sexual abuse, rape, or incest”). In addition, the Department interprets this reporting/notification requirement as applicable to all victims of such crimes, regardless of age, because the victims of sexual abuse, rape, or incest can be any age. Current Title X regulations permit the use of confidential information obtained by project staff to comply with State and local reporting requirements,<sup>57</sup> but do not expressly address the requirement to report child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, human trafficking, or other sexual exploitation, nor affirmatively impose an obligation on Title X grantees and subrecipients to comply with State reporting or notification requirements.

Title X grantees and subrecipients have an affirmative obligation to comply with notification or reporting requirements; merely being aware of such requirements is insufficient to comply with the law. As Representative Ernest Istook said during the debate regarding the provision:

It says, if there is a situation, such as I described, involving an underage child, Title X providers must report that and comply with State law the same as anyone else who deals with services to our young people. 143 Cong. Rec. H7053 (1997).

Some practitioners have proposed that providers avoid soliciting or determining the age of the adolescent or the age of their sexual partner as a means of assuring the adolescent of

confidential services and, thus, avoiding the potential responsibility of reporting. But Title X exempts neither Title X clinics nor Title X healthcare providers from their responsibility to comply with State and local reporting laws. Sexual exploitation, abuse, or assault (including statutory rape) are crimes that affect individuals, families, and communities. Title X projects should lead the Nation in protecting those who are vulnerable to sexual abuse, rape, and assault; in developing protocols to identify clients who may be at risk for sexual abuse; in counseling teens on, and in producing programs and materials that assist teens in, resisting sexual exploitation, abuse, and coercion;<sup>58</sup> and in assuring appropriate support and management of teens (and women) who have been exploited, abused or coerced into unequal sexual partnerships.

The Department believes that existing efforts to ensure compliance with State and local reporting laws protecting minors and other vulnerable populations should be strengthened. While a 2005 report from the Department’s Office of Inspector General (OIG) revealed that OPA informs and periodically reminds Title X grantees and subrecipients of their responsibilities regarding State child-abuse and sexual-abuse reporting requirements, it could not determine the extent to which grantees actually comply with these requirements.<sup>59</sup> Through the proposed rule, the Department would require, as a condition of receiving Title X funding, that a project provide assurance that it has a plan in place to comply with State and local laws requiring notification or reporting and maintains appropriate documentation of compliance with these reporting requirements.

Proposed § 59.17 would clarify the affirmative duty of Title X grantees and subrecipients to comply with State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human

trafficking. It would require that Title X grantees and subrecipients have in place a plan that demonstrates that the grantee and any subrecipients are aware of what specific reporting requirements apply to them in their State (or jurisdiction), and provide adequate training for all personnel with respect to these requirements and how such reports are to be made. As part of prevention, protection, and risk assessment efforts, grantees and subrecipients should include in such plan protocols to identify individuals who are victims of sexual abuse or targets for underage sexual victimization and to ensure that every minor who presents for treatment is provided counseling on how to resist attempts to coerce minors into engaging in sexual activities. In addition, Title X projects would be required to conduct a preliminary screening of any teen who presents with an STD, pregnancy, or suspicion of abuse in order to rule out victimization of a minor. Such screening would be required with respect to any individual who is under the age of consent in the jurisdiction in which the individual receives Title X services. If positively diagnosed, projects are permitted to also treat STDs.

Additionally, proposed § 59.17 would require grantees and subrecipients to maintain records that would identify, among other things, the age of any minor clients served, the age of their sexual partner(s) where required by law, and what reports or notifications were made to appropriate State agencies. The Department would use this documentation to ensure appropriate compliance with State and local reporting requirements.

#### *L. Section 59.18 Appropriate Use of Funds*

Consistent with section 1008, proposed § 59.18 would prohibit the use of Title X funds to build infrastructure of a Title X grantee or subrecipient for purposes outside of those permitted under the Title X regulations and authorized within section 1001 of the Public Health Service Act and not barred by section 1008—that is, to offer family planning methods and services, which do not include abortion as a method of family planning. It would clarify that grantees should use the majority of grant funds to provide direct services to clients and give a detailed accounting for usage related to grant dollars, both in applications for funding and in any annually required reporting. Under proposed § 59.18, any change in the usage of grant funds within the grant cycle would require the approval of the Department. In addition, § 59.18 would require each project to fully account for,

<sup>58</sup> As noted above, the annual appropriations laws also impose on Title X recipients the obligation to provide “counseling to minors on how to resist attempt to coerce minors into engaging in sexual activities.” *See* Consolidated Appropriations Act, 2018, Public Law 115–141, Div. H, sec. 207, 132 Stat. 348, 736 (2018); Consolidated Appropriations Act, 2017, Public Law 115–31, Div. H, sec. 207, 131 Stat. 135, 538 (2017); Consolidated Appropriations Act, 2016, Public Law 114–113, Div. H, sec. 207, 129 Stat. 2242, 2620 (2015).

<sup>59</sup> HHS OIG, Letter on Federal Efforts to Address Applicable Child Abuse and Sexual Abuse Reporting Requirements for Title X Grantees (OEI–02–03–00530) (April 25, 2005), <https://www.hhs.gov/opa/sites/default/files/child-abuse-reporting-requirements.pdf>.

<sup>57</sup> *See* 42 CFR 59.11.



and justify, charges against the Title X grant.

As detailed previously, the current flexibility in the usage of Title X funds permits an interchangeability of assets that grantees may have used to build infrastructure for non-Title X purposes, including abortion services. This danger is exacerbated because Title X providers must secure other sources of revenue to leverage Title X grants. *See* 42 CFR 59.7(c). Infrastructure building may include physical space, health information technology systems, including electronic health records, bulk purchasing of contraceptive and other clinic supplies, clinical training for staff, and community outreach and recruitment. Title X is the only discrete, domestic, Federal grant program solely focused on the provision of cost-effective family planning services, and as the number of Americans at or below the poverty level has increased, the need to prioritize the use of Title X funds for the provision of family planning services has become only more important. The Department accordingly proposes (1) to prohibit use of Title X funds for infrastructure building for purposes outside of the Title X program, (2) to require a detailed accounting for usage related to grant dollars, and (3) to prohibit any change in the use of grant funds without the approval of the Department. In this way, the proposed section would ensure that Title X funds are used for the purposes expressly mandated by Congress—that is, to offer family planning methods and services.

#### M. Section 59.19 Transition Provisions

The Department proposes two different periods of transition to these requirements. Most of the proposed changes to the Title X regulations are merely clarifications of existing statutory requirements or impose requirements that would not seem to require a lengthy period of time for compliance. The Department recognizes, however, that it might take a longer period of time for grantees and subrecipients to comply with the proposed requirement to establish and maintain physical separation of the Title X project from the provision of abortion. Accordingly, the following compliance dates are proposed to provide a transition period:

- Section 59.15: Requirement for physical separation: One year after the date of publication of the final rule.
- All other proposed requirements, including the requirement for financial separation: 60 Days following publication of the final rule.

## V. Regulatory Impact Statement

### A. Introduction and Summary

We have examined the impacts of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995, Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act, 5 U.S.C. 804(2), section 654, 5 U.S.C. 601 (note), on the Assessment of Federal Regulation and Policies on Families, Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017), and the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### 1. Executive Orders 12866 and 13563 and the Congressional Review Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as “economically significant”); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). We estimate that this rulemaking is not “economically significant” as measured by the \$100 million threshold. We have prepared a regulatory impact analysis that, to the best of our ability, presents the costs and benefits of the rulemaking

and are including it here in order to provide further evidence of the value of this proposed rule. This proposed rule has been submitted to the Office of Management and Budget for review.

#### 2. Regulatory Flexibility Act (RFA)

The RFA requires agencies that issue a regulation to analyze options for regulatory relief of small entities, businesses, and 501(c)(3) and government entities if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a “small entity” as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a nonprofit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. (States and individuals are not included in the definition of “small entity.”) HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least 5 percent of small entities experience an impact of more than 3 percent of revenue. HHS proposed to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. Supporting analysis is provided below.

#### 3. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$150 million. HHS does not expect this proposed rule to result in expenditures that would exceed this amount.

#### 4. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments or has federalism implications. HHS has determined that the proposed rule, if finalized, would not contain policies that would 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. The proposed changes in the rule represent the



Federal Government regulating its own program. Accordingly, HHS concludes that the proposed rule does not contain policies that have federalism implications, as defined in Executive Order 13132 and, consequently, a federalism summary impact statement is not required.

5. Summary of the Proposed Rule

This rule proposes to amend the regulations governing the Title X program to ensure programmatic compliance and integrity. Specifically, the proposed rule:

(1) Aligns the regulation with the statutory requirements and purpose of the Title X program, the appropriations provisos and riders addressing the Title X program, and other obligations and requirements established under other Federal law;

(2) Expands the scope of enforcement and auditing mechanisms available to the Department to enforce such program requirements; and

(3) Requires individuals and entities covered by this proposed rule to adhere to certain procedural and administrative

requirements that aim to improve client care and increase transparency.

(4) We evaluate the effects of this rule over 2019–2023. Costs are estimated to be \$45.5 million in 2019 and \$14.6 million in subsequent years. Present value costs of \$88.6 million and annualized costs of \$21.1 million are estimated using a 3 percent discount rate; present value costs of \$72.4 million and annualized costs of \$21.6 million are estimated using a 7 percent discount rate. The quantified and non-quantified benefits and costs are summarized in Table 1.

TABLE 1—ACCOUNTING TABLE OF BENEFITS AND COSTS OF ALL PROPOSED CHANGES

	Present value over 5 years by discount rate (millions of 2016 dollars)		Annualized value over 5 years by discount rate (millions of 2016 dollars)	
	3 Percent	7 Percent	3 Percent	7 Percent
BENEFITS				
Quantified Benefits	0	0	0	0
Non-quantified Benefits (see below): Program integrity of Title X, especially with respect to ensuring that projects and providers do not fund, support, or promote abortion as a method of family planning. Enhanced compliance with statutory requirements and appropriations riders and provisos. Expanded number of entities interested in participating in Title X, including by removal of abortion counseling and referral requirements that potentially violate federal health care conscience protections. Enhanced patient service and care.				
COSTS				
Quantified Costs	88.6	72.4	21.1	21.6
Non-quantified Costs None				

We invite comment on all aspects of this regulatory impact analysis, including the assumptions and conclusions contained in the analysis.

*B. Analysis of Economic Impacts*

1. Need for the Proposed Rule

This proposed rule seeks to address two categories of problems:

(1) Insufficient compliance with the statutory program integrity requirements and purpose and goals of the Title X program (especially those related to section 1008), the appropriations provisos and riders addressing the Title X program, and other obligations and requirements established under other Federal law; and

(2) Lack of transparency regarding the provision of services (with respect to both the identity of the providers and the services being provided by such entities). Each of the issues discussed supra in Part II (Need for Change) fall into one or more of these categories.

While the current regulations state that Title X projects must not provide abortion as a method of family planning, they do not provide sufficient guidance to ensure that Title X projects comply with section 1008 by not encouraging or

promoting abortion as a method of family planning. Limiting section 1008’s prohibition to only “direct” facilitation of abortion is not consistent with the best reading of that provision, which was intended to ensure that Title X funds are not used to encourage or promote abortion in any way. For example, the current regulations:

- Mandate that providers provide counseling on and referral for abortion, if requested by the client;
- Permit shared locations, facilities, personnel, file systems, phone numbers, and websites between Title X clinics and abortion clinics, creating confusion regarding the scope of Title X services and whether the Federal government is funding abortion services; and
- Permit a fungibility of assets that can be used to build infrastructure for abortion services, including physical space, health information technology systems, including electronic health records, bulk purchasing of contraceptives and other clinic supplies, clinical training for staff, and community recruitment.

The lack of clear operational guidance on the abortion restriction in section 1008 has created confusion as to what

activities are proscribed by section 1008. With abortions increasingly performed at nonspecialized clinics primarily serving contraceptive and family planning clients, it is critical that the Department ensure that Federal funds are not directly or indirectly supporting, encouraging, or promoting abortion as a method of family planning and that there is a clear demarcation between Title X funded services and abortion-related services for which Title X funds cannot be used.

The current regulations suffer from additional deficiencies. They are inconsistent with the conscience protections embodied in the Church, Coats-Snowe, and Weldon Amendments; do not address the statutory requirement that Title X projects encourage family participation in minors’ decisions to seek family planning services; do not expressly address the obligation of Title X grantees and subrecipients to comply with State reporting or notification requirements; and do not expressly prohibit the use of Title X funds to encourage, promote, or advocate for abortion, to support any legislative proposal that encourages abortion, or to

support or oppose any candidate for public office. In addition, the current regulations do not require Title X providers to either offer comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site. And the current regulations fail to require grantees to provide the Department sufficient information about the subrecipients with which they (or their subrecipients) contract and any referral agencies or other partners to whom Title X funds may flow, thus precluding OPA from exercising appropriate oversight of the activities of its program and project subrecipients.

This proposed rule addresses each of the foregoing problems. First, to assist the Department in ensuring compliance with, and enforcement of, the section 1008 prohibition, the proposed rule would prohibit family planning projects from using Title X funds to provide or present abortion as a method of family planning; require assurances of compliance; eliminate the requirement that Title X projects provide abortion counseling and referral; prohibit Title X projects from performing, promoting, referring for, or supporting, abortion as a method of family planning; require physical and financial separation of Title X activities from those which are prohibited under section 1008; prohibit certain activities that encourage, promote, or advocate for abortion; and provide clarification on the appropriate use of funds in regard to the building of infrastructure.

