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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0168; Product Identifier 2017–NM–135–AD; Amendment 39–19344; AD 2018–16–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. This AD was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate the specified maintenance requirements and airworthiness limitations. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 14, 2018.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 14, 2018.

ADDRESSES: For service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *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. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0168.

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–2018–0168; 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 final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The NPRM published in the **Federal Register** on April 2, 2018 (83 FR 13885). The NPRM was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate the specified maintenance requirements and airworthiness limitations.

We are issuing this AD to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2017–0170, dated September 7, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318, A319, and A320 series airplanes, and Model A321–111, –211, –212, –213, –231, –232, –251N, –253N, and –271N airplanes. The MCAI states:

> The System Equipment Maintenance Requirements (SEMR) for Airbus A320 family aeroplanes, which are approved by EASA, are currently defined and published in the Airbus A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4 document. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2016–0093 [which corresponds to FAA AD 2017–19–24, Amendment 39–19054 (82 FR 44900, September 27, 2017) (''AD 2017–19–24''),] to require accomplishment of all maintenance tasks as described in ALS Part 4 at Revision 03. ALS Part 4 Revision 04 was not mandated because no significant changes were introduced with this Revision. The new ALS Part 4 Revision 05 (hereafter referred to as 'the ALS' in this [EASA] AD) includes new and/or more restrictive requirements and extends the applicability to model A320–251N, A320–271N, A321–251N, A321–253N and A321–271N aeroplanes.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2016–0093, which is superseded, and requires accomplishment of all tasks as described in the ALS.

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–2018–0168.

Comments

We gave the public the opportunity to participate in developing this final rule. We have considered the comment received. United Airlines indicated that they had no objection to the NPRM.

Explanation of Changes to Applicability

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

Airbus SAS has issued Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017. This service information describes preventive maintenance requirements and includes updated inspections and intervals to be incorporated into the maintenance or inspection program. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 1,133 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

We have determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although this figure 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 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 and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

(2) Is not a ''significant rule'' under 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.

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):

2018–16–04 Airbus SAS: Amendment 39–19344; Docket No. FAA–2018–0168; Product Identifier 2017–NM–135–AD.

(a) Effective Date

This AD is effective September 14, 2018.

(b) Affected ADs

This AD affects AD 2017–19–24, Amendment 39–19054 (82 FR 44900, September 27, 2017) (''AD 2017–19–24'').

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before April 6, 2017.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, and –271N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –253N, and–271N airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of an airworthiness limitations document that specifies more restrictive maintenance requirements and airworthiness limitations. We are issuing this AD to mitigate the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics, leading to an increased potential for failure of certain life-limited parts, and reduced structural integrity or controllability of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017. The initial compliance time for doing the revised actions is at the applicable time specified in Airbus SAS A318/A319/A320/A321 ALS Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017.

(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 and 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 2017–19–24

Accomplishing the actions required by this AD terminates all requirements of AD 2017–19–24.

(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.* 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 SAS'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 2017–0170, dated September 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–2018–0168.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

(l) Material Incorporated by Reference

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

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

(i) Airbus SAS A318/A319/A320/A321 Airworthiness Limitations Section (ALS) Part 4, ''System Equipment Maintenance Requirements (SEMR),'' Revision 05, dated April 6, 2017.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *http://www.airbus.com.*

(4) 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.

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

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

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16735 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0426; Airspace Docket No. 17–AEA–8]

RIN–2120–AA66

Establishment of Class E Airspace; Freeport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface in Freeport, PA, to accommodate new area navigation (RNAV) global positioning system (GPS) standard instrument approach procedures serving McVille Airport. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at this airport.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at McVille Airport, Freeport, PA, to support IFR operations in standard instrument approach procedures at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 22888, May 17, 2018) for Docket No. FAA–2017–0426 to establish Class E airspace extending upward from 700 feet above the surface within a 7.6-mile radius of McVille Airport, Freeport, PA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which

is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 7.6-mile radius of McVille Airport, Freeport, PA, providing the controlled airspace required to support the new RNAV (GPS) standard instrument approach procedures. These changes are necessary for continued safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AEA PA E5 Freeport, PA [New]

McVille Airport, PA

(Lat. 40°44′04″ N, long. 79°35′44″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of McVille Airport.

Issued in College Park, Georgia, on July 31, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–17099 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2017–0865; Airspace Docket No. 17–ASO–19]

RIN–2120–AA66

Amendment of Class D and Class E Airspace; Biloxi, MS, and Gulfport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action amends Class D airspace, and Class E surface airspace, in addition to removing the NOTAM part-time status from Class E airspace designated as an extension, and amending Class E airspace extending upward from 700 feet above the surface at Keesler Air Force Base (AFB), Biloxi, MS, and Gulfport-Biloxi International Airport, (formerly Gulfport-Biloxi Regional Airport), Gulfport, MS. The geographic coordinates for these airports and the Keesler TACAN navigation aid are adjusted in the associated Class D and E airspace to match the FAA's aeronautical database. Also, this action replaces the outdated term ''Airport/Facility Directory'' with the term ''Chart Supplement'' in the Class D and Class E surface area legal descriptions. This action enhances the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority

described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class D and Class E airspace at Keesler AFB, Biloxi, MS, and Gulfport-Biloxi International Airport, Gulfport, MS, to support IFR operations at these airports.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 8208; February 26, 2018) for Docket No. FAA–2017–0865 to amend Class D airspace, Class E surface airspace, Class E airspace designated as an extension to Class D surface area, and Class E airspace extending upward from 700 feet above the surface at Keesler AFB, Biloxi, MS, and Gulfport-Biloxi International Airport.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11B dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR part 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class D airspace, and Class E surface area airspace, in addition to removing the NOTAM part-time status from Class E airspace designated as an extension to a Class D surface area, and amending Class E airspace extending upward from 700 feet or more above the surface at Keesler AFB, Biloxi, MS, and Gulfport-Biloxi International Airport (formerly Gulfport-Biloxi Regional Airport, Gulfport, MS.

This action also amends the geographic coordinates of these airports and the Keesler TACAN navigation aid in the noted airspace classes to be in concert with the FAA's aeronautical database.

Additionally, this action notes the airport name change to Gulfport-Biloxi International Airport from Gulfport-Biloxi Regional Airport.

Finally, this action makes an editorial change to the Class D and Class E surface area airspace legal descriptions replacing ''Airport/Facility Directory'' with ''Chart Supplement'' for Keesler AFB, and Gulfport-Biloxi International Airport.

Class D and Class E airspace designations are published in Paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, effective September 15, 2017, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Biloxi, MS [Amended]

Keesler AFB, MS
(Lat. 30°24′38″ N, long. 88°55′28″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.2-mile radius of Keesler AFB, excluding the portion west of long. 89°00′00″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

ASO MS D Gulfport, MS [Amended]

Gulfport-Biloxi International Airport, MS
(Lat. 30°24′26″ N, long. 89°04′12″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Gulfport-Biloxi International Airport; excluding that portion of airspace within the Biloxi, MS, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO MS E2 Biloxi, MS [Amended]

Keesler AFB, MS
(Lat. 30°24′38″ N, long. 88°55′28″ W)

Within a 4.2-mile radius of Keesler AFB, excluding the portion west of long. 89°00′00″ W. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ASO MS E4 Biloxi, MS [Amended]

Keesler AFB, MS
(Lat. 30°24′38″ N, long. 88°55′28″ W)
Keesler TACAN
(Lat. 30°24′26″ N, long. 88°55′47″ W)

That airspace extending upward from the surface within 1.4 miles each side of the Keesler TACAN 204° radial, extending from the 4.2-mile radius of Keesler AFB to 6 miles southwest of the TACAN.

* * * * *

ASO MS E4 Gulfport, MS [Amended]

Gulfport-Biloxi International Airport, MS
(Lat. 30°24′26″ N, long. 89°04′12″ W)
Gulfport VORTAC
(Lat. 30°24′25″ N, long. 89°04′36″ W)

That airspace extending upward from the surface within 3.3 miles each side of Gulfport VORTAC 130° and 322° radials, extending from the 4.5-mile radius of Gulfport-Biloxi International Airport to 7 miles southeast and northwest of the VORTAC; excluding that portion within the Biloxi, MS, Class D and E airspace areas.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO MS E5 Gulfport, MS [Amended]

Gulfport-Biloxi International Airport, MS
(Lat. 30°24′26″ N, long. 89°04′12″ W)
Keesler AFB
(Lat. 30°24′38″ N, long. 88°55′28″ W)
Keesler TACAN
(Lat. 30°24′26″ N, long. 88°55′47″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Gulfport-Biloxi International Airport and within a 6.5-mile radius of Keesler AFB and within 2 miles each side of Keesler TACAN 204° radial, extending from the 6.5-mile radius to 10.6 miles southwest of the TACAN.

Issued in College Park, Georgia, on August 1, 2018.

Ryan W. Almasy,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–17088 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0255; Airspace Docket No. 18–ASO–6]

RIN–2120–AA66

Revocation of Class E Airspace; St Marys, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class E airspace extending upward from 700 feet above the surface at St Marys, GA, because St Marys Airport has closed, and controlled airspace is no longer required at this location.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it supports removal of Class E airspace due to the closure of St Marys Airport, St Marys, GA.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 23831, May 23, 2018) for Docket No. FAA–2018–0255 to remove Class E airspace extending upward from 700 feet above the surface at St Marys Airport, St Marys, GA. This airport has closed. Therefore, the airspace is no longer necessary at this site.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 removes Class E airspace extending upward from 700 feet or more above the surface due to the closure of St Marys Airport, St Marys, GA. Therefore, controlled airspace is no longer necessary at this site.