To assist the Department in ensuring compliance with, and enforcement of, appropriations provisos and riders addressing the Title X program, the proposed rule would reiterate the voluntary, non-coercive nature of Title X services; require Title X facilities to encourage family participation in a minor's decision to seek family planning services; explicitly prohibit the use of Title X funds for any activity that in any way tends to promote public support or opposition to any legislative proposal or candidate for office; incorporate the encouragement of family participation into the regulations; clarify the affirmative duty of projects to comply with State and local laws requiring notification and reporting of criminal sexual exploitation; clarify that confidentiality of information may not be used as a rationale for noncompliance with such notification or reporting laws; and require assurances of compliance and maintenance of records.

To assist the Department in ensuring compliance with, and enforcement of,

conscience protections embodied in the Church, Coats-Snowe, and Weldon Amendments, the proposed rule would eliminate the requirement that Title X projects provide abortion counseling and referral; prohibit Title X projects from performing, promoting, referring for, or supporting, abortion as a method of family planning; and clarify that single-method service sites are permissible as components of a Title X family planning project, as long as the overall project provides a broad range of acceptable and effective family planning methods and services.

The Department believes that these proposed changes would ensure fidelity to the statutory requirements and purposes of the Title X program, the appropriations provisos and riders addressing the Title X program, and obligations and requirements established under other Federal law. They would do so by aligning the current regulations with these statutory provisions and providing the Department with the oversight tools necessary to ensure compliance.

Second, to ensure that the Title X program places an adequate emphasis on holistic family planning services that recognize the need for linkages with comprehensive primary health care providers, the proposed rule would clarify the definition of family planning; require the referral of pregnant patients for appropriate prenatal and/or social services; require the provision of comprehensive primary health services onsite or through a robust referral linkage; and update the application review criteria.

The Department expects that these proposed changes would ensure that the Title X program takes a holistic approach to family planning through the inclusion of referral to prenatal care and social services for pregnant clients and requiring either comprehensive primary health services onsite or through a robust referral linkage.

Third, to improve transparency regarding the provision of services, the proposed rule would require additional information from applicants and grantees regarding subrecipients, referral agencies, and community partners; require a clear explanation of how grantees would ensure adequate oversight and accountability for compliance and quality outcomes among subrecipients and those who serve as referrals for ancillary or core services; and require each project supported under Title X to fully account for, and justify, charges against the Title X grant. The Department anticipates that these proposed changes will provide the information necessary to ensure, and

determine compliance with the statutory provisions on, program integrity, and the legal and ethical usage of taxpayer dollars.

Title X grantees and subrecipients must comply with the Federal laws that are the subject of this proposed rulemaking. In addition to conducting outreach and providing technical assistance, OPA would have the authority to initiate compliance reviews and take appropriate action to assure compliance with the provisions in this proposed rule.

## 2. Affected Entities

This proposed rule would affect the operations of entities who may receive Title X grants or be subrecipients of such entities at some point in time. According to the 2016 Family Planning Annual Report (FPAR), there were 91 Title X grantees and 1,117 Title X subrecipients in 2016. These entities operated at 3,898 service sites, and provided services to 4,007,552 people. For purposes of this analysis, we assume that these numbers will remain the same across time. Title X services were delivered by 3,550 clinical services provider FTEs, which include 780 physician FTEs, 258 registered nurse FTEs, and 2,512 combined FTEs from physician's assistants (PAs), nurse practitioners (NPs), and certified nurse midwives (CNMs). These FTEs are associated with 1,403 Title X family planning encounters per FTE, for 5.0 million total Title X family planning encounters across these providers in 2016. Title X services are also delivered by other types of service providers, who were involved with 1.7 million Title X family planning encounters in 2016. Providers in these categories include registered nurses, public health nurses, licensed vocational or licensed practical nurses, certified nurse assistants, health educators, social workers, and clinic aides. To estimate the number of FTEs in these categories, we assume that there are 1,403 encounters per FTE for individuals in these categories, which implies approximately 1,219 FTEs in this category in 2016. To convert FTEs reported in Family Planning Annual Report (FPAR) to the number of individuals in these categories, we assume that each individual works an average of between 0.5 FTEs and 1.0 FTEs delivering Title X services, with 0.75 FTEs as our central estimate, uniformly across occupation categories. This implies that there are approximately 4,733 clinical service providers and 1,625 other service providers associated with the provision of Title X-funded family planning services. We use these estimates as our

estimate of service providers affected by this rule.

We estimate the hourly wages of individuals affected by this proposed rule using information on hourly wages in the May 2016 National Occupational Employment and Wage Estimates provided by the U.S. Bureau of Labor Statistics<sup>60</sup> and salaries from the U.S. Office of Personal Management.<sup>61</sup> We use the salary of registered nurses as a proxy for “other clinical service providers” and “other types of service providers” described above. In FPAR, PAs, NPs, and CNMs are not distinguished. Since wages in these three categories are very similar, we use the average wage across this group when discussing impacts affecting the group. We use the wages of Medical and Health Services Managers as a proxy for management staff, and the wages of Lawyers as a proxy for legal staff throughout this analysis. To value the time of potential Title X service recipients, we take the average wage across all occupations in the U.S. We assume that the federal employees affected by the proposed changes to the Title X regulation are Step 5 within their GS-level and earn locality pay for the District of Columbia, Baltimore, and Northern Virginia. We divide annual salaries by 2,087 hours to derive hourly wages. We assume that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate. Estimated hourly rates for all relevant categories are included below.

Throughout, estimates are presented in 2016 dollars. When present value and annualized values are presented, they are discounted relative to year 2016. Finally, we estimate impacts over five years starting in 2019.

TABLE 2—HOURLY WAGES

Physician .....	\$101.04
Physician Assistant .....	49.08
Nurse Practitioner .....	50.30
Certified Nurse Midwife .....	49.23
Registered Nurse .....	34.70
Medical and Health Services Managers .....	52.58
Lawyers .....	67.25
Federal employees in the District of Columbia, Balti- more, and Northern Vir- ginia (2016) .....	
GS–13 Step 5 .....	50.04
GS–14 Step 5 .....	59.13

<sup>60</sup> Bureau of Labor Statistics, Occupational Employment and Wage Statistics (May 2016), [https://www.bls.gov/oes/2016/may/oes\\_nat.htm](https://www.bls.gov/oes/2016/may/oes_nat.htm).

<sup>61</sup> Office of Personnel Management, Salary Table 2016–DCB (Jan. 2016), <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2016/DCB.pdf>.

TABLE 2—HOURLY WAGES—  
Continued

GS–15 Step 5 .....	69.56
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### 3. Estimated Costs

#### a. Learning the Rule’s Requirements

In order to comply with the regulatory changes proposed in this proposed rule, affected entities would first need to learn the rule’s requirements, review their policies in the context of these new requirements, and determine how to respond. Affected entities here would include not only existing grantees and subrecipients, but also potential grantees and subrecipients. Consistent with our view that this proposed rule would increase competition for Title X funding, we estimate that potential grantees and subrecipients range between 100% and 300% of their 2016 values, with a central estimate of 200%. This implies 182 potential grantees and 2,234 potential subrecipients. We estimate that learning the rule’s requirements and determining how to respond would require an average of 20 hours for potential grantees and an average of 10 hours for potential subrecipients, divided evenly between managers and lawyers, in the first year following publication of the final rule. As a result, using wage information provided in Table 2, this implies costs of \$3.11 million in the first year following publication of a final rule in this rulemaking.

#### b. Training

Individuals involved with delivering family planning services would also need to receive training on the requirements of the proposed rule. To convert FTEs reported in FPAR to the number of individuals that would receive training, we assume that each individual works an average of between 0.5 FTEs and 1.0 FTEs delivering Title X services, with 0.75 FTEs as our central estimate. This implies that there are approximately 4,733 clinical service providers and 1,625 other service providers who would need training in order to ensure compliance with these regulations when finalized. We estimate that these individuals would require an average of 4 hours of training in the first year following publication of this rule. In subsequent years, we assume that this new information would be incorporated into existing training requirements, resulting in no incremental burden. As a result, using wage information provided in Table 2, this would imply costs of \$2.71 million in the first year following publication of a final rule in this rulemaking.

In addition, training materials would need to be updated to reflect changes made by this rulemaking. Training materials for Title X providers are currently developed by contract. We estimate that these updates would cost approximately \$200,000. In addition, changes to training materials would require interaction with OPA employees in order to ensure that the materials are suitable for Title X providers. We estimate that this would require half of an FTE at the GS–13 level and half of an FTE at the GS–14 level. We estimate that all of these costs would be incurred in the first year following publication of the final rule. As a result, using wage information provided in Table 2, this would imply costs of \$0.43 million in the first year following publication of a final rule in this rulemaking.

#### c. Assurance Submissions

Title X grantees and subrecipients would face new assurance requirements because of this proposed rule. We estimate that these new requirements would require a lawyer to spend an average of 3 hours reviewing the assurances, 3 hours reviewing organizational policies and procedures, or to take other actions to assess compliance, and a medical and health services manager to spend 2 hours total for the same tasks the first year following publication of the final rule at each grantee and subrecipient. In subsequent years, we estimate that these new requirements would require a lawyer to spend an average of 1 hour reviewing the assurances, 3 hours reviewing organizational policies and procedures, or to take other actions to assess compliance, and a medical and health services manager to spend 2 hours total for the same tasks at each grantee and subrecipient. As a result, using wage information provided in Table 2, this would imply costs of \$1.2 million in the first year and \$0.9 million in subsequent years following publication of a final rule in this rulemaking.

#### d. Documentation of Compliance

Title X grantees and subrecipients would need to document their compliance with new requirements because of this proposed rule. First, Title X grantees are required to encourage minors to involve family in their decisions to seek family planning services. Actions taken to satisfy this requirement must be documented in a minor’s medical record. We estimate that each occurrence would require a physician assistant to spend an average of 2 minutes to make appropriate documentation in a minor’s medical

records. Approximately 20% (800,000) of the 4 million Title X clients are adolescents. We estimate that complying with the requirement to encourage family participation will result in 75% (600,000) of adolescent patients' medical records requiring appropriate documentation. As a result, using wage information provided in Table 2, this would imply costs of \$2.0 million in the each year following publication of a final rule in this rulemaking.

Second, grantees must generate reports with information related to subrecipients, referral agencies and individuals involved in the grantee's Title X project. We estimate that these new requirements would require a health services manager to spend an average of 4 hours in each year following publication of the final rule at each grantee and subrecipient. As a result, using wage information provided in Table 2, this would imply costs of \$0.3 million in each years following publication of a final rule in this rulemaking.

#### e. Monitoring and Enforcement

This proposed rule would result in additional monitoring of Title X grantees and subrecipients in order to ensure compliance with new regulatory and existing statutory requirements. We estimate that addressing additional monitoring and enforcement activities would require management staff for each grantee to spend an average of an additional 40 hours each year, and would require an average of an additional 10 hours for each Title X service provider each year. Finally, additional monitoring and enforcement require additional time spent by Federal staff. We estimate this would require 3 FTEs at the GS-13 level, 2 FTEs at the GS-14 level, and 2 FTEs at the GS-15 level. As a result, using wage information provided in Table 2, this would imply costs of \$8.53 million every year following publication of a final rule in this rulemaking.

#### f. Physical Separation

As a result of this proposed rule, Title X providers would be required to provide Title X services at facilities that physically separate from locations at which abortion as a method of family planning is provided. A Congressional Research Service<sup>62</sup> report estimates that 10% of clinics that receive Title X funding offer abortion as a method of family planning separately from their

Title X-funded activities. In addition, Title X providers may share resources with unaffiliated entities that offer abortion as a method of family planning. As a result, we estimate that between 10% and 30% of service sites, with a central estimate of 20%, would need to be evaluated to determine whether they comply with the proposed physical separation requirements. We estimate that this evaluation would require an average of an additional five hours by management staff at each of these affected service sites in the first year following publication of a final rule. Similarly, we estimate that this evaluation would affect between 10% and 30% of grantees, with a central estimate of 20%. We estimate that this would require an average of an additional forty hours, divided evenly between lawyers and management staff, at each affected grantee, in the first year following publication of a final rule. We estimate that these evaluations would determine that between 10% and 20% of service sites, with a central estimate of 15%, do not comply with physical separation requirements. At each of these service sites, we estimate that an average of between \$10,000 and \$30,000, with a central estimate of \$20,000, would be incurred to come into compliance with physical separation requirements in the first year following publication of a final rule in this rulemaking. As a result, using wage information provided in Table 2, this would imply costs of \$24.38 million in the first year following publication of a final rule.

#### g. Encouraging Parental Involvement in Family Planning Services

Title X providers are already required by the statute to encourage minors to involve their parents in family planning services. However, it is currently unclear whether this requirement is being satisfied by Title X providers. As a result, this proposed rule would require that actions be taken to satisfy this requirement and that such actions be documented in a minor's medical record. We believe that this will result in improved compliance with the statutory requirement that minors be encouraged to involve their parents in family planning services. As noted previously, we estimate that complying with the requirement to document the encouragement of family participation will result in 600,000 adolescent patients' medical records requiring documentation as a result of these requirements each year. We estimate that an additional 0–50% of these adolescents, with a central estimate of 25%, would receive additional

encouragement to involve parents as a result of a final rule in this rulemaking proceeding each year. We estimate that this would require an average of an additional ten minutes spent by a registered nurse and ten minutes spent by the service recipient in each case. These impacts would occur in each year following publication of a final rule in this rulemaking. As a result, using wage information provided in Table 2, this would imply costs of \$2.93 million in each year following publication of a final rule.

#### 4. Estimated Benefits

This proposed rule is expected to offer benefits to taxpayers and stakeholders who want assurance that their tax dollars are being used in compliance with the requirements of the Title X program. It is also expected to increase the number of entities interested in participating in Title X as grantees or subrecipient service providers and, thereby, to increase patient access to family planning services focused on optimal health outcomes for every Title X client. Third, because of the clarifying language, as well as the new provisions within this proposed rule, we also expect the quality of service to improve. Finally, the proposed rule would clarify the role of the Title X program within communities across the nation, expand and diversify the field of medical professionals who serve individuals and families, and build a better appreciation for the important services offered as a result.

#### a. Upholding and Preserving the Purpose and Goals of the Title X Program

As discussed in the preamble, the statutory prohibition on the use of Title X funds in programs/projects where abortion is a method of family planning has been in existence as long as the program, and has been reiterated through annual appropriations provisions. This proposed rule is expected to provide the Department with tools to ensure compliance with those statutory requirements. It is also expected to increase transparency and assurances that taxpayer dollars are being used as Congress intended. The Title X program, too, would benefit, as the requirement of physical and financial separation and the prohibition on infrastructure building for non-Title X purposes would ensure greater accountability for the use of Federal funds, mitigate confusion about what services the Federal government supports and funds, and increase the amount of Title X funds

<sup>62</sup> Napili, A., *Title X (Public Health Service Act) Family Planning Program*, Congressional Research Service Report RL33644 (Aug. 31, 2017).

that are used to deliver family planning services.

#### b. Patient/Provider Benefits and Protections

The Department expects that the proposed rule would have additional benefits for patients and providers. Benefits for patients are at least twofold. First, as noted above, the new regulation would require Title X service providers to offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site. This would promote seamless care and services for patients while expanding the breadth of services available within the states, territories and throughout the regions.

Second, the proposed regulation would protect certain patients from further victimization. It would do so by requiring Title X grantees and subgrantees to comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking; to develop a plan for such compliance and provide adequate training for all personnel on the subject; and to maintain records identifying the age of any minor clients served, the age of their sexual partner(s) where required by law, and the reports or notifications made to appropriate State or local law enforcement or other authorities, in accordance with such laws. These provisions would protect patients, especially minor children, from further victimization, and promote the identification and bringing to justice of those who would prey on women and children.

For providers, the proposed regulation is expected to create benefits through respect for conscience. It would do so by better aligning the Title X regulations with the statutory prohibitions on discrimination against health care entities, including individual health care providers, who refuse to participate in abortion-related activity such as counseling and referrals. Potential grantees, and subrecipients that refuse to provide abortion counseling and referrals may now be eligible and interested in applying to provide family planning services under the current Title X regulations. And the expansion of provider and family planning options would have salutary benefits for patients, including for patients who seek providers who share their religious or moral convictions.

As the Department has stated with regard to other conscience protection

actions, open communication in the doctor-patient relationship would foster better over-all care for patients. While the benefit of open and honest communication between a patient and her doctor is difficult to quantify, one study showed that even “the quality of communication [between the physician and patient] affects outcomes . . . [and] influences how often, and if at all, a patient would return to that same physician.”<sup>63</sup> Facilitating open communication between providers and their patients helps to eliminate barriers to care, particularly for minorities. Because positions of conscience are often grounded in religious influence, “[d]enying the aspect of spirituality and religion for some patients can act as a barrier. These influences can greatly affect the well-being of people. These influences were reported to be an essential element in the lives of certain migrant women which enabled them to face life with a sense of equality.”<sup>64</sup> It is important for patients seeking care to feel assured that their faith, and the principles of conscience grounded in their faith, would be honored, especially in the area of family planning. This would ensure that patients with such religious or moral convictions feel they are being treated fairly and that their religious or moral convictions are respected.<sup>65</sup>

#### C. Analysis of Regulatory Alternatives

The Department carefully considered the alternatives to this proposed rule, but concluded that none would adequately address the two categories of problems it seeks to address: (1) Insufficient compliance with the statutory requirements and the purpose and goals of the Title X program (especially those related to section 1008), the appropriations provisos and riders addressing the Title X program, and other obligations and requirements established under other Federal law; and (2) lack of transparency regarding the provision of services.

First, the Department considered maintaining the status quo and utilizing programmatic guidance and funding opportunity announcements (FOAs, also known as notices of funding opportunities) to address the problems described above. Such actions, however,

would be incompatible with part 59 as it currently exists. Specifically, Title X providers would still be required to provide counseling on, and referral for, abortion upon request, a requirement inconsistent with section 1008 that could be discouraging to, and disqualify, potential grantees and subrecipients that refuse to counsel on, or provide referrals for, abortion. The maintenance of this requirement, as noted above, potentially violates the Coats-Snowe Amendment and the Weldon Amendment. Moreover, there would be no mechanisms by which the Department would be able to verify whether grantees and their subrecipients are complying with the statutory program integrity, education, and reporting requirements. In addition, the Department would still be using application review criteria that the Department now believes fail to ensure that applicants comply with the statutory requirements of the Title X program. As detailed earlier in the preamble, application review criteria must serve as a meaningful instrument to assess the quality of the applicant and the application. The current application review criteria lack rigor, making it possible for less qualified applicants to garner high scores and affording the Department little help in selecting strong Title X grantees. While the Department has discretion under the current criteria to issue FOAs that add to criteria in the regulation, as past FOAs have done, and the Department could thus seek to strengthen the selection criteria through FOA requirements, such an approach is inadequate to ensure that appropriate criteria are fully set forth, required by regulation, and give the public notice of the long term commitment of the program.

HHS considered a variety of options to ensure that it is clear to grantees, the general public, and patients who depend upon Title X services, that Title X programs do not fund, support, or promote abortion as a method of family planning. Specifically, we considered:

(1) *Maintaining the status quo*, where only line-item financial separation from activities that treat abortion as a method of family planning is required. Currently Title X costs must be pro-rated from abortion-related activities. There is a need for greater financial oversight and accountability than is possible under the current regulations, in order to ensure that Title X funds are used only for permissible Title X services. And the current financial accounting separation leaves too much ambiguity surrounding abortion activities that may be a part of the overall services of the organization

<sup>63</sup> Fallon E. Chipidza, F. E. *et al.*, Impact of the Doctor-Patient Relationship, *The Primary Care Companion for CNS Disorders* 17(5) (Oct. 22, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4732308>.

<sup>64</sup> Scheppers, E. *et al.*, Potential Barriers to the Use of Health Services Among Ethnic Minorities: A Review, *Family Practice* (23):325, 343 (June 1, 2006), <https://academic.oup.com/fampra/article/23/3/325/475515>.

<sup>65</sup> *Id.*

or facility, although not a part of Title X-funded family planning services.

(2) *Requiring signage, brochures or separate staff and examination rooms within the same physical space to delineate* a separation between Title X and abortion-related services. The Department considered that this less restrictive option might serve the same goal as physical separation in erasing, or mitigating to some extent, the current confusion between Title X and abortion-related services. The Department determined that this less restrictive option might serve the same goal in erasing the current confusion between Title X and abortion-related services. But the Department determined that a shared reception area with materials available on both Title X family planning services and abortion-related services would continue the confusion, rather than mitigate it. Signage is often not read, and it would be likely that the segregation of staff/staff responsibilities within the same reception area would not provide sufficient distinction to end confusion. If the same physical space provides both Title X and abortion-related services, signs and separate receptionists may only partially mitigate, but not eliminate, the public perception and confusion. Different examination rooms would likely have little impact because patients would likely be unaware that the purpose of a suite of examination rooms differs by funding stream, if the entrance and reception area is shared in common. The optics and practical operation of two distinct services within a single collocated space are difficult, if not impossible to overcome.

Thus, for these reasons and the reasons for our decision to propose both physical and financial separation, we preliminarily determine that both of these options would be insufficient to ensure statutory compliance and clarity regarding such compliance. The Department seeks public comment on these alternatives.

The Department seeks comment on whether additional policies or requirements, beyond those proposed herein, should be imposed to ensure compliance. These include expanding the requirement that referral agencies that do not receive Title X funds but nevertheless provide information, counseling, or services to Title X clients be subject to the same reporting and compliance requirements as do grantees and subrecipients; and requiring organizational separation in addition to physical and financial separation.

The Department invites comment on both its proposed approach and other approaches to assure compliance with

the statutory requirements, along with the provision of holistic family planning services, age appropriate education and services for adolescents, and other services that promote healthy outcomes and provide transparency regarding the provision of services.

#### *D. Executive Order 13771*

Executive Order 13771 (January 30, 2017) requires that the costs associated with significant new regulations “to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.” This proposed rule, if finalized as proposed, is expected to be an Executive Order 13771 regulatory action. The Department estimates that this rule generates \$13.6 million in annualized costs at a 7% discount rate, discounted relative to fiscal year 2016, over a perpetual time horizon.

#### *E. Regulatory Flexibility Analysis*

As discussed above, the RFA requires agencies that issue a regulation to analyze options for regulatory relief of small entities if a proposed rule has a significant impact on a substantial number of small entities. HHS considers a rule to have a significant economic impact on a substantial number of small entities if at least 5 percent of small entities experience an impact of more than 3 percent of revenue.

We calculate the costs of the proposed changes per service site over 2019–2023. The estimated average annualized cost of the rule per service site is approximately \$5,423 using a 3 percent discount rate. We note that this figure includes all costs, and that relatively large entities are likely to experience proportionally higher costs. The U.S. Small Business Administration establishes size standards that define a small entity. According to these standards, family planning centers with revenues below \$11.0 million are considered small entities. Since the estimated costs of the proposed rule would be a small fraction of the standard by which a family planning center entity is considered a small entity, the Department anticipates that the proposed rule would not have a significant economic impact on a substantial number of small entities.

#### *F. Assessment of Federal Regulation and Policies on Families*

Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, sec. 654, 112 Stat. 2681 (1998), requires Federal departments and agencies to determine whether a proposed policy or

regulation could affect family well-being.<sup>66</sup>

Agencies must assess whether the proposed regulatory action: (1) Impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) if the regulatory action financially impacts families, are justified; (6) may be carried out by State or local government or by the family; and (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society.<sup>67</sup> If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law.

The Department believes the action taken in this proposed rule cannot be carried out by State or local government or by the family because the rule pertains to the enforcement of certain Federal laws and the administration of a Federal program.

The Secretary proposes to certify that this proposed rule has been assessed in accordance with Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277, sec. 654, 112 Stat. 2681 (1998), and would not negatively affect family well-being.

#### *G. Paperwork Reduction Act*

This proposed rule contains information collection requirements (ICRs) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. A description of these provisions is given in the following paragraphs with an estimate of the annual burden, summarized in Table 3. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.

<sup>66</sup> This section discusses the assessment required in Executive Order 12606, The Family, which was revoked on April 21, 1997. Office of Management and Budget, Memorandum from Jacob Lew, Dir., To Heads of Executive Departments, Agencies, & Independent Establishments Assessment of Federal Regulations and Policies on Families (Jan. 26, 1999), <https://www.fws.gov/policy/library/rglew.pdf>.

<sup>67</sup> Treasury and General Government Appropriations Act, 1999, Public Law 105–277, sec. 654, 112 Stat. 2681, 2681–528–2681–530 (1998).

- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the required issues under section 3506(c)(2)(A) of the PRA. The collections of information required by the proposed rule relate to § 59.2 (Definitions), § 59.5 (What requirements must be met by a family planning project?), § 59.7 (What criteria would the Department of Health and Human Services use to decide which family planning services projects to fund and in what amounts?), § 59.13 (Standards of compliance with prohibition on abortion), § 59.17 (Compliance with reporting requirements), and § 59.18 (Appropriate use of funds).

Proposed § 59.2 would apply to situations where an unemancipated minor wishes to receive services on a confidential basis and be considered on the basis of her/his own resources, as would proposed § 59.5(a)(14). In such cases, the Title X provider would be required to document in the minor's medical records the specific actions taken by the provider to encourage the minor to involve her/his family (including her/his parents or guardian) in her/his decision to seek family planning services. This documentation requirement would not apply if the Title X provider (1) believes that the minor is a victim of child abuse or incest and (2) has, consistent with applicable State or local law, reported the situation to the relevant authorities. The reporting requirement must be documented in the medical record.

Proposed § 59.5 would require Title X providers to report, in grant applications and in all required reports, information regarding subrecipients and referral agencies and individuals, including a detailed description of the extent of collaboration and a clear explanation of how the grantee would ensure adequate oversight and accountability; and to maintain records with respect to minors on the specific actions taken to encourage family participation (or the reason why such family participation was not encouraged).