Class E airspace designations are published in Paragraph 6005, of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore: (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 St Marys, GA [Removed]

Issued in College Park, Georgia, on July 31, 2018.

Ryan W. Almasy,

Manager, Operations Support Group Eastern Service Center, Air Traffic Organization.

[FR Doc. 2018–17089 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–0101; Airspace Docket No. 18–AGL–4]

RIN 2120–AA66

Amendment of Class E Airspace; Lansing, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Capital Region International Airport, Lansing, MI. This action is the result of an airspace review due to the decommissioning of the Lansing VHF omnidirectional range (VOR) navigation aid as part of the VOR Minimum Operational Network (MON) Program. The geographic coordinates and name of the airport are also updated to coincide with the FAA's aeronautical database. An editorial change is also made to the airspace legal designation by removing the city from the airport name.

DATES: Effective 0901 UTC, November 8, 2018. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11B, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11B at NARA, call (202) 741–6030, or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace extending upward from 700 feet above the surface at Capital Region International Airport, Lansing, MI, to support instrument flight rule operations.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (83 FR 16802; April 17, 2018) for Docket No. FAA–2018–0101 to amend Class E airspace extending upward from 700 feet above the surface at Capital Region International Airport, Lansing, MI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11B, dated August 3, 2017, and effective September 15, 2017, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017. FAA Order 7400.11B is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11B lists Class A, B, C, D, and E airspace areas,

air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 modifies Class E airspace extending upward from 700 feet above the surface to within a 6.8-mile radius (increased from a 6.7-mile radius) at Capital Region International Airport (formerly Capital City Airport), Lansing, MI; removes the extension to the east of the airport associated with the ARTDA LOM; adds an extension within 2.0 miles each side of the 091° bearing from the airport from the 6.8-mile radius to 10.4 mile east of the airport; and adds an extension within 4.0 miles each side of the 233° from the airport from the 6.8-mile radius to 10.5 miles southwest of the airport.

The name of the airport is also updated from Capital City Airport to Capital Region International Airport, and the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. Additionally, an editorial change is made removing the name of the city associated with the airport in the airspace legal designation to comply with a recent change to FAA Order 7400.2L, Procedures for Handling Airspace Matters.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11B, Airspace Designations and Reporting Points, dated August 3, 2017, and effective September 15, 2017, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above The Surface of The Earth.

* * * * *

AGL MI E5 Lansing, MI [Amended]

Capital Region International Airport, MI
(Lat. 42°46′43″ N, long. 84°35′10″ W)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Capital Region International Airport, and within 2.0 miles each side of the 091° bearing from the airport extending from the 6.8-mile radius to 10.4 mile east of the airport, and within 4.0 miles each side of the 233° bearing from the airport extending from the 6.8-mile radius to 10.5 miles southwest of the airport.

Issued in Fort Worth, Texas, on July 30, 2018.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2018–17100 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[160801675–7593–02]

RIN 0605–AA45

Public Information, Freedom of Information Act and Privacy Act Regulations

AGENCY: Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Commerce's (Department) regulations under the Freedom of Information Act (FOIA) and Privacy Act. The FOIA regulations are being revised to clarify, update and streamline the language of several procedural provisions, including methods for submitting FOIA requests and appeals and the time limits for filing an administrative appeal, and to incorporate certain changes brought about by the amendments to the FOIA under the FOIA Improvement Act of 2016. Additionally, the FOIA regulations are being updated to reflect developments in the case law.

DATES: These amendments are effective August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Toland, Deputy Chief Freedom of Information Act Officer and Department Privacy Act Officer, Office of Privacy and Open Government, 1401 Constitution Ave. NW, Room 61013, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background Information

On February 6, 2018, the Department published a proposed rule revising its existing regulations under the FOIA and Privacy Act. *See* 83 FR 5215. This rule proposed revisions to the Department's regulations under the Freedom of Information Act to incorporate certain changes made to the FOIA, 5 U.S.C. 552, by the FOIA Improvement Act of 2016, Public Law 114–185, 130 Stat. 538 (June 30, 2016). The FOIA Improvement Act of 2016 provides that agencies must allow a minimum of 90 days for requesters to file an administrative appeal. The Act also requires that agencies notify requesters of the availability of dispute resolution services at various times throughout the FOIA process. This rule updated the Department's regulations in 15 CFR part 4, subpart A, to reflect those statutory changes. Additionally, this rule revises the Department's regulations under the FOIA to clarify, update and streamline

the language of several procedural provisions, including the methods for submitting FOIA requests and appeals, to reflect developments in the case law and to keep the regulations up to date with small administrative changes.

Public Comments

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments to the proposed rule during the 30-day open comment period. The Department received twenty-four public submissions in response to the proposed rulemaking. Due consideration was given to each comment received and a determination was made that twenty-three of the comments were not relevant to the proposed rule.[1] The Department adopted the twenty-fourth comment to enable a more efficient FOIA process.

Section 4.10 (Appeals From Initial Determinations or Untimely Delays)

One commenter offered that the proposed regulations should comply with guidance from the U.S. Department of Justice's Office of Information Policy (OIP) directing agencies—as part of the agency's final appeal determination—to also alert FOIA requesters of OGIS's mediation services as a nonexclusive alternative to litigation. The Department accepts this suggestion and updates § 4.10(f) with language that follows the aforementioned OIP guidance.

The same commenter further recommended that the Department add language to § 4.10(f), which clarifies for requesters the difference between formal mediation and the services OGIS provides. The Department also agrees with this suggestion and updates § 4.10(f) with appropriate clarifying language.

Classification

Executive Order 12866: It has been determined that this document is not significant for purposes of E.O. 12866.

Regulatory Flexibility Act: In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chief Counsel for Regulation certified at the Proposed Rule stage that this regulation will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

Paperwork Reduction Act: This document does not contain a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: August 7, 2018.

Michael J. Toland,

Department of Commerce, Deputy Chief FOIA Officer, Department Privacy Act Officer.

For the reasons stated in the preamble, the Department of Commerce amends 15 CFR part 4 as follows:

PART 4—[AMENDED]

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 41 U.S.C. 3101; Reorganization Plan No. 5 of 1950.

Subpart A—Freedom of Information Act

■ 2. Amend § 4.1 by redesignating paragraph (c) as (d), and by adding a new paragraph (c) to read as follows:

§ 4.1 General provisions.

* * * * *

(c) The Department has a FOIA Requester Service Center with at least one FOIA Public Liaison. Each Department component may have a FOIA Requester Service Center with at least one FOIA Public Liaison. FOIA Public Liaisons are responsible for: Working with requesters that have any concerns about the service received from a FOIA component, reducing delays in the processing of FOIA requests, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Contact information for the relevant component FOIA Requester Service Centers, FOIA Public Liaisons, and component FOIA offices and contacts is available at *http://www.osec.doc.gov/opog/contacts.html.*

* * * * *

■ 3. Amend § 4.2 by revising paragraphs (a) and (c) to read as follows:

§ 4.2 Public reading rooms.

(a) Records that the FOIA requires to be made available for public inspection and copying are accessible electronically through the Department's ''Electronic FOIA Library'' on the Department's website, *http://www.doc.gov*, which includes links to websites for those components that maintain Electronic FOIA Libraries. Each component of the Department is responsible for determining which of its records are required to be made available, as well as identifying additional records of interest to the public that are appropriate for disclosure, and for making those records available either in its own Electronic Library or in the Department's central Electronic FOIA Library. Components that maintain their own Electronic FOIA Libraries are designated as such in Appendix A to this part. Each component shall also maintain and make available electronically a current subject-matter index of the records made available electronically. Each component shall ensure that posted records and indices are updated regularly, at least quarterly.

* * * * *

(c) The Department and its components shall maintain and make available electronically for public inspection:

(1) Copies of records that have been released and—

(i) That the component that maintains them determines, because of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records by other requesters, or

(ii) That have been requested three or more times by different requesters;

(2) A general index of the records available for public inspection—for purposes of these regulations, a general index includes records available through a search capability on the Department or component's website, such as a person finder;

(3) Final opinions and orders, including concurring and dissenting opinions made in the adjudication of cases;

(4) Those statements of policy and interpretations that have been adopted by a component and are not published in the **Federal Register**; and

(5) Administrative staff manuals and instructions to staff that affect a member of the public.

■ 4. Amend § 4.3 by revising paragraph (d) to read as follows:

§ 4.3 Records under the FOIA.

* * * * *

(d) Components shall preserve all correspondence pertaining to the requests they receive under this subpart, as well as copies of all requested records, until disposition or destruction

[1] Comment topics included discussions about infrastructure gas pipelines, clean water issues, air quality, environmental regulations, and mining.

is authorized by Title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2, Information Access and Protection Records. Components shall not dispose of records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

■ 5. Revise § 4.4 to read as follows:

§ 4.4 Requirements for making requests.