Proposed § 59.7 would require Title X grant applicants to describe, within their applications, their affirmative compliance with each provision of the regulations governing the Title X program.

Proposed § 59.13 would require Title X grantees to provide assurance satisfactory to the Secretary that, as a

Title X grantee, it does not provide abortion and does not include abortion as a method of family planning. This assurance would include, at a minimum, representations (supported by documentary evidence where the Secretary requests it) as to compliance with § 59.13 and each of the requirements in §§ 59.14 through 59.16.

Proposed § 59.17 would require Title X grantees to provide appropriate documentation or other assurance satisfactory to the Secretary that it has in place and has implemented a plan to comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, and human trafficking. It would also require Title X grantees to maintain records to demonstrate compliance with the requirements of § 59.17, and make continuation of funding for Title X services contingent upon demonstrating to the Secretary that the criteria have been met.

Lastly, proposed § 59.18 would require Title X grantees to give a detailed accounting of use related to grant dollars, both in their applications for funding, and within any annually required reporting, and to fully account for, and justify, charges against the Title X grant.

**Burden of Response:** The Department is committed to leveraging existing grant, contract, annual reporting, and other Departmental forms where possible, rather than creating additional, separate forms for recipients to sign. We anticipate two separate burdens of response: (1) Assurance of compliance; and (2) documentation of compliance. The burden for the assurance of compliance is the cost of grantee and/or subrecipient staff time to (a) review the assurance language as well as the underlying language related to stated requirements; (b) to review grantee and/or subrecipient policies and procedures or to take other actions to assess grantee and/or subrecipient compliance with the requirements to which the grantee and/or subrecipient is required to assure compliance.

The labor cost would include a lawyer spending an average of 3 hours reviewing all assurances and a medical and health service manager spending an average of one hour reviewing and signing the assurances at each grantee and subrecipient. We estimate the number of grantees and subrecipients at 1,208, based on 2016 number of Title X grantees and subrecipients, as represented in Title X FPAR data. The mean hourly wage (not including benefits and overhead) for these occupations is \$67.25 per hour for the

lawyer and \$52.58 for the medical and health service manager, as noted in the table above. The labor cost is \$307,000 in the first year ( $(\$67.25 \times 3 + \$52.58 \times 1) \times 1,208$  grantees and subrecipients). We estimate that the cost, in subsequent years, would be \$145,000, which would represent an annual allotment of one hour for the lawyer and one hour for the medical and health service manager ( $(\$67.25 \times 1 + \$52.58 \times 1) \times 1,208$  grantees and subrecipients).

The Department estimates that all recipients and subrecipients will review their organizational policies and procedures or take other actions to self-assess compliance with applicable Title X requirements each year, spending an average of 4 hours doing so. The labor cost is a function of a lawyer spending an average of 3 hours and a medical and health service manager spending an average of one hour. The labor cost for self-assessing compliance, such as reviewing policies and procedures, is a total of \$307,000 each year ( $(\$67.25 \times 3 + \$52.58 \times 1) \times 1,208$  grantees and subrecipients).

The burden for the documentation of compliance is the cost of grantee and/or subrecipient staff time to (a) document in a minor's medical records actions taken to encourage the minor to involve parents in family planning services and (b) complete reports regarding information related to subrecipients, referral agencies and individuals involved in the grantee's Title X project. We assume that a physician assistant would be used to document such compliance. The mean hourly wage (not including benefits and overhead) for this occupation is \$49.08 per hour. The labor cost would require spending an average of 10 minutes to make appropriate documentation in a minor's medical records. Approximately 20% (800,000) of the 4 million Title X clients are adolescents. We estimate that complying with the requirement to encourage family participation will result in 75% (600,000) of adolescent patients' medical records requiring appropriate documentation. The labor cost will be \$982,000 each year ( $\$49.08$  per hour  $\times 2$  minutes  $\times 600,000$  adolescents).

The labor cost would also include a medical and health services manager spending an average of four hours each year to complete reports regarding information related to subrecipients, and referral agencies and individuals involved in the grantee's Title X project at each grantee and subrecipient. The labor cost will be \$254,000 each year ( $\$52.58$  per hour  $\times 4$  hours  $\times 1,208$  grantees and subrecipients).



TABLE 3—PROPOSED ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS OR BURDEN OF RESPONSE IN YEAR ONE/SUBSEQUENT YEARS FOLLOWING PUBLICATION OF THE FINAL RULE

Regulation burden	OMB control No.	Respondents responses	Hourly rate (\$)	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting (\$)
Assurance of Compliance .....	.....	1,208/1,208	63.58/62.36	8/6	9,664/7,248	614,000/452,000
Documentation of Compliance .....	.....	1,208/1,208	52.58/52.58	2/2	2,416/2,416	254,000/254,000
Documentation on Minor's Medical Records .....	.....	600,000/600,000	49.08/49.08	.03/.03	100,000/100,000	982,000/982,000
Total Cost .....	.....	.....	.....	.....	.....	5,813,000/5,424,000

The Department asks for public comment on the proposed information collection including what additional benefits may be cited as a result of this proposed rule.

Comments regarding the collection of information proposed in this proposed rule must refer to the proposed rule by name and docket number, and must be submitted to both OMB and the Docket Management Facility where indicated under **ADDRESSES** by the date specified under **DATES**.

When it issues a final rule, the Department plans to publish in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB). Publication of the control numbers notifies the public that OMB has approved the final rule's information collection requirements under the Paperwork Reduction Act of 1995.

#### List of Subjects in 42 CFR Part 59

Abortion, Birth control, Family planning, Grant programs.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR chapter I, subchapter D, part 59, as set forth below:

#### PART 59—GRANTS FOR FAMILY PLANNING SERVICES

- 1. The authority citation for part 59 is revised to read as follows:

**Authority:** 42 U.S.C. 300 through 300a–6.

- 2. Revise § 59.1 to read as follows:

##### § 59.1 To what programs do these regulations apply?

(a) The regulations of this subpart are applicable to the award of grants under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects. These projects shall consist of the educational, comprehensive medical, and social services necessary to aid

individuals to determine freely the number and spacing of their children. Unless otherwise specified, the requirements imposed by these regulations apply equally to grantees and subrecipients, grantees shall require subrecipients (and the subrecipients of subrecipients) to comply with the requirements contained in such regulations pursuant to their written contracts with such subrecipients, and shall be required to ensure that their subrecipients (and the subrecipients of subrecipients) comply with such requirements.

(b) Except for §§ 59.3, 59.4, 59.8, and 59.10, the regulations of this subpart are also applicable to the execution of contracts under section 1001 of the Public Health Service Act (42 U.S.C. 300) to assist in the establishment and operation of voluntary family planning projects, and will be applied in accordance with the applicable statutes, procedures and regulations that generally govern Federal contracts. To this extent, the use of the terms “grant,” “award,” “grantee” and “subrecipient” in applicable regulations of this subpart will apply similarly to contracts, contractors and subcontractors, and the use of the term “project” or “program” will also apply to a project or program established by means of a contract.

##### ■ 3. Amend § 59.2 by:

- a. Adding, in alphabetical order, new definitions of “Family Planning” and “Grantee”;
- b. Revising the definition of “Low income family”; and
- c. Adding, in alphabetical order, new definitions of “Program and project”, and “Subrecipient”.

The revisions and additions read as follows:

##### § 59.2 Definitions.

\* \* \* \* \*

*Family planning* means the voluntary process of identifying goals and developing a plan for the number and spacing of children and the means by

which those goals may be achieved. These means include a broad range of acceptable and effective choices, which may range from choosing not to have sex to the use of other family planning methods and services to limit or enhance the likelihood of conception (including contraceptive methods and natural family planning or other fertility awareness-based methods) and the management of infertility (including adoption). Family planning services include preconceptional counseling, education, and general reproductive and fertility health care to improve maternal and infant outcomes, and the health of women, men, and adolescents who seek family planning services, and the prevention, diagnosis, and treatment of infections and diseases which may threaten childbearing capability or the health of the individual, sexual partners, and potential future children). Family planning and family planning services are never coercive and are strictly voluntary. Family planning does not include postconception care (including obstetric or prenatal care) or abortion as a method of family planning. Family planning, as supported under this subpart, should reduce the incidence of abortion.

*Grantee* means the entity that receives Federal financial assistance by means of a grant, and assumes legal and financial responsibility and accountability for the awarded funds, for the performance of the activities approved for funding and for reporting required information to the Office of Population Affairs.

*Low income family* means a family whose total income does not exceed 100 percent of the most recent Poverty Guidelines issued pursuant to 42 U.S.C. 9902(2). “Low-income family” also includes members of families whose annual income exceeds this amount, but who, as determined by the project director, are unable, for good reasons, to pay for family planning services. For example:



(1) Unemancipated minors who wish to receive services on a confidential basis must be considered on the basis of their own resources, provided that the Title X provider has documented in the minor's medical records the specific actions taken by the provider to encourage the minor to involve her/his family (including her/his parents or guardian) in her/his decision to seek family planning services, except that documentation of such encouragement is not to be required if the Title X provider has documented in the medical record:

(i) That it suspects the minor to be the victim of child abuse or incest; and

(ii) That it has, consistent with and if permitted or required by applicable State or local law, reported the situation to the relevant authorities.

(2) With respect to contraceptive services, a woman can be considered from a "low-income family" if she has health insurance coverage through an employer which does not provide the contraceptive services sought by the woman because it has a sincerely held religious or moral objection to providing such coverage.

\* \* \* \* \*

*Program* and *project* are used interchangeably and mean a plan or sequence of activities that fulfills the requirements elaborated in a Title X funding announcement and may be comprised of, and implemented by a single grantee or subrecipient(s), or a group of partnering providers who, under a grantee or subrecipient, deliver comprehensive family planning services that satisfy the requirements of the grant within a service area.

\* \* \* \* \*

*Subrecipient* means any entity that provides family planning services with Title X funds under a written agreement with a grantee or another subrecipient. These entities may also be referred to as "delegates" or "contract agencies."

■ 4. Revise § 59.3 to read as follows:

**§ 59.3 Who is eligible to apply for a family planning services grant?**

Any public or nonprofit private entity in a State may apply for a grant under this subpart.

■ 5. Amend § 59.5 by:

■ a. Revising paragraphs (a)(1) and (5);

■ b. Removing paragraph (a)(10)(i);

■ c. Redesignating paragraph (a)(10)(ii) as (a)(10);

■ d. Adding paragraphs (a)(12), (13), and (14); and

■ e. Revising paragraphs (b)(1) and (8).

The revisions and additions read as follows:

**§ 59.5 What requirements must be met by a family planning project?**

(a) \* \* \*

(1) Provide a broad range of acceptable and effective family planning methods (including contraceptives, natural family planning and other fertility-awareness based methods) and services (including infertility services, including adoption, and services for adolescents). Such projects are not required to provide every acceptable and effective family planning method or service. A participating entity may offer only a single method or a limited number of methods of family planning as long as the entire project offers a broad range of such family planning methods and services.

\* \* \* \* \*

(5) Not provide, promote, refer for, support, or present abortion as a method of family planning.

\* \* \* \* \*

(12) In order to promote holistic health and provide seamless care, Title X service providers should offer either comprehensive primary health services onsite or have a robust referral linkage with primary health providers who are in close physical proximity to the Title X site.

(13) Ensure transparency in the delivery of services by reporting the following information in grant applications and all required reports:

(i) Subrecipients and referral agencies and individuals by name, location, expertise and services provided or to be provided;

(ii) Detailed description of the extent of the collaboration with subrecipients, referral agencies and individuals, as well as less formal partners within the community, in order to demonstrate a seamless continuum of care for clients; and

(iii) Clear explanation of how the grantee will ensure adequate oversight and accountability for quality and effectiveness of outcomes among subrecipients and those who serve as referrals for ancillary or core services.

(14) Encourage family participation in the decision of minors to seek family planning services and ensure that the records maintained with respect to each minor document the specific actions taken to encourage such family participation (or the specific reason why such family participation was not encouraged).

(b) \* \* \*

(1) Provide for medical services related to family planning (including physician's consultation, examination prescription, and continuing supervision, laboratory examination,

contraceptive supplies) and necessary referral to other medical facilities when medically indicated, consistent with § 59.14(a), and provide for the effective usage of contraceptive devices and practices.

\* \* \* \* \*

(8) Except as provided in § 59.14(a), provide for coordination and use of referral arrangements with other providers of health care services, local health and welfare departments, hospitals, voluntary agencies, and health services projects supported by other federal programs.

\* \* \* \* \*

■ 6. Revise § 59.7 to read as follows:

**§ 59.7 What criteria will the Department of Health and Human Services use to decide which family planning services projects to fund and in what amounts?**

(a) Within the limits of funds available for these purposes, the Secretary may award grants for the establishment and operation of those projects which will, in the Department's judgment, best promote the purposes of statutory provisions applicable to the Title X program.

(b) Any grant applications that do not clearly address how the proposal will satisfy the requirements of this regulation shall not proceed to the competitive review process, but shall be deemed ineligible for funding. The Department will explicitly summarize each provision of the regulation (or include the entire regulation) within the Funding Announcement, and shall require each applicant to describe their plans for affirmative compliance with each provision.

(c) If the proposal is deemed compliant with this regulation, then applicants will be subject to criteria for selection within the competitive grant review process, including:

(1) The degree to which the applicant's project plan adheres to the Title X statutory purpose and goals for the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents), which meet all of the statutory and regulatory requirements and restrictions, and where none of the funds . . . shall be used in programs where abortion is a method of family planning.

(2) The degree to which the relative need of the applicant is demonstrated in the proposal and the applicant shows capacity to make rapid and effective use of grant funds, including and especially

among a broad range of partners and diverse subrecipients and referral individuals and organizations, and among non-traditional Title X partnering organizations.

(3) The degree to which the applicant takes into account the number of patients to be served while also targeting areas that are more sparsely populated and/or places in which there are not adequate family planning services available.

(4) The extent to which family planning services are needed locally and the applicant proposes innovative ways to provide services to unserved or underserved patients.

■ 7. Revise § 59.11 to read as follows:

**§ 59.11 Confidentiality.**

All information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and not be disclosed without the individual's documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality; concern with respect to the confidentiality of information, however, may not be used as a rationale for noncompliance with laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence, human trafficking, or similar reporting laws. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

■ 8. Add §§ 59.13 through 59.19 to subpart A to read as follows:

\* \* \* \* \*

59.13 Standards of compliance with prohibition on abortion.

59.14 Prohibition on referral for abortion.

59.15 Maintenance of physical and financial separation.

59.16 Prohibition on activities that encourage, promote or advocate for abortion.

59.17 Compliance with reporting requirements.

59.18 Appropriate use of funds.

59.19 Transition provisions.

**§ 59.13 Standards of compliance with prohibition on abortion.**

A project may not receive funds under this subpart unless it provides assurance satisfactory to the Secretary that, as a Title X grantee, it does not provide abortion and does not include abortion as a method of family planning. Such assurance must also include, at a minimum, representations (supported by documentary evidence where the Secretary requests it) as to compliance

with this section and each of the requirements in §§ 59.14 through 59.16. A project supported under this subpart must comply with such requirements at all times during the project period.

**§ 59.14 Prohibition on referral for abortion.**

(a) *Prohibition on referral for abortion.* A Title X project may not perform, promote, refer for, or support, abortion as a method of family planning, nor take any other affirmative action to assist a patient to secure such an abortion. If asked, a medical doctor may provide a list of licensed, qualified, comprehensive health service providers (some, but not all, of which also provide abortion, in addition to comprehensive prenatal care), but only if a woman who is currently pregnant clearly states that she has already decided to have an abortion. This list is only to be provided to a woman who, of her own accord, makes such a request. The list shall not identify the providers who perform abortion as such. All other patients will be provided, upon request, a list of licensed, qualified, comprehensive health service providers (including providers of prenatal care) who do not provide abortion as a part of their services.

(b) *Referral for prenatal services.* Because Title X funds are intended only for family planning, once a client served by a Title X project is medically verified as pregnant, she must be referred for appropriate prenatal and/or social services (such as prenatal care and delivery, infant care, foster care, or adoption), and shall be given assistance with setting up a referral appointment to optimize the health of the mother and unborn child. She must also be provided with information necessary to protect her health and the health of the unborn child until such a time as the referral appointment is kept. In cases in which emergency care is required, the Title X project shall only be required to refer the client immediately to an appropriate provider of emergency medical services.

(c) *Use of permitted referrals to encourage abortion.* A Title X project may not use prenatal, social service, emergency medical, or other referrals as an indirect means of encouraging or promoting abortion as a method of family planning. Recognizing, however, the duty of a physician to promote patient safety, a doctor may, if asked, provide a list of licensed, qualified, comprehensive health service providers (some of which also provide abortion, in addition to comprehensive prenatal care). Such information related to abortion is permitted only if a woman who is currently pregnant clearly states

that she has already decided to have an abortion.

(d) *Provision of medically necessary information.* Nothing in this subpart shall be construed as prohibiting the provision of information to a project client that is medically necessary to assess the risks and benefits of different methods of contraception in the course of selecting a method, provided that the provision of such information does not otherwise promote abortion as a method of family planning.

(e) *Examples.* (1) A pregnant client of a Title X project requests prenatal care services, which project personnel are qualified to provide. Because the provision of such services is outside the scope of family planning supported by Title X, the client must be referred to appropriate providers of prenatal care. Provision of prenatal services within the Title X project is inconsistent with this part.

(2) A Title X project discovers an ectopic pregnancy in the course of conducting a physical examination of a client. Referral arrangements for emergency medical care are immediately provided. Such action complies with the requirements of paragraph (b) of this section.

(3) After receiving comprehensive care at a Title X provider, a pregnant woman decides to have an abortion, is concerned about her safety during the procedure, and asks the Title X project to provide her with a referral to an abortion provider. The Title X project tells her that it does not refer for abortion but provides her a list of licensed, qualified health care professionals in the area (some of whom provide abortion as part of their primary health care services). The list includes, among other licensed, qualified, comprehensive health care providers, a local health care professional who provides abortions in addition to comprehensive prenatal care. Inclusion of this provider/clinic on the list is consistent with paragraph (a) of this section.

(4) A pregnant woman asks the Title X project to provide her with a list of abortion providers in the area. The project tells her that it does not refer for abortion and provides her a list that consists of hospitals and clinics and other providers that provide prenatal care and abortions. None of the entries on the list are providers that principally provide abortions. Although there are several appropriate licensed, qualified providers of prenatal care in the area that do not provide or refer for abortions, none of these providers are included on the list. Provision of the list

is inconsistent with paragraphs (a) and (c) of this section.

(5) A pregnant woman requests information on abortion and asks the Title X project to refer her for an abortion. The project counselor tells her that the project does not consider abortion a method of family planning and therefore does not refer for abortion. The counselor further tells the client that the project can help her to obtain prenatal care and necessary social services, and provides her with a list of such providers from which the client may choose. Such actions are consistent with paragraph (a) of this section.

(6) Title X project staff provide contraceptive counseling to a client in order to assist her in selecting a contraceptive method. In discussing oral contraceptives, the project counselor provides the client with information contained in the patient package insert accompanying a brand of oral contraceptives, referring to abortion only in the context of a discussion of the relative safety of various contraceptive methods and in no way promoting abortion as a method of family planning. The provision of this information does not constitute abortion referral.

#### **§ 59.15 Maintenance of physical and financial separation.**

A Title X project must be organized so that it is physically and financially separate, as determined in accordance with the review established in this section, from activities which are prohibited under section 1008 of the Act and §§ 59.13, 59.14, and 59.16 from inclusion in the Title X program. In order to be physically and financially separate, a Title X project must have an objective integrity and independence from prohibited activities. Mere bookkeeping separation of Title X funds from other monies is not sufficient. The Secretary will determine whether such objective integrity and independence exist based on a review of facts and circumstances. Factors relevant to this determination shall include:

(a) The existence of separate, accurate accounting records;

(b) The degree of separation from facilities (e.g., treatment, consultation, examination and waiting rooms, office entrances and exits, shared phone numbers, email addresses, educational services, and websites) in which prohibited activities occur and the extent of such prohibited activities;

(c) The existence of separate personnel, electronic or paper-based health care records, and workstations; and

(d) The extent to which signs and other forms of identification of the Title

X project are present, and signs and material referencing or promoting abortion are absent.

#### **§ 59.16 Prohibition on activities that encourage, promote or advocate for abortion.**

(a) *Prohibition on activities that encourage abortion.* A Title X project may not encourage, promote or advocate abortion as a method of family planning. This restriction prohibits actions to assist women to obtain abortions or to increase the availability or accessibility of abortion for family planning purposes. Prohibited actions include the use of Title X project funds for the following:

(1) Lobbying for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

(2) Providing speakers or educators who, in the Title X project or the use of Title X project funds, promote the use of abortion as a method of family planning;

(3) Attending events or conferences during which the grantee or subrecipient engages in lobbying;

(4) Paying dues to any group that, as a more than insignificant part of its activities, advocates abortion as a method of family planning and does not separately collect and segregate funds used for lobbying purposes;

(5) Using legal action to make abortion available in any way as a method of family planning; and

(6) Developing or disseminating in any way materials (including printed matter, audiovisual materials and web-based materials) advocating abortion as a method of family planning or otherwise promoting a favorable attitude toward abortion.

(b) *Examples.* (1) Clients at a Title X project are given brochures advertising a clinic that provides abortions, or such brochures are available in any fashion at a Title X clinic (sitting on a table or available or visible within the same space where Title X services are provided). Provision or availability of the brochure violates paragraph (a)(6) of this section.

(2) A Title X project makes an appointment for a pregnant client with an abortion clinic. The Title X project has violated paragraph (a) of this section.

(3) A Title X project pays dues with project funds to a state association that, among other activities, lobbies at state and local levels for the passage of legislation to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its

annual budget on such activity. Payment of dues to the association violates paragraph (a)(4) of this section.

(4) An organization conducts a number of activities, including operating a Title X project. The organization uses non-project funds to pay dues to an association that, among other activities, engages in lobbying to protect and expand the legal availability of abortion as a method of family planning. The association spends a significant amount of its annual budget on such activity. Payment of dues to the association by the organization does not violate paragraph (a)(4) of this section.

(5) An organization that operates a Title X project engages in lobbying to increase the legal availability of abortion as a method of family planning. The project itself engages in no such activities, and the facilities and funds of the project are kept separate from prohibited activities. The project is not in violation of paragraph (a)(1) of this section.

(6) Employees of a Title X project write their legislative representatives in support of legislation seeking to expand the legal availability of abortion, in their personal capacities and using no project funds to do so. The Title X project has not violated paragraph (a)(1) of this section.

(7) On her own time and at her own expense, a Title X project employee speaks before a legislative body in support of abortion as a method of family planning. The Title X project has not violated paragraph (a) of this section.

(8) A Title X project uses Title X funds for sex education classes in a local high school. During the course of the class, information is distributed to students that includes abortion as a method of family planning. The Title X project has violated paragraph (a) of this section.

#### **§ 59.17 Compliance with reporting requirements.**

(a) Title X projects shall comply with all State and local laws requiring notification or reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence or human trafficking (collectively, "State notification laws").

(b) A project may not receive funds under this subpart unless it provides appropriate documentation or other assurance satisfactory to the Secretary that it:

(1) Has in place and implemented a plan to comply with State laws. Such plan shall include, at a minimum, policies and procedures with respect to

such notification and reporting that include:

(i) A summary of obligations of the project or organizations and individuals carrying out the project under State notification laws, including any obligation to inquire or determine the age of a minor client or of a minor client's sexual partner(s);

(ii) Timely and adequate annual training of all individuals (whether or not they are employees) serving clients for or on behalf of the project regarding State notification laws; policies and procedures of the Title X project and/or provider with respect to notification and reporting of child abuse, child molestation, sexual abuse, rape, incest, intimate partner violence and human trafficking; and compliance with State notification laws.

(iii) Protocols to ensure that every minor who presents for treatment is provided counseling on how to resist attempts to coerce them into engaging in sexual activities; and

(iv) Commitment to conduct a preliminary screening of any teen who presents with a sexually transmitted disease (STD), pregnancy, or any suspicion of abuse, in order to rule out victimization of a minor. Such screening would be required with respect to any individual who is under the age of consent in the state of the proposed service area. Projects are permitted to diagnose, test for, and treat STDs.

(2) Maintains records to demonstrate compliance with each of the requirements set forth in paragraph (b)(1) of this section, including which:

(i) Indicate the age of minor clients;

(ii) Indicate the age of the minor client's sexual partners where required by law, and

(iii) Document each notification or report made pursuant to such State notification laws.

(c) Continuation of grantee or subrecipient funding for Title X services is contingent upon demonstrating to the satisfaction of the Secretary that the criteria have been met.

(d) The Secretary may review records maintained by a grantee or subrecipient for the sole purpose of ensuring compliance with the requirements of this section.

#### **§ 59.18 Appropriate use of funds.**

(a) Title X funds shall not be used to build infrastructure for purposes prohibited with these funds, such as support for the abortion business of a Title X grantee or subrecipient. Funds shall only be used for the purposes, and in direct implementation of the funded project, expressly permitted with this regulation and authorized within section 1001 of the Public Health Service Act, that is, to offer family planning methods and services. Grantees must use the majority of grant funds to provide direct services to clients, and each grantee shall give a detailed accounting for the use of grant dollars, both in their applications for funding, and within any annually required reporting. Further, any significant change in the usage of grant funds within the grant cycle shall not be undertaken without the approval of the Office of Population Affairs.

(b) Title X funds shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public

support or opposition to any legislative proposal or candidate for office.

(c) Each project supported under Title X shall fully account for, and justify, charges against the Title X grant. The Department shall put additional protections in place to prevent any possible misuse of Title X funds through misbilling or overbilling, or any other unallowable expense.

#### **§ 59.19 Transition provisions.**

(a) In accordance with § 59.15, with respect to the requirement for physical separation that is effective after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], covered entities must comply with the applicable new requirements [DATE 1 year after the publication of the final rule].

(b) In accordance with § 59.15, with respect to the requirement for financial separation is effective after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], covered entities must comply with the applicable new requirements no later than [DATE 60 days AFTER PUBLICATION OF THE FINAL RULE].

(c) In regards to all other requirements are effective after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], covered entities must comply no later than 60 days following publication of the final rule.