(a) *How made and addressed.* The Department has a decentralized system for responding to FOIA requests, with each component designating a FOIA office to process records from that component. All components have the capability to receive requests electronically either through electronic mail (email) or the FOIAonline website, *http://foiaonline.regulations.gov*. A request for Department records that are not customarily made available to the public as part of the Department's regular informational services (or pursuant to a user fee statute), must be in writing and shall be processed under the FOIA, regardless of whether the FOIA is mentioned in the request. Requests must include the requester's full name and a valid return address. Requesters may also include other contact information, such as an email address and a telephone number. For the quickest handling, the request (and envelope, if the request is mailed or hand delivered) should be marked ''Freedom of Information Act Request.'' Requests may be submitted by U.S. mail, delivery service, email, or online at the FOIAonline website, *http://foiaonline.regulations.gov*. Requests may also be submitted to some components, identified in Appendix A to this part, by facsimile. Requests should be sent to the Department component identified in Appendix A to this part that maintains those records requested, and should be sent to the addresses, email addresses, or numbers listed in Appendix A to this part or the Department's website, *http://www.doc.gov*.[1] If the proper component cannot be determined, the request should be sent to the central facility identified in Appendix A to this part. The central facility will forward the request to the component(s) it believes most likely to have the requested records. Requests will be considered received for purposes of the 20-day time limit of § 4.6 as of the date it is received by the proper component's FOIA office, but in any event not later than ten working days after the request is first received by any Department component identified in Appendix A to this part.

(b) *Requests for records about an individual or oneself.* For requests for records about oneself, § 4.24 contains additional requirements. For requests for records about another individual, either a notarized authorization signed by that individual or a declaration by that individual made under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization, permitting disclosure of the individual's records to the requester, or proof that the individual is deceased (for example, a copy of a death certificate or an obituary) will facilitate processing the request.

(c) *Description of records sought.* (1) A FOIA request must reasonably describe the agency records sought, to enable Department personnel to locate them with a reasonable amount of effort.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number, and the name and location of the office where the record(s) might be found.

(i) In addition, if records about a court case are sought, the title of the case, the court in which the case was filed, and the nature of the case should be included.

(ii) If known, any file designations or descriptions of the requested records should be included.

(iii) As a general rule, the more specifically the request describes the records sought, the greater the likelihood that the Department will be able to locate those records.

(3) Before submitting their requests, requesters may first contact the Department's or the component's FOIA contact to discuss the records they are seeking and to receive assistance in describing the records.

(4) For further assistance, requesters may also contact the relevant FOIA Requester Service Center or FOIA Public Liaison. Contact information for relevant FOIA Requester Service Centers and FOIA Public Liaisons is contained on the Department's website, *http://www.osec.doc.gov/opog/contacts.html* and Appendix A to this part.

(5) If a component determines that a request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or how the request is otherwise insufficient, to enable the requester to modify the request to meet the requirements of this section.

(6) Requesters who are attempting to reformulate or modify such a request may discuss their request first with the relevant FOIA Contact, or if unresolved, with the relevant Requester Service Center or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records.

(7) When a requester fails to provide sufficient detail within 30 calendar days after having been asked to reasonably describe the records sought, the component shall notify the requester in writing that the request has not been properly made, that no further action will be taken, and that the FOIA request is closed. Such a notice constitutes an adverse determination under § 4.7(d) for which components shall follow the procedures for a denial letter under § 4.7(e).

(8) In cases where a requester has modified his or her request, the date of receipt for purposes of the 20-day time limit of § 4.6 shall be the date of receipt of the modified request.

■ 6. Amend § 4.5 by revising paragraphs (a), (b), and (c) to read as follows:

§ 4.5 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraph (b) of this section, the proper component of the Department to respond to a request for records is the component that first receives the request and has responsive records (or in the instance of where no records exist, the component that first receives the request and is likely to have responsive records), or the component to which the Departmental FOIA Officer or component FOIA Officer assigns lead responsibility for responding to the request. Where a component's FOIA office determines that a request was misdirected within the Department, the receiving component's FOIA office shall route the request to the FOIA office of the proper component(s). Records responsive to a request shall include those records within the Department's possession and control as of the date the Department begins its search for them. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Consultations and referrals.* When the Department or a component receives a request for a record (or a portion thereof) in its possession that originated with another Departmental component or Federal agency subject to the FOIA,

[1] The United States Patent and Trademark Office (USPTO), which is established as an agency of the United States within the Department of Commerce, operates under its own FOIA regulations at 37 CFR part 102, subpart A. Accordingly, requests for USPTO records, and any appeals thereof, should be sent directly to the USPTO.

the Department or component should typically refer the record to the component or originating agency for direct response to the requester (see § 4.8 for additional information about referrals of classified information). When the Department or a component receives a request for a record (or a portion thereof) in its possession that originated with another Departmental component, Federal agency, or executive branch office that is not subject to the FOIA, the Department or component shall consult with that component, Federal agency, or executive branch office before responding to the requester. In instances where a record is requested that originated with the Department or component and another component, Federal agency, or executive branch office has substantial interest in the record (or a portion thereof), the Department or component should typically consult with that component, Federal agency, or executive branch office before responding to the requester.

(c) *Notice of referral.* Whenever a component refers a record to another Federal agency or Department component for direct response to the requester, the component's FOIA Officer should typically notify the requester in writing of the referral and inform the requester of the name(s) of the agency or Department component to which the record was referred, including that agency's or component's FOIA contact information. The standard referral procedure is not appropriate where disclosure of the identity of the agency or Department component to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party were not publicly known, then to disclose that law enforcement interest by providing notice of a referral could cause an unwarranted invasion of the personal privacy of the third party. In such cases, the agency that received the request should consult with the originating agency to seek its views on the disclosability of the record and the release determination should then be conveyed to the requester by the agency that originally received the request.

* * * * *

■ 7. Amend § 4.6 by revising paragraphs (d)(1), (d)(2), and (e)(1) to read as follows:

§ 4.6 Time limits and expedited processing.

* * * * *

(d) * * *

(1) Components may extend the time period for processing a FOIA request only in ''unusual circumstances,'' as described in paragraph (d)(2) of this section, in which the component shall, before expiration of the twenty-day period to respond, notify the requester of the extension in writing of the unusual circumstances involved and the date by which processing of the request is expected to be completed. If the extension is for more than ten working days, the component shall provide the requester with an opportunity to modify the request or agree to an alternative time period for processing the original or modified request. Furthermore, the requester will be advised that the relevant FOIA Public Liaison or FOIA contact is available for this purpose and of the requester's right to seek dispute resolution services from the Office of Government Information Services (OGIS).

(2) For purposes of this section, ''unusual circumstances'' include:

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

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need to consult, which shall be conducted with all practicable speed, with another Federal agency having a substantial interest in the determination of the FOIA request or with another component of the Department which has a substantial interest in the determination of the request.

* * * * *

(e) * * *

(1) A component must use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including the amount of pages involved, the need to consult with or refer to other agencies or Department components or for commercial confidential information to a third party, or whether the request qualifies for unusual circumstances as described in paragraph (d)(2) of this section, and whether the request qualifies for expedited processing as described in paragraph (f) of this section.

* * * * *

■ 8. Revise § 4.7 to read as follows:

§ 4.7 Responses to requests.

(a) *Acknowledgment of requests.* Upon receipt of a request, a component ordinarily shall send an acknowledgement to the requester which shall provide an assigned tracking request number for further reference and, if necessary, confirm whether the requester is willing to pay fees. A component must send this acknowledgment if the request will take longer than ten working days to process. In most cases, the acknowledgement email, generated by the FOIAonline system, that is sent to requesters who provide an email address will suffice for this requirement.

(b) *Interim responses.* If a request involves voluminous records or requires searches in multiple locations, to the extent feasible, a component shall provide the requester with interim responses. Such responses may include records that are fully releasable or records that have been withheld in part under one or more applicable FOIA exemptions set forth at 5 U.S.C. 552(b). Bureaus will make reasonable efforts to provide to requesters an estimated date when a determination will be provided. An interim response is not a determination and appeal rights need not be provided with the interim response.

(c) *Determination*—(1) *Grants of requests.* If a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing of such determination.

(i) A component shall inform the requester:

(A) Of any fees charged under § 4.11; and

(B) That the requester may contact the relevant FOIA Public Liaison or FOIA contact for further assistance.

(ii) The component shall also disclose records to the requester promptly upon payment of any applicable fees.

(iii) Records disclosed in part shall be marked or annotated to show the applicable FOIA exemption(s) and the amount of information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if feasible.

(2) *Adverse determinations of requests.* If a component makes an adverse determination regarding a request, it shall notify the requester of that determination in writing.

(i) An adverse determination may be a denial of a request and includes decisions that:

(A) The requested record is exempt, in whole or in part.

(B) The request does not reasonably describe the records sought and the requester is unwilling to further clarify the request.

(C) The information requested is not a record subject to the FOIA.

(D) The requested record does not exist, cannot be located, or has previously been destroyed.

(E) The requested record is not readily reproducible in the form or format sought by the requester.

(ii) Adverse determinations may also include:

(A) Denials of requested fee category status.

(B) Denials of requests for fee waivers.

(C) Denials of requests for expedited processing.

(D) Denials of requests for reduction of fees.

(3) *Content of denial.* The denial letter shall be signed by an official listed in Appendix B to this part (or a designee), and shall include:

(i) The name and title or position of the person responsible for the denial;

(ii) A brief statement of the reason(s) for the denial, including any FOIA exemption(s) applied by the component in denying the request;

(iii) An estimate of the volume of any records or information withheld, by providing the number of pages or some other reasonable form of estimation. This estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable FOIA exemption;

(iv) A statement advising the requester of the right to seek dispute resolution services from the Department FOIA Public Liaison, the relevant component FOIA Public Liaison or FOIA contact, or OGIS; and

(v) A statement that the denial may be appealed under § 4.10, and a list of the requirements for filing an appeal set forth in § 4.10(b).

■ 9. Revise § 4.9 to read as follows:

§ 4.9 Confidential commercial information.

(a) *Definitions.* For the purposes of this section:

(1) *Confidential commercial information* means commercial or financial information, obtained by the Department from a submitter, which may be protected from disclosure under FOIA exemption (b)(4) (5 U.S.C. 552(b)(4)).