Dated: May 24, 2018.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2018-11673 Filed 5-29-18; 4:15 pm]

**BILLING CODE 4150-34-P**



# FEDERAL REGISTER

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Vol. 83

Friday,

No. 106

June 1, 2018

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## Part III

## Department of Labor

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Occupational Safety and Health Administration

29 CFR Part 1910

Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry; Proposed Rules

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

[Docket ID—OSHA—H005C—2006—0870]

RIN 1218—AB76

## Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule.

**SUMMARY:** OSHA is proposing a nine-month extension of the compliance date for certain ancillary requirements of the general industry beryllium standard (from March 12, 2018 to December 12, 2018). This proposal would not extend the compliance date for the permissible exposure limits (PELs), exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions, or for any provisions for which the standard already establishes compliance dates in 2019 and 2020. OSHA has preliminarily determined that this proposal will maintain essential safety and health protections for workers while OSHA prepares an NPRM to clarify specific provisions of the beryllium standard that would both maintain the standard's worker safety and health protections and address employers' compliance burdens.

**DATES:** Submit comments to this proposed rule, hearing requests, and other information by July 2, 2018. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments, hearing requests, and other material, identified by Docket No. OSHA—H005C—2006—0870, using any of the following methods:

*Electronically:* Submit comments and attachments, as well as hearing requests and other information, electronically at <https://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Follow the instructions online for submitting comments. Note that this docket may include several different **Federal Register** notices involving active rulemakings, so it is extremely important to select the correct notice or its ID number when submitting comments for this rulemaking. After accessing “all documents and comments” in the docket (OSHA—H005C—2006—0870), check the

“proposed rule” box in the column headed “Document Type,” find the document posted on the date of publication of this document, and click the “Submit a Comment” link. Additional instructions for submitting comments are available from the <https://www.regulations.gov> homepage.

*Facsimile:* OSHA allows facsimile transmission of comments that are 10 pages or fewer in length (including attachments). Fax these documents to the OSHA Docket Office at (202) 693–1648. OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Docket No. OSHA—H005C—2006—0870, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. These attachments must clearly identify the sender's name, the date, the subject, and the docket number (OSHA—H005C—2006—0870) so that the Docket Office can attach them to the appropriate document.

*Regular mail, express delivery, hand delivery, and messenger (courier) service:* Submit comments and any additional material to the OSHA Docket Office, Docket No. OSHA—H005C—2006—0870, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–2350 (TTY (877) 889–5627). Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The Docket Office will accept deliveries (express delivery, hand delivery, messenger service) during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

*Instructions:* All submissions must include the Agency's name, the title of the rulemaking (Limited Extension of Select Compliance Dates for Occupational Exposure to Beryllium in General Industry), and the docket number (OSHA—H005C—2006—0870). OSHA will place comments and other material, including any personal information, in the public docket without revision, and the comments and other material will be available online at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about

themselves or others), such as Social Security Numbers, birth dates, and medical data.

In this preamble, OSHA cites to documents in Docket No. OSHA—H005C—2006—0870, the docket for this rulemaking. To simplify these document cites, OSHA uses “Document ID” followed by the last four digits of the full docket identification number. For example, if a document's full docket identification number is ID—OSHA—H005C—2006—0870—1234, the citation used in this preamble would be Document ID 1234. The docket is available at <https://www.regulations.gov>, the Federal eRulemaking Portal.

*Docket:* To read or download comments or other material in the docket, go to <https://www.regulations.gov> or to the OSHA Docket Office at the above address. The electronic docket for this proposed rule established at <https://www.regulations.gov> contains most of the documents in the docket. However, some information (e.g., copyrighted material) is not available publicly to read or download through this website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

**FOR FURTHER INFORMATION CONTACT:**

*Press inquiries:* Mr. Frank Meilinger, OSHA Office of Communications; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General information and technical inquiries:* William Perry or Maureen Ruskin, Directorate of Standards and Guidance; telephone (202) 693–1950; email: [perry.bill@dol.gov](mailto:perry.bill@dol.gov).

*Copies of this **Federal Register** document and news releases:* Electronic copies of these documents are available at OSHA's web page at <https://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:****I. Explanation of Regulatory Action***A. Introduction*

OSHA is publishing this Notice of Proposed Rulemaking (NPRM) to propose a nine-month extension of the compliance date for certain requirements of the general industry beryllium standard (29 CFR 1910.1024), which was promulgated on January 9, 2017 (82 FR 2470). The standard provides that the compliance date for the affected requirements is March 12, 2018, but on March 2, 2018, OSHA issued a memorandum stating that no provisions of the standard would be enforced until May 11, 2018. Then, on

May 9, 2018, OSHA issued an enforcement memorandum stating that the ancillary requirements that are affected by the planned NPRM will not be enforced until June 25, 2018. Neither memorandum was published in the **Federal Register**.

This proposed action would revise the standard to extend the compliance date for the affected provisions until December 12, 2018. OSHA is proposing to extend the compliance date for select ancillary requirements of the general industry standard, but this proposal would not extend the compliance date for PELs, exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions, or for any provisions for which the standard already establishes compliance dates in 2019 and 2020. It also would not affect the applicability of the scope and application paragraph or the definitions, except to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that will be proposed in the later substantive rulemaking NPRM (Document ID 2156).<sup>1</sup> As explained in more detail in the following sections, OSHA believes the proposed action is necessary to provide sufficient time for preparation and publication of a planned NPRM that will affect the provisions of the rule covered by this proposed extension.

As described in Section I.D, Explanation of Proposed Action and Request for Comment, OSHA is planning to propose revisions to the beryllium standard in accordance with a settlement agreement entered into with stakeholders on April 24, 2018 (Document ID 2156). The upcoming rulemaking will affect select ancillary provisions in the standard. OSHA is concerned that beginning enforcement of those provisions before publication of the substantive proposal may result in employer confusion or improper implementation of the relevant provisions of the rule.

### B. Summary of Economic Impact

This proposed rule is not economically significant. OSHA is revising 29 CFR 1910.1024(o)(2) to extend the deadline for compliance with certain provisions of the beryllium rule for nine months. This proposed rule is expected to be an Executive Order (E.O.) 13771 deregulatory action. Details on OSHA’s cost/cost savings estimates for this proposed rule can be found in the rule’s preliminary economic analysis in

the “Agency Determinations” section of this preamble. OSHA has estimated that, at a 3 percent discount rate over 10 years, there are net annual cost savings of \$0.76 million per year for this proposed rule; at a discount rate of 7 percent there are net annual cost savings of \$1.73 million per year. When the Department uses a perpetual time horizon, the annualized cost savings of the proposed rule is \$1.65 million with 7 percent discounting.

### C. Regulatory Background

OSHA published an NPRM for occupational exposure to beryllium in the **Federal Register** on August 7, 2015 (80 FR 47566). In the NPRM, the Agency made a preliminary determination that employees exposed to beryllium and beryllium compounds at the previous PEL faced a significant risk to their health and that promulgating the proposed standard would substantially reduce that risk. The NPRM invited interested stakeholders to submit comments on a variety of issues.

OSHA held a public hearing in Washington, DC, on March 21 and 22, 2016. The Agency heard testimony from several organizations, including public health groups, industry representatives, and labor unions. Following the hearing, participants had an opportunity to submit additional evidence and data, as well as final briefs, arguments, and summations (Document ID 1756, Tr. 326).

On January 9, 2017, after considering the entire record, OSHA issued a final rule with three separate standards for general industry, shipyards, and construction, in order to tailor requirements to the circumstances found in these sectors. See 82 FR 2470 (January 9, 2017). The final beryllium standards established new PELs of 0.2 µg/m<sup>3</sup> as an 8-hour time-weighted average (TWA) and 2.0 µg/m<sup>3</sup> as a short-term exposure limit (STEL) determined over a sampling period of 15 minutes. The standards also established other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, medical removal, hazard communication, and recordkeeping. The general industry standard established a compliance date (when obligations of the standard commence and become enforceable) of March 12, 2018, for all obligations except change rooms and showers required by paragraph (i) (compliance date of March 11, 2019) and engineering controls required by

paragraph (f) (compliance date of March 10, 2020). See 29 CFR 1910.1024(o)(2).

Following promulgation of the final standard, representatives of general industry employers, including Materion Corporation, along with representatives of the coal-fired power industry and the aluminum production industry, challenged the rule in federal court and approached OSHA with questions and concerns about some of the provisions in the final rule.

In response to the stakeholder feedback, and to resolve the pending litigation, OSHA is planning to propose revisions to certain provisions in the general industry standard and rely on its de minimis policy while the rulemaking is pending so that employers may comply with the proposed provisions without risk of a citation.<sup>2</sup> The revisions OSHA plans to propose are generally designed to clarify the standard in response to stakeholder questions or to simplify compliance, while in all cases maintaining a high degree of protection from the adverse health effects of beryllium exposure (Document ID 2156). For example, the proposed changes include modifying certain definitions to clarify the meaning of the terms, including a list of operations that trigger the requirement for beryllium work areas so that employers understand when they must set up a beryllium work area, and modifying the disposal and recycling provisions to clarify that items designated for disposal must be in containers that prevent the release of beryllium under ordinary conditions rather than sealed, impermeable containers. The proposed compliance date extension will give OSHA time to prepare and publish the planned NPRM to amend the standard before employers must comply with the affected provisions of the rule so that, until any such changes are finalized, employers may comply with the proposed provisions without risk of a citation.

<sup>2</sup> The OSH Act allows the Secretary of Labor to prescribe procedures to issue notices instead of citations for “de minimis violations” that have no direct or immediate relationship to safety or health. 29 U.S.C. 658(a). The Secretary’s de minimis policy is set forth in its Field Operations Manual (FOM), available at [https://www.osha.gov/OshDoc/ Directive\\_pdf/CPL\\_02-00-160.pdf](https://www.osha.gov/OshDoc/ Directive_pdf/CPL_02-00-160.pdf). Under the de minimis policy, compliance “with a proposed OSHA standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection and the employer’s action clearly provides equal or greater employee protection” is a de minimis condition. De minimis conditions result in no citation or penalties. See 29 CFR 1903.15 (“Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.”); <https://www.osha.gov/Publications/osh3000.pdf>.

<sup>1</sup> CBD is the acronym for chronic beryllium disease.

#### *D. Explanation of Proposed Action and Request for Comment*

OSHA is proposing to revise the “Dates” provision of the beryllium standard (at 29 CFR 1910.1024(o)(2)) to extend the deadline for compliance with most of the ancillary requirements of the standard from March 12, 2018, to December 12, 2018. As previously discussed, this proposed action would provide time for preparation and publication of a planned NPRM that will impact the provisions covered by this extension so that employers may comply with the proposed provisions without risk of a citation (Document ID 2156).

OSHA will be proposing modifications to ancillary provisions of the beryllium standard in response to stakeholder questions and concerns. These concerns were raised during lengthy settlement discussions among OSHA, the United Steelworkers of America (the union representing the largest proportion of beryllium-exposed workers), Materion Corporation (the leading producer of beryllium and beryllium products), some of Materion’s customers, and the National Association of Manufacturers (Document ID 2156). In addition to agreeing on the proposed revisions, the parties agreed that if OSHA was not able to finalize the substantive NPRM before December 12, 2018, compliance with the beryllium standard as modified by the proposal would be accepted as compliance with the standard under OSHA’s de minimis policy (Document ID 2156).

The revisions OSHA plans to propose are primarily clarifying or simplifying in nature (Document ID 2156). They are designed to enhance worker protections by ensuring that the rule is well-understood and compliance is simple and straightforward. All of the provisions covered by this extension will be affected by the planned rulemaking.

OSHA has preliminarily determined that it would be undesirable, for both the Agency and the regulated community, to begin enforcement of the ancillary provisions of the standard that will be affected by the upcoming rulemaking. Enforcing compliance with the relevant ancillary requirements, as currently written, before publishing the agreed-upon proposal, is likely to result in employers taking unnecessary measures to comply with provisions that OSHA intends to clarify. This proposed compliance date extension will give OSHA time to prepare and publish the planned substantive NPRM to amend the standard before employers must comply with the affected

provisions of the rule, at which point OSHA may rely on its de minimis policy and employers may comply with the proposed provisions without risk of a citation.

Therefore, OSHA is proposing this short extension of the compliance date for the following provisions: Beryllium work areas and regulated areas (paragraph (e)), written exposure control plans (paragraph (f)(1)), personal protective clothing and equipment (paragraph (h)), hygiene areas and practices (paragraph (i) except for change rooms and showers; see below), housekeeping (paragraph (j)), communication of hazards (paragraph (m)), and recordkeeping (paragraph (n)).

Not every provision in the standard will be covered by the proposed extension. First, the proposal will not affect the compliance date for the updated TWA PEL and STEL (paragraph (c)), exposure assessment (paragraph (d)), or respiratory protection (paragraph (g)). These paragraphs are not affected by the regulatory revisions OSHA plans to propose, and are essential to ensure employers are controlling worker exposures to beryllium while OSHA works on the rulemaking to amend other aspects of the standard. The compliance dates for paragraphs (c), (d), and (g) are unaffected by this proposal.