(2) *Submitter* means any person or entity outside the Federal Government from which the Department obtains confidential commercial information, directly or indirectly. The term includes U.S. or foreign persons, U.S. or foreign corporations; state, local and tribal governments; and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information should be encouraged to use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under FOIA exemption (b)(4). These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(c) *Notice to submitters.* (1) A component shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its confidential commercial information whenever required under paragraph (d) of this section, except as provided in paragraph (g) of this section, in order to give the submitter an opportunity under paragraph (e) of this section to object to disclosure of any specified portion of that information.

(2) Such written notice shall be sent via certified mail, return receipt requested, or similar means.

(3) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(4) The notice shall either describe the confidential commercial information requested or include copies of the requested records or portions of the records containing the information. If notification of a large number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification, instead of sending individual notifications.

(d) *When notice is required.* Notice shall be given to the submitter whenever:

(1) The submitter has designated the information in good faith as protected from disclosure under FOIA exemption (b)(4); or

(2) The component has reason to believe that the information may be protected from disclosure under FOIA exemption (b)(4), but has not yet determined whether the information is protected from disclosure.

(e) *Opportunity to object to disclosure.* A component shall allow a submitter seven working days (*i.e.,* excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the written notice described in paragraph (c) of this section to provide the component with a statement of any objection to disclosure. A FOIA Officer may extend the comment period from seven to ten working days, if a submitter requests an extension. The statement from a submitter must identify any portions of the information the submitter requests to be withheld under FOIA exemption (b)(4), and describe how each qualifies for protection under the exemption: That is, why the information is a trade secret, or commercial or financial information that is privileged or confidential. If a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information a submitter provides under this paragraph may itself be subject to disclosure under the FOIA.

(f) *Notice of intent to disclose.* A component shall consider a submitter's objections and specific grounds under the FOIA for nondisclosure in deciding whether to disclose confidential commercial information. If a component decides to disclose confidential commercial information over a submitter's objection, the component shall give the submitter written notice via certified mail, return receipt requested, or similar means, which shall include:

(1) A statement of reason(s) why the submitter's objections to disclosure were not sustained;

(2) A description of the confidential commercial information to be disclosed; and

(3) A statement that the component intends to disclose the information seven working days, or ten working days if an extension is granted, from the date the submitter receives the notice.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (c) and (f) of this section shall not apply if:

(1) The component determines that the information is exempt and will be withheld under a FOIA exemption;

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

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with Executive Order 12600; or

(4) The designation made by the submitter under paragraph (b) of this

section appears obviously frivolous, except that, in such a case, the component shall provide the submitter written notice of any final decision to disclose the information seven working days after the date the submitter receives the notice.

(h) *Notice to submitter of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter. Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(i) *Corresponding notice to requester.* Whenever a component provides a submitter with notice and an opportunity to object to disclosure under paragraph (c) of this section, the component shall notify the requester that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested. Whenever a submitter files a lawsuit seeking to prevent the disclosure of confidential commercial information, the component shall notify the requester of such action and, as a consequence, there may be further delay in receiving a response.

■ 10. Amend § 4.10 by revising paragraphs (a), (b), (c), (d), and (f)(3) and (4), and adding paragraph (f)(5), to read as follows:

§ 4.10 Appeals from initial determinations or untimely delays.

(a)(1) If a request for records to a component other than the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(1) of this section. For requests filed on or after July 1, 2016, the appeal must be received by the Office of the General Counsel during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 90 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date of the request, including the last extension under § 4.6(d), of a request due date. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 90-day limit will not be considered.

(2) If a request for records to the Office of Inspector General is initially denied in whole or in part, or has not been timely determined, or if a requester receives an adverse determination regarding any other matter listed under this subpart (as described in § 4.7(c)), the requester may file an appeal. Appeals can be submitted in writing or electronically, as described in paragraph (b)(2) of this section. For requests submitted on or after July 1, 2016, the appeal must be received by the Office of Inspector General, Office of Counsel, during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday) within 90 calendar days of the date of the written denial of the adverse determination or, if there has been no determination, an appeal may be submitted any time after the due date, including the last extension under § 4.6(d), of the adverse determination. Written or electronic appeals arriving after normal business hours will be deemed received on the next normal business day. If the 90th calendar day falls on a Saturday, Sunday, or a legal public holiday, an appeal received by 5:00 p.m., Eastern Time, the next business day will be deemed timely. Appeals received after the 90-day limit will not be considered.

(b)(1) Appeals, other than appeals from requests made to the Office of Inspector General, shall be decided by the Assistant General Counsel for Employment, Litigation, and Information (AGC–ELI). Written appeals should be addressed to the Assistant General Counsel for Employment, Litigation, and Information, at the U.S. Department of Commerce, Office of the General Counsel, Room 5896, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked ''Freedom of Information Act Appeal.'' Appeals may also be submitted electronically either by email to *FOIAAppeals@doc.gov* or online at the FOIAonline website, *http://foiaonline.regulations.gov,* if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, AGC–ELI ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(2) Appeals of initial and untimely determinations by the Office of Inspector General shall be decided by the Counsel to the Inspector General, except that appeals of records requests that were initially denied by the Counsel to the Inspector General shall be decided by the Deputy Inspector General. Written appeals should be addressed to the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General. The address of both is: U.S. Department of Commerce, Office of the Inspector General, Office of Counsel, Room 7898C, 1401 Constitution Avenue NW, Washington, DC 20230. For a written appeal, both the letter and the appeal envelope should be clearly marked ''Freedom of Information Act Appeal.'' Appeals may also be submitted electronically either by email to *FOIA@oig.doc.gov* or online at the FOIAonline website, *http://foiaonline.regulations.gov,* if requesters have a FOIAonline account. In all cases, the appeal (written or electronic) should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. No opportunity for personal appearance, oral argument or hearing on appeal is provided. Upon receipt of an appeal, the Counsel to the Inspector General, or the Deputy Inspector General if the records were initially denied by the Counsel to the Inspector General, ordinarily shall send an acknowledgement letter to the requester which shall confirm receipt of the requester's appeal.

(c) Upon receipt of an appeal involving records initially denied on the basis of FOIA exemption (b)(1), the records shall be forwarded to the Deputy Assistant Secretary for Security (DAS) for a declassification review. The DAS may overrule previous classification determinations in whole or in part if continued protection in the interest of national security is no longer required, or no longer required at the same level. The DAS shall advise the AGC–ELI, the General Counsel, Counsel to the Inspector General, or Deputy Inspector General, as appropriate, of his or her decision.

(d) If an appeal is granted, the notification letter may include documents to be released or the request may be referred back to the component for further action consistent with the determination on the appeal.

(f) * * *

(3) Notification that dispute resolution services are offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation, informing the requester that dispute resolution is a voluntary process, and if the Department and requester agree to participate in the dispute resolution services provided by OGIS, the Department will actively engage as a partner to the process in an attempt to resolve the dispute.

(4) Notification that judicial review of the denial is available in the district court of the United States in the district in which the requester resides, or has his or her principal place of business, or in which the agency records are located, or in the District of Columbia; and

(5) The name and title or position of the official responsible for denying the appeal.

■ 11. Amend § 4.11 by:

■ a. Revising paragraphs (a), (b)(2), (b)(4), (b)(6), (b)(7), (b)(8), (c) introductory text, (c)(2), (c)(3)(ii), (d)(6), and (d)(7).

■ b. Adding paragraph (d)(8).

■ c. Revising paragraphs (e), (i)(4), (j), (l)(2)(iii), (l)(3)(ii), and (l)(5).

The revisions and addition read as follows:

§ 4.11 Fees.

(a) *In general.* Components shall charge fees for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or when a waiver or reduction is granted under paragraph (l) of this section. A component shall collect all applicable fees before processing a request if a component determines that advance payment is required in accordance with paragraphs (i)(2) and (i)(3) of this section. If advance payment of fees is not required, a component shall collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) * * *

(2) *Direct costs* means those expenses a component incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. The hourly processing fees for calculating direct costs for Department or component personnel searching for, duplication, and reviewing records are reflected in Table 1. Note that the 16% overhead has already been included in the hourly rates identified in Table 1.

TABLE 1—FOIA HOURLY PROCESSING FEES

Type	Grade	Hourly rate
Administrative	E–9/GS–8 and below	$28
Professional	Contractor/O–1 to O–6/W–1 to W–5/GS–9 to GS–15	56
Executive	O–7 and above and Senior Executive Service	128

* * * * *

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution. Educational institutions may include a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education A Department component may seek verification from the requester that the request is in furtherance of scholarly research and agencies will advise requesters of their placement in this category. Verification may be supported by a letter from a teacher, instructor, or professor written on the institution's letterhead or from an institutional email address and in which the body of the email outlines the research to be conducted. Student requests may be supported by evidence that the records are sought for the student's academic research purposes, for example, through evidence of a class assignment or a letter from a teacher, instructor, or professor. A component's decision to grant a requester educational institution status will be made on a case-by-case basis based upon the requester's intended use of the material.

Example 1. A request from a professor or a student of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

Example 2. A request from the same professor or student of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional letterhead.

Example 3. A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

* * * * *

(6) *Representative of the news media, or news media requester,* means any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at-large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public including news organizations that disseminate solely on the internet. To be in this category, a requester must not be seeking the requested records for a commercial use. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. A component's decision to grant a requester media status will be made on a case-by-case basis based upon the requester's intended use of the material. The mere fact that a person or entity has been classified as news media with respect to one request does not mean they will be so considered as

news media with respect to any other requests.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting it and marking any applicable exemptions. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent obtaining and considering any formal objection to disclosure made by a submitter under § 4.9, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components shall ensure that searches are done in the most efficient and least expensive manner reasonably possible.

(c) *Fees.* In responding to FOIA requests, components shall charge the fees summarized in chart form in paragraphs (c)(1) and (c)(2) of this section and explained in paragraphs (c)(3) through (c)(5) of this section, unless a waiver or reduction of fees has been granted under paragraph (l) of this section.

* * * * *

(2) Uniform fee schedule.

Service	Rate
(i) Manual search	Hourly rate from Table 1 of employee involved.
(ii) Computerized search	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.
(iii) Review of records	Hourly rate from Table 1 of employee involved.
(iv) Duplication of records:	
(A) Paper copy reproduction	$.08 per page.
(B) Other reproduction (*e.g.,* converting paper into an electronic format (*e.g.*, scanning), computer disk or printout, or other electronically-formatted reproduction (*e.g.,* uploading records made available to the requester into FOIAonline)).	Actual direct cost, including operator time, using the hourly rate from Table 1, of the employee involved.

(3) * * *

(ii) For computer searches of records, requesters will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (d)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (d)(3) of this section) are entitled to the cost equivalent of two hours of manual search time without charge. These direct costs will include the costs of the operator/programmer FOIA hourly processing rate apportionable to the search and any other tangible direct costs associated with a computer search.

* * * * *

(d) * * *

(6) No search fees shall be charged to a FOIA requester when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request (this section only applies to FOIA requests, not appeals), except as described in paragraph (d)(8) of this section.

(7) No duplication fees shall be charged to requesters in the fee category of a representative of the news media or an educational or noncommercial scientific institution when a component does not comply with the statutory time limits at 5 U.S.C. 552(a)(6) in which to respond to a request, except as described in paragraph (d)(8) of this section.

(8)(i) When a Department component determines that unusual circumstances, as those terms are defined in § 4.6(d)(2), apply to the processing of the request, and provides timely written notice to the requester in accordance with the FOIA, then the Department component is granted an additional ten days until the fee restrictions in paragraphs (d)(6) and (7) of this section apply.

(ii) The fee restrictions in paragraphs (d)(6) and (7) of this section do not apply:

(A) When a Department component determines that unusual circumstances, as those terms are defined in § 4.6(d)(2), apply to the processing of the request;

(B) More than 5,000 pages are necessary to respond to the request;

(C) The Department component provides timely written notice to the requester in accordance with the FOIA; and

(D) The Department component has discussed with the requester (or made three good faith attempts to do so) on how the requester can effectively limit the scope of the request.

(e) *Notice of anticipated fees in excess of $20.00.* (1) When a component determines or estimates that the fees for processing a FOIA request will total more than $20.00 or total more than the amount the requester indicated a willingness to pay, the component shall notify the requester of the actual or estimated amount of the fees, unless the requester has stated in writing a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee. A notice under this paragraph shall offer the requester an opportunity to discuss the matter with Departmental personnel in order to modify the request in an effort to meet the requester's needs at a lower cost. The requester may also contact the Department FOIA Public Liaison, the relevant component's FOIA Public Liaison or FOIA contact, or OGIS for further assistance, or file an administrative appeal of the fee estimate amount in accordance with § 4.10.

(2) When a requester has been notified that the actual or estimated fees will amount to more than $20.00, or amount to more than the amount the requester indicated a willingness to pay, the component will do no further work on the request until the requester agrees in writing to pay the actual or estimated total fee. The component will toll the processing of the request when it notifies the requester of the actual or estimated amount of fees and this time will be excluded from the twenty (20) working day time limit (as specified in § 4.6(b)). The requester's agreement to pay fees must be made in writing, must designate an exact dollar amount the requester is willing to pay, and must be received within 30 calendar days from the date of the notification of the fee estimate. If the requester fails to submit an agreement to pay the anticipated fees within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and

notify the requester that the request will be closed.

* * * * *

(i) * * *

(4) When the component requires advance payment or payment due under paragraphs (i)(2) and (i)(3) of this section, the component will not further process the request until the required payment is made. The component will toll the processing of the request when it notifies the requester of the advanced payment due and this time will be excluded from the twenty (20) working day time limit (as specified in § 4.6(b)). If the requester does not pay the advance payment within 30 calendar days from the date of the component's fee notice, the component will presume that the requester is no longer interested and notify the requester that the request will be closed.

(j) *Tolling.* When necessary for the component to clarify issues regarding fee assessment with the FOIA requester, the time limit for responding to the FOIA request is tolled until the component resolves such issues with the requester. The tolling period is from the day a requester was contacted through the working day (*i.e.,* excluding Saturdays, Sundays, and legal public holidays) on which a response was received by the responsible component.

* * * * *

(l) * * *

(2) * * *

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure:* Whether disclosure of the requested information will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media satisfies this consideration.

* * * * *

(3) * * *

(ii) *The primary interest in disclosure:* Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.'' A fee waiver or reduction is justified if the public interest standard (paragraph (l)(1)(i) of this section) is satisfied and the public interest is greater than any identified commercial interest in disclosure. Components ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market Government information for direct economic return shall not be presumed to primarily serve the public interest.

* * * * *

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (l)(2) and (3) of this section, insofar as they apply to each request.

■ 12. Amend Appendix A to Part 4 by revising the introductory text of paragraph (5) and paragraph (5)(v) to read as follows:

Appendix A to Part 4—Freedom of Information Public Inspection Facilities, and Addresses for Requests for Records Under the Freedom of Information Act and Privacy Act, and Requests for Correction of Amendment Under the Privacy Act

* * * * *

(5) Economic Development Administration, Office of the Chief Counsel, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 72023, Washington, DC 20230; Ph.: (202) 482–3085; Fax: (202) 482–5671; FOIAonline: *http://foiaonline.regulations.gov*. This component maintains a separate online Electronic FOIA Library through its website, *http://www.eda.gov*. The following Regional EDA offices do not maintain separate online Electronic FOIA Libraries.

* * * * *

(v) Philadelphia Regional Office, EDA, U.S. Department of Commerce, Robert N.C. Nix Federal Building, 900 Market Street, Room 602, Philadelphia, Pennsylvania 19107; Ph.: (215) 597–4603.

* * * * *

[FR Doc. 2018–17171 Filed 8–9–18; 8:45 am]

BILLING CODE 3510–BX–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2018–0771]

RIN 1625–AA08

Special Local Regulation; Roanoke River, Plymouth, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the navigable waters of the Roanoke River in Plymouth, North Carolina. This special local regulation is intended to restrict vessel traffic on the Roanoke River during a high-speed boat race. The restriction of vessel traffic movement in the regulated area is intended to protect participants and spectators from the hazards posed by high-speed boat races. Entry of vessels or persons into this regulated area is prohibited unless specifically authorized by the Captain of the Port (COTP) North Carolina or a designated representative.

DATES: This rule is effective from 11 a.m. on August 11, 2018, through 5 p.m. on August 12, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0771 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 Petty Officer Matthew Tyson, Waterways Management Division, U.S. Coast Guard Sector North Carolina, Wilmington, NC; telephone: 910–772–2221, email *Matthew.I.Tyson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code
COTP Captain of the Port

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 the Coast Guard was not notified of the need for this rule until August 2, 2018, and it is impracticable and contrary to the public interest to delay this action. Waiting for a comment period to run would inhibit the Coast Guard's ability to protect the public and participants from the dangers associated with the high-speed boat race scheduled to start on August 11, 2018.

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 be impracticable and contrary to public interest because immediate action is needed to protect the public and participants from the dangers associated with the high-speed boat race scheduled to start on August 11, 2018.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP North Carolina has determined that potential hazards associated with the Virginia Outlaw Drag Boat Association Rumble on the Roanoke scheduled for 11 a.m. through 5 p.m. on August 11 and 12, 2018, is a safety concern for mariners during the high-speed boat race on the Roanoke River in Plymouth, North Carolina. This rule is necessary to protect safety of life from the potential hazards associated with the high-speed boat race.

IV. Discussion of the Rule

This rule establishes a special local regulation on a portion of the Roanoke River from 11 a.m. on August 11, through 5 p.m. on August 12, 2018. The rule will be enforced 11 a.m. through 5 p.m. each of those days. The time of enforcement will be broadcast locally over VHF–FM marine radio. The special local regulation will include all navigable waters of the Roanoke River in Plymouth, North Carolina, from approximate positions: Latitude 35°52′25″ N, longitude 076°44′33″ W, then northwest to latitude 35°52′29″ N, longitude 076°44′37″ W, then southwest along the shoreline to latitude 35°52′00″ N, longitude 076°45′31″ W, then south to latitude 35°51′56″ N, longitude 076°45′30″ W, then northeast along the shoreline to the point of origin, a length of approximately one mile. The duration of this special local regulation is intended to protect participants and spectators on the navigable waters of the Roanoke River during the high-speed boat race. For safety reasons, no public spectators will be allowed to view the event from the waterway. Vessels may request permission to pass through the regulated area between race heats. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP North Carolina 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, and duration of the special local regulation. Vessel traffic will not be allowed to enter or transit a portion of the Roanoke River from 11 a.m. through 5 p.m. on both August 11 and 12, 2018. The Coast Guard will transmit a Broadcast Notice to Mariners via VHF–FM marine channel 16 regarding the special local regulation. This portion of the Roanoke River has been determined to be a low traffic area during this time of the year. This rule allows vessels to request permission to pass through the regulated area between race heats.