Second, the proposal will not affect the compliance date for medical surveillance (paragraph (k)) or medical removal protection (paragraph (l)). Although OSHA plans to propose clarifications to certain definitions pertaining to paragraph (k) (Medical Surveillance), OSHA has preliminarily determined that the proposed clarifications would not substantially affect the actions that employers must take to comply with the medical surveillance provisions of the beryllium standard (Document ID 2156).<sup>3</sup> OSHA has also preliminarily determined that access to medical surveillance should not be delayed because, as explained in the preamble to the 2017 beryllium rule, the early identification of beryllium-related health effects can contribute to effective management of early signs and symptoms (82 FR at 2546, 2720–2721; Document ID 1756, Tr. 111, 132). Therefore, the compliance date for medical surveillance (paragraph (k)) is

<sup>3</sup> OSHA plans to propose revisions to the definition of “CBD diagnostic center” to prevent confusion about staffing requirements for CBD diagnostic centers. OSHA plans to propose a change to the definition of “chronic beryllium disease” to narrow the scope and avoid confusion with other lung diseases. OSHA also plans to propose a change to the definition of “confirmed positive” to clarify that the results must be obtained within the 30 day follow-up test period required after a first abnormal or borderline BeLPT test result (Document ID 2156).

unaffected by this proposal. Until the substantive rulemaking is proposed, however, employers may comply with the medical surveillance provisions as clarified by the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that OSHA has agreed to propose in the substantive rulemaking NPRM, which are available in the docket (Document ID 2156) and in OSHA’s interim enforcement guidance on the OSHA website (<https://www.osha.gov/laws-regs/standardinterpretations/2018-05-09>). OSHA has also determined, preliminarily, that this compliance date extension should have no effect on medical removal protection (paragraph (l)), because compliance with medical removal protection is not directly affected by the changes OSHA is planning to propose to the rule (Document ID 2156).

Third, the proposal will not affect paragraph (a), Scope and application. It will also not affect paragraph (b), Definitions, except as described above to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that are included in the settlement agreement and will be proposed in the substantive rulemaking NPRM (Document ID 2156).

Finally, the compliance date for change rooms and showers required by paragraph (i) of the standard will remain March 11, 2019 (29 CFR 1910.1024(o)(2)(i)), and the compliance date to implement engineering controls required by paragraph (f) of the standard will remain March 10, 2020 (29 CFR 1910.1024(o)(2)(ii)). OSHA expects to publish the planned NPRM well in advance of these compliance dates.

Although OSHA is proposing to extend the compliance date for paragraph (m), Communication of Hazards—which includes specific labeling requirements—manufacturers, importers, and employers are still obligated to label hazardous chemicals containing beryllium, ensure that safety data sheets are readily available, and train workers on the hazards of beryllium in accordance with the Hazard Communication Standard (HCS), 29 CFR 1910.1200. OSHA encourages employers to review their hazard communication program, employee training, and other hazard communication practices (such as workplace labeling) to ensure continued compliance with the HCS. Also, while OSHA is proposing to extend the compliance date for the recordkeeping requirements of paragraph (n), OSHA expects employers to continue to comply with 29 CFR 1910.1020 (Access



to Employee Exposure and Medical Records).

OSHA seeks comment on this proposal to revise paragraph (o) of the general industry beryllium standard to extend the compliance date for select ancillary provisions. OSHA welcomes comment on both the duration and scope of the proposed compliance date extension. OSHA encourages commenters to include a rationale for any concerns raised with this proposal, as well as for alternatives that they propose. OSHA also requests comment on the “Agency Determinations” section that follows, including the preliminary economic analysis and other regulatory impacts of this rule on the regulated community. Please note that comments on the changes OSHA plans to propose to the ancillary requirements of the general industry standard should be reserved for submission during the public comment period for that NPRM.

## II. Agency Determinations

### A. Preliminary Economic Analysis and Regulatory Flexibility Certification

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the impacts of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This proposed rule is not an “economically significant regulatory action” under Executive Order 12866 or UMRA, or a “major rule” under the Congressional Review Act (5 U.S.C. 801 *et seq.*). Neither the benefits nor the costs of this proposal would exceed \$100 million in any given year. This proposed rule to extend the compliance date for certain ancillary provisions in the beryllium standard would result in cost savings. Cost savings arise in this context because a delay in incurred costs for employers would allow them to invest the funds (and earn an expected return at the going interest rate) that would otherwise have been spent to comply with the beryllium standard.

At a discount rate of 3 percent, this proposed compliance date extension would yield annualized cost savings of \$0.76 million per year for 10 years. At a discount rate of 7 percent, this proposal would yield an annualized cost savings of \$1.73 million per year for 10 years. When the Department uses a perpetual time horizon to allow for cost

comparisons under Executive Order 13771 (82 FR 9339, Jan. 30, 2017), the annualized cost savings of this proposed compliance date extension is \$1.65 million at a discount rate of 7 percent.

### 1. Changes to the Baseline: Updating to 2017 Dollars and Removing Familiarization Costs; Discussion of Overhead Costs

More than one year has elapsed since promulgation of the beryllium standard on January 9, 2017, so OSHA has updated the projected costs for general industry contained in the final economic analysis (FEA) that accompanied the rule from 2015 to 2017 dollars, using the latest Occupational Employment Statistics (OES) wage data (for 2016) and inflating them to 2017 dollars. Additionally, although familiarization costs were included in the cost estimates developed in the beryllium FEA, OSHA expects that those costs have already been incurred by affected employers, and is excluding them from its analysis of the cost savings associated with the proposed extension of compliance dates. Thus, baseline costs for this preliminary economic analysis (PEA) are the projected costs from the 2017 FEA, updated to 2017 dollars, less familiarization costs.

OSHA notes that it did not include an overhead labor cost in the 2017 FEA, and has not accounted for such costs in this PEA. There is not one broadly accepted overhead rate, and the use of overhead to estimate the marginal costs of labor raises a number of issues that should be addressed before applying overhead costs to analyze the cost implications of any specific regulation. There are several ways to look at the cost elements that fit the definition of overhead, and there is a range of overhead estimates currently used within the federal government—for example, the Environmental Protection Agency has used 17 percent,<sup>4</sup> and government contractors have been reported to use an average of 77 percent.<sup>5</sup> Some overhead costs, such as

<sup>4</sup> Grant Thornton, LLP, 2015 Government Contractor Survey (Document ID OSHA–H005C–2006–0870–2153). The application of this overhead rate was based on an approach used by the Environmental Protection Agency (EPA), as described in EPA’s “Wage Rates for Economic Analyses of the Toxics Release Inventory Program,” June 10, 2002. This analysis itself was based on a survey of several large chemical manufacturing plants: Heiden Associates, *Final Report: A Study of Industry Compliance Costs Under the Final Comprehensive Assessment Information Rule*, Prepared for the Chemical Manufacturers Association, December 14, 1989.

<sup>5</sup> For further examples of overhead cost estimates, please see the Employee Benefits Security Administration’s guidance at <https://www.dol.gov/>

advertising and marketing, may be more closely correlated with output than with labor. Other overhead costs vary with the number of new employees. For example, rent or payroll processing costs may change little with the addition of 1 employee in a 500-employee firm, but may change substantially with the addition of 100 employees. If an employer is able to rearrange current employees’ duties to implement a rule, then the marginal share of overhead costs, such as rent, insurance, and major office equipment (e.g., computers, printers, copiers), would be very difficult to measure with accuracy.

If OSHA had included an overhead rate when estimating the marginal cost of labor, without further analyzing an appropriate quantitative adjustment, and adopted for these purposes an overhead rate of 17 percent on base wages, the cost savings of this proposal would increase to approximately \$0.82 million per year, at a discount rate of 3 percent, or to approximately \$1.87 million per year, at a discount rate of 7 percent.<sup>6</sup> The addition of 17 percent overhead on base wages would therefore increase cost savings by approximately 8 percent above the primary estimate at either discount rate.

### 2. Changes to the Standard: Nine-Month Extension of the Compliance Date for Some Ancillary Provisions

The beryllium standard went into effect on May 20, 2017, with most compliance obligations beginning on March 12, 2018. OSHA is proposing to extend the compliance date for specific provisions until December 12, 2018. The compliance dates for the updated PELs, exposure assessment, respiratory protection, medical surveillance, and medical removal protection requirements, and for some other provisions for which the standard already establishes compliance dates in 2019 and 2020, would not change as a result of this proposal. The applicability of the scope and application paragraph and the definitions would also not change as a result of this proposal, except to allow employers to comply with the definitions of “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive” that will be

[sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf](https://www.osha-slc.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-august-2016.pdf).

<sup>6</sup> OSHA used an overhead rate of 17 percent on base wages in a sensitivity analysis in the FEA (OSHA–2010–0034–4247, p. VII–65) in support of the March 25, 2016 final respirable crystalline silica standards (81 FR 16286) and in the PEA in support of the June 27, 2017 beryllium proposal for the construction and shipyard sectors (82 FR 29201).

proposed in the later substantive rulemaking NPRM (Document ID 2156). As discussed previously, the purpose of this proposal is to provide time for OSHA to issue a planned NPRM that would affect the parts of the standard that are covered by this proposed compliance date extension before that compliance date is reached, so that OSHA may rely on its de minimis policy and employers may comply with the proposed provisions without risk of a citation.

OSHA estimated cost savings of the proposed extension relative to baseline costs, where baseline costs reflect the costs of compliance *without* the proposed change to the compliance date provision. OSHA calculated the cost savings by lagging the first-year costs for the affected provisions by nine months and then calculating the present value of the delayed costs over the 10 years following the proposed compliance date. Annualizing the present value of cost savings over ten years, the result is an annualized cost savings of \$0.76 million per year at a discount rate of 3 percent, or \$1.73 million per year at a discount rate of 7 percent. When the Department uses a perpetual time horizon to allow for cost comparisons under Executive Order 13771, the annualized cost savings of this proposed compliance date extension is \$1.65 million at a discount rate of 7 percent.

The undiscounted cost savings by provision and year are presented below in Table 1. As shown in Table 1, and described elsewhere in this notice, the cost savings described in this PEA reflect savings only for provisions covered by the proposed compliance date extension. OSHA estimated no cost savings for the PELs, exposure assessment, respiratory protection, medical surveillance, or medical removal protection provisions (as they are not covered by the proposed extension), or for any provisions for

which the rule already establishes compliance dates in 2019 (change rooms/showers) or 2020 (engineering controls).<sup>7</sup> The cost savings by year and discount rate are shown below in Table 2.

### 3. Economic and Technological Feasibility

In the FEA for the beryllium standard, OSHA concluded that the rule was technologically feasible. OSHA has preliminarily determined that this proposal is also technologically feasible because it does not change any of the rule's substantive requirements, and, if adopted, would simply give employers more time to comply with some of the rule's ancillary requirements. Furthermore, OSHA previously concluded that the beryllium standard was economically feasible. As this proposal does not impose any new substantive requirements, and results in cost savings, OSHA has preliminarily concluded that the proposal is also economically feasible.

### 4. Effects on Benefits

The planned rulemaking to revise the general industry beryllium standard is intended to be responsive to questions and concerns expressed by stakeholders

<sup>7</sup> Note that the labor costs associated with time spent changing clothes are generally triggered by wearing personal protective equipment, as required by paragraph (h) of the beryllium standard. OSHA is proposing to extend the compliance date for paragraph (h). If the proposal is adopted, the rule would not require employers to incur the labor costs associated with changing time for personal protective equipment until December 12, 2018, so OSHA is generally accounting for those cost savings in this PEA. OSHA has not accounted for any cost savings related to the use of head covers, however. Head covers may be used to prevent contamination of employees' hair, potentially precluding the need for showers under paragraph (i)(3) of the standard. Because this proposal would not extend the compliance date for showers, OSHA has not accounted for head covers for purposes of estimating the cost savings associated with this proposal.

regarding ancillary provisions of the rule. Safety and health programs can be inefficacious if employers and other stakeholders are unclear about OSHA requirements. Hence, by addressing stakeholder questions and concerns, the planned rulemaking will make it more likely that the regulated community will realize the full benefits of the rule, as estimated in the 2017 beryllium FEA. Although it is not possible to quantify the effect of stakeholder uncertainty on the projected benefits of the rule, OSHA preliminarily believes that the short term loss of benefits associated with this proposed extension of initial compliance dates will be more than offset in the long term by the benefits that will be realized as a result of the Agency's effort to provide additional clarity in the rule. OSHA has preliminarily determined that this proposal will maintain essential safety and health protections for workers.

### 5. Certification of No Significant Impact on a Substantial Number of Small Entities

This proposal will result in cost savings for affected employers, and those savings fall below levels that could be said to have a significant positive economic impact on a substantial number of small entities.<sup>8</sup> Therefore, OSHA certifies that this proposed standard would not have a significant impact on a substantial number of small entities.

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<sup>8</sup> OSHA investigated whether the projected cost savings would exceed 1 percent of revenues or 5 percent of profits for small entities and very small entities for every industry. To determine if this was the case, OSHA returned to its original regulatory flexibility analysis (in the 2017 FEA) for small entities and very small entities. OSHA found that the cost savings of this proposal are such a small percentage of revenues and profits for every affected industry that OSHA's criteria would not be exceeded for any industry.

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Table 1: Undiscounted Compliance Costs by Year and Provision (2017 Dollars)

Year	Engineering Controls and Work Practices	Respirator Costs	Rule Familiarization	Exposure Assessment	Regulated Areas	Beryllium Work Areas	Medical Surveillance	Medical Removal Provision	Written Exposure Control Plan	Protective Work Clothing & Equipment	Hygiene Areas and Practices - Change Rooms	Hygiene Areas and Practices - Changing Labor Time	Hygiene Areas and Practices - Head Coverings	Housekeeping	Training	Total	Delayed Cost Total	Not Delayed Cost Total
	<i>Not Delayed</i>	<i>Not Delayed</i>	<i>Not Delayed</i>	<i>Not Delayed</i>	<i>Delayed</i>	<i>Delayed</i>	<i>Not Delayed</i>	<i>Not Delayed</i>	<i>Delayed</i>	<i>Delayed</i>	<i>Not Delayed</i>	<i>Delayed</i>	<i>Not Delayed</i>	<i>Delayed</i>	<i>Delayed</i>			
1	\$48,363,092	\$372,038	\$0	\$18,903,655	\$686,423	\$1,148,798	\$16,810,498	\$3,288,986	\$2,772,426	\$1,893,890	\$761,953	\$207,268	\$12,211	\$37,615,726	\$9,536,539	\$142,373,503	\$53,861,070	\$88,512,433
2	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$2,289,059	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$49,893,714	\$31,965,865	\$17,927,849
3	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$7,108,201	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$54,846,155	\$31,965,865	\$22,880,290
4	\$7,899,637	\$306,608	\$0	\$6,540,784	\$642,631	\$0	\$3,239,801	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$50,898,692	\$31,965,865	\$18,932,827
5	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$6,401,799	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$54,139,754	\$31,965,865	\$22,173,889
6	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$3,764,658	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,369,312	\$31,965,865	\$19,403,447
7	\$8,021,023	\$318,521	\$0	\$6,540,784	\$642,631	\$0	\$6,011,831	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$53,804,021	\$31,965,865	\$21,838,156
8	\$7,899,637	\$252,372	\$0	\$6,540,784	\$642,631	\$0	\$4,054,404	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,659,059	\$31,965,865	\$19,693,194
9	\$8,021,023	\$264,285	\$0	\$6,540,784	\$642,631	\$0	\$5,796,549	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$53,534,504	\$31,965,865	\$21,568,639
10	\$7,899,637	\$306,608	\$0	\$6,540,784	\$642,631	\$0	\$4,214,358	\$256,541	\$1,890,613	\$1,893,890	\$677,245	\$207,268	\$12,211	\$19,744,717	\$7,586,746	\$51,873,249	\$31,965,865	\$19,907,384

TABLE 2—COST SAVINGS DUE TO COMPLIANCE DATE EXTENSION

Year	<i>t</i>	Undiscounted costs by year	Discounted costs—3%	Discounted costs—7%
<b>Baseline</b>				
1 .....	1.00	\$53,861,070	\$52,292,301	\$50,337,449
2 .....	2.00	31,965,865	30,130,893	27,920,224
3 .....	3.00	31,965,865	29,253,295	26,093,668
4 .....	4.00	31,965,865	28,401,257	24,386,605
5 .....	5.00	31,965,865	27,574,036	22,791,220
6 .....	6.00	31,965,865	26,770,909	21,300,205
7 .....	7.00	31,965,865	25,991,173	19,906,734
8 .....	8.00	31,965,865	25,234,149	18,604,424
9 .....	9.00	31,965,865	24,499,174	17,387,312
10 .....	10.00	31,965,865	23,785,605	16,249,825
Total .....			293,932,792	244,977,667
Annualized—10 Years .....			34,457,890	34,879,308
<b>Discounting Option 1</b>				
1 .....	1.75	53,861,070	51,145,783	47,846,852
2 .....	2.75	31,965,865	29,470,268	26,538,787
3 .....	3.75	31,965,865	28,611,911	24,802,605
4 .....	4.75	31,965,865	27,778,554	23,180,004
5 .....	5.75	31,965,865	26,969,470	21,663,556
6 .....	6.75	31,965,865	26,183,952	20,246,314
7 .....	7.75	31,965,865	25,421,312	18,921,788
8 .....	8.75	31,965,865	24,680,886	17,683,914
9 .....	9.75	31,965,865	23,962,025	16,527,023
10 .....	10.75	31,965,865	23,264,102	15,445,816
Total .....			287,488,264	232,856,658
Annualized—10 Years .....			33,702,395	33,153,550
Difference from Baseline .....			– 755,495	– 1,725,759

### B. Paperwork Reduction Act

This NPRM does not propose changes to the information collections already approved by Office of Management and Budget (OMB). OMB approved the information collection requirements for the general industry beryllium standard under OMB Control Number 1218–0267, with an expiration date of April 30, 2020.

### C. Federalism

OSHA reviewed this proposed rule in accordance with Executive Order 13132 on Federalism (64 FR 43255, (Aug. 10, 1999)), which requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Federal agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et seq.*), Congress expressly provides that states and U.S. territories may adopt, with Federal approval, a plan for the development

and enforcement of occupational safety and health standards. OSHA refers to such states and territories as “State Plan States.” Occupational safety and health standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. 29 U.S.C. 667. Subject to these requirements, State Plan States are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis that promulgation of the beryllium standard complies with Executive Order 13132 (82 FR at 2633). In states without an OSHA-approved State Plan, any standard developed from this proposed rule would limit state policy options in the same manner as every standard promulgated by OSHA. For State Plan States, Section 18 of the OSH Act, as noted in the previous paragraph, permits State Plan States to develop and enforce their own beryllium standards provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this proposal.

### D. State Plans

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, State Plans must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary, *e.g.*, because an existing state standard covering this area is “at least as effective” as the new Federal standard or amendment (29 CFR 1953.5(a)). The state standard must be at least as effective as the final Federal rule. State Plans must adopt the Federal standard or complete their own standard within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although OSHA may encourage them to do so. The 21 states and 1 U.S. territory with OSHA-approved occupational safety and health plans covering private sector and state and local government are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

The proposed amendments to OSHA's beryllium standard would not impose any new requirements on employers. Accordingly, State Plans would not have to amend their standards to extend the compliance dates for their beryllium rules, but they may do so within the limits of any extension adopted by Federal OSHA.

#### E. Unfunded Mandates Reform Act

When OSHA issued the final rule establishing standards for occupational exposure to beryllium, it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 13132 (64 FR 43255 (Aug. 10, 1999)). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to state or local governments except in states that voluntarily adopt State Plans. OSHA further noted that the rule did not impose costs of over \$100 million per year on the private sector. (82 FR at 2634.)

As discussed above in Section II. A (Preliminary Economic Analysis and Regulatory Flexibility Certification) of this preamble, this proposed extension does not impose any costs on private-sector employers beyond those costs already identified in the final rule for beryllium in general industry. Because OSHA reviewed the total costs of the final rule under UMRA, no further review of those costs is necessary. Therefore, for purposes of UMRA, OSHA certifies that this proposed rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than \$100 million in any year.

#### F. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this proposed rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have "tribal implications" as defined in that order. As proposed, the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes.

#### G. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 654(b), 655(b). A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. See *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980). In the beryllium rulemaking, OSHA made such a determination with respect to beryllium exposure in general industry (82 FR at 2479). This proposed rule does not impose any new requirements on employers. Therefore, this proposal does not require an additional significant risk finding. See *Edison Electric Institute v. OSHA*, 849 F.2d 611, 620 (D.C. Cir. 1988).

In addition to materially reducing a significant risk, a health standard must be technologically and economically feasible. *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1251 (D.C. Cir. 1980) (OSHA must reduce risk "as far as it c[an] within the limits of [technological and economic] feasibility.") A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop. See *American Textile Mfrs. Institute v. OSHA*, 452 U.S. 490, 513 (1981); *American Iron and Steel Institute v. OSHA*, 939 F.2d 975, 980 (D.C. Cir. 1991). And a rule is economically feasible if it does not "threaten massive dislocation to, or imperil the existence of, [an] industry." *United Steelworkers*, 647 F.2d at 1265 (internal citations and quotation marks omitted). In the 2017

FEA for the beryllium standard, OSHA found the standard to be technologically and economically feasible (82 FR at 2471). This proposed rule would be technologically and economically feasible as well because it would not require employers to implement any additional protective measures and would not impose any additional costs on employers.

#### List of Subjects in 29 CFR Part 1910

Beryllium, Occupational safety and health.

Signed at Washington, DC, on May 25, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

#### Amendments to Standards

For the reasons stated in the preamble of this proposed rule, OSHA proposes to amend 29 CFR part 1910 as follows:

### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

#### Subpart Z—Toxic and Hazardous Substances

■ 1. The authority citation for subpart Z of 29 CFR part 1910 is revised to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Section 1910.1030 also issued under Public Law 106-430, 114 Stat. 1901.

Section 1910.1201 also issued under 40 U.S.C. 5101 *et seq.*

■ 2. Amend § 1910.1024 by revising paragraph (o)(2) to read as follows:

#### § 1910.1024 Beryllium.

\* \* \* \* \*

(o) \* \* \*

(2) *Compliance dates.* (i) Obligations contained in paragraphs (c), (d), (g), (k), and (l) of this standard: March 12, 2018;

(ii) Change rooms and showers required by paragraph (i) of this standard: March 11, 2019;

(iii) Engineering controls required by paragraph (f) of this standard: March 10, 2020; and

(iv) All other obligations of this standard: December 12, 2018.

\* \* \* \* \*

[FR Doc. 2018-11643 Filed 5-31-18; 8:45 am]

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Vol. 83, No. 106

Friday, June 1, 2018

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### FEDERAL REGISTER PAGES AND DATE, JUNE

25327-25544..... 1

### CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

#### 3 CFR

##### Proclamations:

9756.....25327

##### Executive Orders:

13836.....25329

13837.....25335

13838.....25341

13839.....25343

#### 7 CFR

210.....25349

225.....25349

400.....25361

#### 14 CFR

25.....25361

39.....25363

##### Proposed Rules:

39 (7 documents) .....25405,  
25408, 25410, 25412, 25415,  
25417, 25419

#### 17 CFR

200.....25365

201.....25365

#### 29 CFR

##### Proposed Rules:

1910.....25536

#### 33 CFR

100.....25366

117 (3 documents) .....25369,  
25370

165 (3 documents) .....25370,  
25371, 25373

#### 37 CFR

202.....25375

#### 40 CFR

52 (2 documents) .....25375,  
25378

60.....25382

61.....25382

63.....25382

81.....25390

##### Proposed Rules:

81.....25422

#### 42 CFR

##### Proposed Rules:

59.....25502

#### 50 CFR

17.....25392

---

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---

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**S. 204/P.L. 115-176**  
Trickett Wendler, Frank Mongiello, Jordan McLinn, and

Matthew Bellina Right to Try Act of 2017 (May 30, 2018; 132 Stat. 1372)

**Last List May 31, 2018**

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DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	Jun 18	Jun 22	Jul 2	Jul 6	Jul 16	Jul 31	Aug 30
June 4	Jun 19	Jun 25	Jul 5	Jul 9	Jul 19	Aug 3	Sep 4
June 5	Jun 20	Jun 26	Jul 5	Jul 10	Jul 20	Aug 6	Sep 4
June 6	Jun 21	Jun 27	Jul 6	Jul 11	Jul 23	Aug 6	Sep 4
June 7	Jun 22	Jun 28	Jul 9	Jul 12	Jul 23	Aug 6	Sep 5
June 8	Jun 25	Jun 29	Jul 9	Jul 13	Jul 23	Aug 7	Sep 6
June 11	Jun 26	Jul 2	Jul 11	Jul 16	Jul 26	Aug 10	Sep 10
June 12	Jun 27	Jul 3	Jul 12	Jul 17	Jul 27	Aug 13	Sep 10
June 13	Jun 28	Jul 5	Jul 13	Jul 18	Jul 30	Aug 13	Sep 11
June 14	Jun 29	Jul 5	Jul 16	Jul 19	Jul 30	Aug 13	Sep 12
June 15	Jul 2	Jul 6	Jul 16	Jul 20	Jul 30	Aug 14	Sep 13
June 18	Jul 3	Jul 9	Jul 18	Jul 23	Aug 2	Aug 17	Sep 17
June 19	Jul 5	Jul 10	Jul 19	Jul 24	Aug 3	Aug 20	Sep 17
June 20	Jul 5	Jul 11	Jul 20	Jul 25	Aug 6	Aug 20	Sep 18
June 21	Jul 6	Jul 12	Jul 23	Jul 26	Aug 6	Aug 20	Sep 19
June 22	Jul 9	Jul 13	Jul 23	Jul 27	Aug 6	Aug 21	Sep 20
June 25	Jul 10	Jul 16	Jul 25	Jul 30	Aug 9	Aug 24	Sep 24
June 26	Jul 11	Jul 17	Jul 26	Jul 31	Aug 10	Aug 27	Sep 24
June 27	Jul 12	Jul 18	Jul 27	Aug 1	Aug 13	Aug 27	Sep 25
June 28	Jul 13	Jul 19	Jul 30	Aug 2	Aug 13	Aug 27	Sep 26
June 29	Jul 16	Jul 20	Jul 30	Aug 3	Aug 13	Aug 28	Sep 27