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 special local regulation may be small entities, for the reasons stated in section IV.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 will 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, which guides 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 approximately six hours on two separate days that prohibits entry into a portion of the Roanoke River. 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 § 100.35T05–0771 to read as follows:

§ 100.35T05–0771 Special Local Regulation, Roanoke River, Plymouth, NC.

(a) *Location.* The following area is a special local regulation: All navigable waters of the Roanoke River in Plymouth, North Carolina, from approximate positions: Latitude 35°52′25″ N, longitude 076°44′33″ W, then northwest to latitude 35°52′29″ N, longitude 076°44′37″ W, then southwest along the shoreline to latitude 35°52′00″ N, longitude 076°45′31″ W, then south to latitude 35°51′56″ N, longitude 076°45′30″ W, then northeast along the shoreline to the point of origin, a length of approximately one mile.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, Sector North Carolina.

Official Patrol means any vessel assigned by the COTP North Carolina with a commissioned, warrant, or petty officer on board and displaying the Coast Guard ensign.

Participants means persons and vessels involved in the high-speed boat race.

Patrol Commander means a Coast Guard commissioned, warrant, or petty officer designated by the COTP North Carolina for the enforcement of the special local regulation.

(c) *Regulations.* (1) The requirements of § 100.501(b) and (c)(1) and (2) apply to the area described in paragraph (a) of this section.

(2) With the exception of participants, entry into or remaining in this special local regulation is prohibited unless authorized by the COTP North Carolina or the COTP North Carolina's Patrol Commander. All other vessels must depart the special local regulation immediately upon the start of enforcement.

(3) To request permission transit through the special local regulation, contact the COTP North Carolina or the COTP North Carolina's Patrol Commander through the Coast Guard Sector North Carolina Command Duty Officer, Wilmington, North Carolina, at telephone number 910–343–3882 or on VHF–FM marine band radio channel 13 (165.65 MHz) or channel 16 (156.8 MHz).

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the special local regulation by Federal, State, and local agencies.

(e) *Enforcement period.* This regulation will be enforced from 11 a.m. through 5 p.m. on both August 11 and 12, 2018.

Dated: August 6 2018.

Bion B. Stewart,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2018–17222 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2018–0635]

RIN 1625–AA00

Safety Zone; Ski Show Sylvan Beach, Fish Creek, Oneida, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Fish Creek during the Ski Show Sylvan Beach. This safety zone is intended to prohibit persons and vessels from a portion of Fish Creek during the Ski Show Sylvan Beach. This temporary safety zone is necessary to protect vessels and racers from the navigational hazards associated with the ski show.

DATES: This rule is effective from 12:00 p.m. until 8:00 p.m. on August 12, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2018–0635 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 LTJG Sean Dolan, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
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

On July 13, 2018 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) titled Ski Show Sylvan Beach; Fish Creek, Oneida, NY (83 FR 32604). In that we discussed why we issued the NPRM and invited comments on our proposed regulatory action related to this Standup Paddleboard race. During the comment period that ended August 2, 2018 we received no relevant comments.

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** because doing so would be impracticable and contrary to the public interest. Delaying the effective date would be contrary to the rule's objectives of enhancing safety of life on the navigable waters and protection of persons and vessels near the 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 Buffalo (COTP) has determined that a ski show on a navigable waterway will pose a significant risk to participants and the boating public. This rule is necessary to protect vessels and racers during the Ski Show Sylvan Beach.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no relevant comments on our NPRM published on July 13, 2018. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from 12:00 p.m. until 8:00 p.m. on August 12, 2018. The safety zone will cover all navigable waters of where Fish Creek meets Oneida Lake starting at position 43°11′36.6″ N, 75°43′53.8″ W then South to 43°11′33.7″ N, 75°43′51.2″ W then East to 43°11′42.4″ N, 75°43′38.6″ W then North to 43°11′44.5″ N, 75°43′39.7″ W then returning to the point of origin. The duration of the zone is intended to enhance the safety of vessels and racers on the navigable waters within the above stated points, before, during, and after the scheduled event.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Captain of the Port or his designated on-scene representative may be contact via VHF Channel 16.

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 of the safety zone. Vessel traffic would not be able to safely transit around this safety zone, which would impact a small designated area of Fish Creek. However, the Coast Guard would issue a Broadcast Notice to Mariners 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 received no comments from the Small Business Administration on this rulemaking. 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 this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security 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 establishment of a safety zone. 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 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: 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.T09–0635 to read as follows:

§ 165.T09–0635 Safety Zone; Ski Show Sylvan Beach; Fish Creek, Oneida, NY.

(a) *Location.* The safety zone will encompass all waters of Fish Creek in Oneida, NY, starting at position 43°11′36.6″ N, 75°43′53.8″ W then South to 43°11′33.7″ N, 75°43′51.2″ W then East to 43°11′42.4″ N, 75°43′38.6″ W then North to 43°11′44.5″ N, 75°43′39.7″ W then returning to the point of origin (NAD 83).

(b) *Enforcement period.* This rule is effective from 12:00 p.m. until 8:00 p.m. on August 12, 2018.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: August 6, 2018.

Joseph S. Dufresne,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2018–17181 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2017–0437; FRL–9981–97—Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Adoption of Control Techniques Guidelines for Control of Volatile Organic Compound Emissions From Miscellaneous Metal Parts Surface Coating, Miscellaneous Plastic Parts Surface Coating, and Pleasure Craft Surface Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Commonwealth of Pennsylvania's state implementation plan (SIP). The revision includes amendments to the Pennsylvania Department of Environmental Protection's (PADEP) regulations and addresses the requirement to adopt reasonably available control technology (RACT) for sources covered by EPA's control techniques guidelines (CTG) standards for the following categories: Miscellaneous metal parts surface coating, miscellaneous plastic parts surface coating, and pleasure craft surface coatings, as well as related cleaning activities. The SIP revision also amends regulations for graphic arts systems and mobile equipment repair and refinishing as well as making general administrative changes. This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on September 10, 2018.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0437. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Gregory A. Becoat, (215) 814 2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2016, PADEP submitted a revision to the Pennsylvania SIP concerning the adoption of EPA's CTG for miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes, and pleasure craft surface coatings. Specifically, PADEP has amended 25 Pennsylvania Code (Pa. Code) Chapter 129 (relating to standards for sources) to address RACT and further reduce volatile organic compounds (VOC) emissions in Pennsylvania. In accordance with sections 172(c)(1), 182(b)(2)(A) and 184(b)(1)(B) of the CAA, Pennsylvania's SIP revision submittal establishes VOC emission limitations and other requirements consistent with the recommendations of EPA's 2008 Control Techniques Guidelines for Miscellaneous Metal and Plastic Parts Coatings (MMPP) (Publication No. EPA 453/R–08–003; September 2008) and Control Techniques Guidelines for Automobile and Light-Duty Truck Assembly Coatings for these sources in the Commonwealth of Pennsylvania (Publication No. EPA 453/R–08–006).

I. Background

Ground level ozone is formed in the atmosphere by photochemical reactions between volatile organic compounds (VOCs), nitrogen oxides (NO_X), and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC and NO_X emission sources to achieve emission reductions. Among effective control measures, RACT controls significantly reduce VOC and NO_X emissions from major stationary sources. NO_X and VOC are referred to as ozone precursors and are emitted by many types of pollution sources, including motor vehicles, power plants, industrial facilities, and area wide sources, such as consumer products and lawn and garden equipment. Scientific evidence indicates that adverse public health effects occur following exposure to ozone. These effects are more pronounced in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.

RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 FR 53761 at 53762 (September 17, 1979). Section 182 of the CAA sets forth two separate RACT requirements for ozone nonattainment areas. The first requirement, contained in section 182(a)(2)(A) of the CAA, and referred to as RACT fix-up, requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. Pennsylvania previously corrected its deficiencies under the 1-hour ozone standard and has no further deficiencies to correct under this section of the CAA. The second requirement in section 182(b)(2) of the CAA applies to moderate (or worse) ozone nonattainment areas, and pursuant to section 184(b)(1)(B), to all areas in a state that are included in an ozone transport region (OTR). Section 184 of the CAA includes all of Pennsylvania in the OTR. Sections 182(b)(2) and 184(b) require these areas to implement RACT controls on all major VOC and NO_X emission sources and on all sources and source categories covered by a CTG issued by EPA.[1] *See* CAA sections 182(b)(2) and 184(b).

In subsequent **Federal Register** notices, EPA has addressed how states can meet the RACT requirements of the CAA. EPA developed the CTG for MMPP in September 2008 (Publication No. EPA 453/R–08–003) that provides guidelines with regard to feasible emission limitations and operating practices for a number of different surface coatings used within this large and diverse source category. The 2008 MMPP CTG recommends separate sets of emission limits for metal parts coatings, plastic parts coatings, automotive/transportation and business machine plastic parts, and pleasure craft, depending on the type of coating used by a particular source. The miscellaneous metal product and plastic parts surface coatings categories identified pursuant to section 183(e) of the CAA include the coatings that are applied to the surfaces of a varied range of metal and plastic parts and products. Such parts or products are constructed either entirely or partially from metal or plastic. These miscellaneous metal products and plastic parts include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: Fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and numerous other industrial and household products.

The pleasure craft coating category does not include coatings that are a part of other product categories listed under Section 183(e) of the CAA for which CTGs have been published or included in other CTGs. For pleasure craft surface coatings, EPA took into account California regulations when developing the 2008 MMPP CTG. California was the only state at that time with regulations governing VOC emissions from pleasure craft surface coatings. After EPA finalized the 2008 MMPP CTG, the pleasure craft coatings industry asserted to EPA that three of the VOC emission limits in the CTG were too low considering the performance requirements of the pleasure craft coatings and that the VOC emission limits recommended did not represent RACT for the National pleasure craft coatings industry. On September 14, 2009, EPA was contacted by the pleasure craft coatings industry to reconsider some of the VOC emission limits recommended in the final 2008 MMPP CTG. In response, EPA issued a memorandum on June 1, 2010, entitled ''Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration,'' recommending that the pleasure craft industry work with state agencies during their RACT rule development process to assess what is reasonable for the specific sources regulated. EPA has stated that states can use the recommendations from the MMPP CTG to form their own determinations as to what constitutes RACT for pleasure craft coating operations. CTGs impose no legally binding requirements on any entity, including pleasure craft coating facilities. As stated in the memorandum, EPA will evaluate state-developed RACT rules and determine whether the submitted rules meet the RACT requirements of the CAA.

II. Summary of SIP Revision and EPA Analysis

On November 18, 2016, PADEP submitted a SIP revision which adopted the recommendations contained in the 2008 MMPP CTG with respect to sources in the miscellaneous metal products coatings and plastic parts coatings product categories. For the pleasure craft coating industry, after evaluating what is reasonable for this source category, PADEP determined that three VOC content limits in the CTG should be revised from the limits in the CTG to represent RACT for the pleasure craft coating industry. This is based on EPA's memorandum that the pleasure craft industry should work with state agencies during their RACT rule development process to assess what is reasonable for the specific sources regulated.

The SIP revision includes an amendment to 25 Pa. Code Chapter 129—(relating to standards for sources) as follows: (1) Amended section 129.51(a)—(relating to general) in order

[1] CTGs are documents issued by EPA intended to provide state and local air pollution control authorities information to assist them in determining RACT for VOC from various sources. The recommendations in the CTG are based upon available data and information and may not apply to a particular situation based upon the circumstances. States can follow the CTG and adopt state regulations to implement the recommendations contained therein, or they can adopt alternative approaches. In either case, states must submit their RACT rules to EPA for review and approval as part of the SIP process. Pursuant to section 184(b)(1)(B) of the CAA, all areas in the OTR must implement RACT with respect to sources of VOCs in the state covered by a CTG issued before or after November 15, 1990.

to extend applicability; (2) added section 129.52d—''Control of VOC emissions from miscellaneous metal parts surface coating processes, miscellaneous plastic parts surface coating processes and pleasure craft surface coatings,'' in order to regulate VOC emissions from these three categories; (3) amended section 129.52(g)—(relating to surface coating processes) in order to clarify record keeping and reporting requirements; (4) added section 129.52 subsection (k) in order to clarify the applicability of the requirements of section 129.52, Table I, Category 10 in 25 Pa. Code Chapter 129; (5) amended section 129.67 (relating to graphic arts systems) in order to extend applicability; and (6) amended section 129.75 (relating to mobile equipment repair and refinishing) in order to specify exceptions for those who apply surface coating to mobile equipment already subject to requirements of sections 129.52 and 129.52d. More detailed information on these provisions as well as a detailed summary of EPA's review and rationale for approving these SIP revisions can be found in the Technical Support Document (TSD) for this action, which is available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2017–0437.

After evaluating the SIP revision submittal, EPA concluded that it meets CAA requirements under sections 110, 172(c)(1), 182(b)(2)(A), and 184(b)(1) by adopting EPA's CTG and continuing to address and minimize VOC emissions in the Commonwealth of Pennsylvania, as discussed in more detail in EPA's TSD for this rulemaking action. PADEP is adopting without change most of the requirements recommended by the MMPP CTG but adopting the pleasure craft industry recommendations for the following three coating categories: Antifouling Sealer/Tiecoat; Other Substrate Antifoulant; and Extreme High Gloss. For these three categories, the Commonwealth of Pennsylvania reviewed industry data and determined that for the purpose of functionality, cost, and VOC emissions, the alternative limits adopted for these three coating categories constitute RACT. EPA concludes that Pennsylvania's approach is consistent with the guidance memorandum entitled, ''Control Technique Guidelines for Miscellaneous Metal and Plastic Part Coatings—Industry Request for Reconsideration,'' and therefore, concludes that these regulations reflect RACT given costs and VOC emissions. The revised VOC content limits for the pleasure craft surface coatings proposed by PADEP are expected to have a de minimis impact on the amount of VOC emission reductions from the implementation of the revised VOC limits due to having no facilities with the potential to emit VOC emissions for pleasure craft surface coatings.

EPA notes that under 25 Pa. Code §§ 129.52d, PADEP is allowing the provisions of 25 Pa. Code § 129.52d to supersede the requirements of a RACT permit previously issued under 25 Pa. Code §§ 129.91–129.95 if the permit was issued prior to January 1, 2017, to the owner or operator of a source subject to section 129.52d(a), except to the extent the RACT permit contains more stringent requirements. EPA further notes that the RACT permits issued under 25 Pa. Code §§ 129.91–129.95 were issued for previous RACT determinations on a case-by-case basis; these permits were then submitted to EPA as source-specific SIP revisions and were previously acted on by EPA and would have been approved into the Pennsylvania SIP. If EPA approved those source-specific RACT determinations as meeting the requirements of RACT under the CAA, then the permits associated with those determinations were approved into the SIP as listed in 40 CFR 52.2020(d). The requirements of the source-specific RACT determination which EPA approved into the Pennsylvania SIP remain applicable requirements for the specific source unless and until Pennsylvania seeks to remove the limits from the SIP in accordance with CAA section 110(l). To the extent that the provisions of 25 Pa. Code § 129.52d are more stringent than those of a previous SIP-approved permit, PADEP will need to make a source-specific determination as to whether the requirements of the previous RACT permit apply, or those of § 129.52d, and submit that determination to EPA as a SIP revision in order to remove the previously approved permit from the SIP. Until such a SIP revision is made, EPA cannot remove the source-specific permits from the SIP and EPA is not taking such action in this rulemaking. Thus, the requirements of a previously SIP-approved permit are not superseded under the SIP. In accordance with section 110 of the CAA including 110(a) and 110(l), EPA determines that approval of this PADEP SIP revision will not interfere with reasonable further progress, attainment of any NAAQS or any other applicable CAA requirements.

On October 16, 2017 (82 FR 48034 and 82 FR 47988), EPA simultaneously published a notice of proposed rulemaking (NPR) and a direct final rule (DFR) for the Commonwealth of Pennsylvania approving the SIP revision. EPA received five adverse comments on the rulemaking and withdrew the DFR prior to the effective date of December 15, 2017.

III. Response to Comments

During the comment period, EPA received several anonymous comments on the rulemaking. Of the comments, one comment generally discussed greenhouse gas from electric vehicles, a second comment generally discussed wildfires and wildland fire management policy, and a third comment generally discussed the Mercury and Air Toxics Standards. EPA believes these three comments are not germane to this rulemaking action, thus no further response is provided. The following is a summary of the comments pertinent to this rulemaking action and EPA's response to those comments.

Comment #1: The first commenter stated that EPA did not address a March 28, 2017 Executive Order (E.O.) regarding the promotion of energy independence and economic growth.[2]

Response #1: EPA disagrees with the commenter's assertion that this rulemaking action required evaluation mandated under the E.O.. The E.O. in question pertains to reviewing existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy. First, EPA does not believe this E.O. applies to this rulemaking action because, to the extent this rulemaking is considered an agency action under the E.O., this action was not an existing agency action as of March 28, 2017, the date the E.O. was signed. Second, assuming *arguendo,* that this rulemaking action is considered an agency action under the E.O., this rulemaking action does not create a burden as that term is defined in the E.O.. As defined in the E.O., the term ''burden'' means, ''to unnecessarily obstruct, delay, curtail, or otherwise impose significant cost on the siting, permitting, production, utilization, transmission, or delivery of energy resources.'' This rulemaking action does not affect the siting, permitting, production, utilization, transmission, or delivery of energy resources because this action merely approves Pennsylvania's submission as meeting

[2] Based on the comment, EPA assumes the E.O. in question is E.O. 13783, Promoting Energy Independence and Economic Growth, signed March 28, 2017.

certain necessary CTG requirements under the CAA, thus any required review under this E.O. is not applicable. Finally, EPA does not have discretion to disapprove the state's SIP submission if it meets the applicable CAA requirements. CAA section 110(k)(3) requires that EPA ''shall'' approve the SIP submission ''as a whole'' if it meets the applicable requirements in the CAA. Pennsylvania's submission adopts RACT for sources identified in EPA's CTG, as required by CAA section 184(b). Thus, considering the plain language of CAA section 110(k)(3), EPA cannot consider disapproving or requiring changes to a state's SIP submittal based on a particular E.O. or statutory reviews.

Comment #2: The second commenter asserted that EPA should review its CTG and Alternative Control Technology (ACT) guidance documents to ''make sure they aren't too costly.'' The commenter further asserted that VOC reductions in Pennsylvania are not needed and EPA should only require RACT reductions in areas with ''bad air.'' The commenter concluded by stating EPA should withdraw the rule in its entirety to enable economic growth and promote jobs.

Response #2: EPA disagrees with the commenter that this rulemaking should be withdrawn and that EPA's CTGs and ACTs should be reviewed. The CTG at issue in this rulemaking was issued in 2008. This rulemaking action concerns only EPA's action approving Pennsylvania's SIP submission adopting the CTG requirements, and thus comments about the CTG itself are outside the scope of this action. In any case, EPA considered the cost of installing controls when developing the CTG and concluded, ''The recommended VOC emission rates described [in the CTG] reflect the control measures that are currently being implemented by these facilities. Consequently, there is no additional cost to implement the CTG recommendations for coatings.'' Further, the CTG went on to state the following for the work practices being recommended: ''The CTG also recommends work practices for reducing VOC emissions from both coatings and cleaning materials. We believe that our work practice recommendations in the CTG will result in a net cost savings. Implementing work practices reduces the amount of coating and cleaning materials used by decreasing evaporation.'' Thus, EPA did consider cost when issuing this CTG in a prior rulemaking.

EPA further disagrees with the commenter's assertion that VOC reductions are not needed in the entire Commonwealth of Pennsylvania, and disagrees that the state or EPA has any discretion to not implement those reductions. First, the commenter provided no evidence supporting a claim that VOC reductions are only needed in areas with ''bad air'' (EPA assumes this is a reference to nonattainment areas). Second, Congress has dictated through the CAA that VOC RACT is required to be implemented throughout the entire Commonwealth. CAA section 182(b)(2)(A) requires that, for each ozone nonattainment area classified as Moderate or above, the area must revise their SIPs to include RACT for each category of VOC sources covered by CTG documents issued between November 15, 1990 and the date of attainment. CAA section 184(a) further establishes a single OTR which includes the entire Commonwealth of Pennsylvania, and section 184(b)(1)(B) requires all OTR states to submit SIPs implementing RACT with respect to *all* sources of VOC in the state that are covered by a CTG. Finally, Pennsylvania and EPA are not permitted to ignore statutory mandates for any policy reason, including to promote jobs or to enable economic growth. Thus, the requirements of the CAA require Pennsylvania to revise its SIP in order to implement VOC RACT for all CTGs issued, including the automobile and light-duty truck assembly coating category. As an OTR state, Pennsylvania is required to reduce VOCs by implementing RACT and CTGs.

IV. Final Action

EPA is approving the Commonwealth of Pennsylvania's November 2016 SIP revision submittal, which adopts EPA's CTG for miscellaneous metal parts surface coating, miscellaneous plastic parts surface coating, and pleasure craft surface coatings, and which makes other related administrative changes, because the revision meets the requirements of CAA sections 110, 172(c)(1), 182(b)(2)(A), and 184(b)(2).

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Pennsylvania rule discussed in section II of this preamble. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

VI. 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

[3] 62 FR 27968 (May 22, 1997).

Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 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, which approves Pennsylvania's SIP revision adopting CTGs for miscellaneous metal parts surface coating, miscellaneous plastic parts surface coating, and pleasure craft surface coatings, as well as general administrative changes related to cleaning activities, may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: July 26, 2018.

Cecil Rodrigues,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (c)(1) is amended by:

■ i. Revising the entries for Section 129.51 and Section 129.52;

■ ii. Adding an entry for Section 129.52d; and

■ iii. Revising the entries for Section 129.67, and Section 129.75.

The additions and revisions read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/ § 52.2063 citation
Title 25—Environmental Protection Article III—Air Resources				
* *	*	*	*	* *
Section 129.51	General	10/22/16	8/10/18 [Insert **Federal Register** citation].	Revised Section 129.51(a).
Section 129.52	Surface coating processes	10/22/16	8/10/18 [Insert **Federal Register** citation].	Revised 129.52(g) and added Subsection 129.52(k).
* *	*	*	*	* *
Section 129.52d	Control of VOCs from Miscellaneous Metal Parts Surface Coating Processes, Miscellaneous Plastic Parts Surface Coating Processes and Pleasure Craft Surface Coatings.	10/22/16	8/10/18 [Insert **Federal Register** citation].	New section 129.52d is added. This section does not remove or replace any permits approved under 52.2020(d).
* *	*	*	*	* *
Section 129.67	Graphic arts systems	10/22/16	8/10/18 [Insert **Federal Register** citation].	Revised Subsection 129.67(a)(1).
* *	*	*	*	* *
Section 129.75	Mobile equipment repair and refinishing.	10/22/16	8/10/18 [Insert **Federal Register** citation].	Revised Subsection 129.75(b)(1). Previous approval 8/14/00 (c) 148.
* *	*	*	*	* *

* * * * *

[FR Doc. 2018–17078 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2017–0429; FRL–9980–47]

Picoxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of picoxystrobin in or on multiple commodities that are identified and discussed later in this document. E.I. DuPont De Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective August 10, 2018. Objections and requests for hearings must be received on or before October 9, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2017–0429, 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.*

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, P.E., Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2017–0429 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before October 9, 2018. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2017–0429, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of November 27, 2017 (82 FR 56017) (FRL–9968–55), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F8557) by E.I. Du Pont De Nemours and Company, Chestnut Run Plaza, 974 Centre Road, Wilmington, DE 19805. The petition requested 40 CFR 180.669 be amended by establishing tolerances for residues of the fungicide picoxystrobin, methyl (αE)-α-(methoxymethylene)-2-[[[6-(trifluoromethyl)-2-pyridinyl]oxy]methyl]benzeneacetate, in or on alfalfa, forage at 4 parts per million (ppm); alfalfa, hay at 5 ppm; alfalfa, seed at 9 ppm; almond hulls at 15 ppm; cotton, gin by-products at 40 ppm; cottonseed (Crop Subgroup 20C) at 4 ppm; grass, forage (Grown for Seed) at 40 ppm; grass, hay (Grown for Seed) at 80 ppm; head lettuce at 7 ppm; onion, bulb (Crop Subgroup 3–07A) at 0.8 ppm; onion, green (Crop Subgroup 3–07B) at 15 ppm; pea and bean, succulent shelled (Crop Subgroup 6B) at 3 ppm; peanut at 0.1 ppm; peanut, hay at 40 ppm; sunflower (Crop Subgroup 20B) at 3 ppm; tree nut except hulls (Crop Group 14–12) at 0.15 ppm; vegetable, brassica head and stem (Crop Group 5–16) at 5 ppm; vegetable, cucurbit (Crop Group 9) at 0.7 ppm; vegetable, fruiting (Crop Group 8–10) at 1.5 ppm; vegetable, leaf petiole (Crop Subgroup 22B) at 40 ppm; vegetable, leafy except head lettuce (Crop Group 4–16) at 60 ppm; vegetable, leaves of root and tuber (Crop Group 2) at 40 ppm; vegetable, legume, edible podded (Crop Subgroup 6A) at 4 ppm; vegetable, root (Crop Subgroup 1A) at 0.6 ppm; and vegetable, tuberous and corm (Crop Subgroup 1C) at 0.06 ppm. That document referenced a summary of the petition prepared by E.I. Du Pont De Nemours and Company, the registrant, which is available in the docket, *http://www.regulations.gov.*

Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Notice of this same petition was provided again in the **Federal Register** of January 26, 2018 (83 FR 3658) (FRL–9971–46). The only difference between the two notifications is that the second notification spelled out the analytical method, whereas the November 2017 notification used just the abbreviations. Both documents provided notice for the same petition and same tolerances. That document is also available in the docket, *http://www.regulations.gov.* One comment was received on this second notification, but it did not raise any issues relevant to this rulemaking.

Based upon review of the data supporting the petition, EPA is establishing tolerances at levels lower than requested, except for the commodities of alfalfa forage, hay, and seed, and using commodity terms consistent with the Agency's food and feed commodity vocabulary. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for picoxystrobin including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with picoxystrobin follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The most consistently observed effects of picoxystrobin exposure across species, genders, and treatment durations were decreased body-weight, body-weight gain and food consumption, and diarrhea. The effects on body-weight and food consumption were consistent with the commonly observed findings for compounds that disrupt the mitochondria respiration system and the resulting disruption of energy production. Similar to some other strobilurins, picoxystrobin causes intestinal disturbance as indicated by increased incidence of diarrhea or duodenum mucosal thickening. These intestinal effects appeared to be related to the irritating action on the mucus membranes as demonstrated by severe eye irritation effect seen in the primary eye irritation study on picoxystrobin.

In the rat, developmental toxicity was expressed as misaligned 5th sternebrae at doses causing maternal toxicity (*i.e.* diarrhea and decreased body weight gain, and food consumption). In the rabbit, developmental toxicity seen at doses causing maternal toxicity (*i.e.* decreased body weight and clinical signs of toxicity) consisted of long 13th rib length and incompletely ossified odontoids and 27 pre-pelvic vertebrae. In the reproduction study, parental/systemic toxicity manifested as decreased body weight and body weight gain in both the parents and offspring; no reproductive toxicity was seen.

There was no evidence that picoxystrobin directly affects the nervous system; behavioral changes observed in the acute and subchronic neurotoxicity studies were attributed to general malaise. Picoxystrobin has no effects on the immune system in rats and mice, and is not mutagenic or genotoxic. No adverse dermal or systemic effects were identified in the rat following dermal exposure at the limit-dose. In the inhalation toxicity study, rats showed no portal of entry, respiratory or systemic toxicity. Chronic picoxystrobin exposure induced a treatment-related increase in testicular interstitial cell benign tumors in male rats at the high-dose only. No tumors were seen in female rats or in male and female mice, and there is no mutagenic concern. Based on this information, EPA has classified picoxystrobin as ''suggestive evidence of carcinogenic potential'', for which quantification of cancer risk based on a non-linear approach (*i.e.,* the chronic reference doses (RfD)) is appropriate. Use of the chronic RfD will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to picoxystrobin. Specific information on the studies received and the nature of the adverse effects caused by picoxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Picoxystrobin: Human Health Risk Assessment for Proposed New Uses on Root Vegetables, Subgroup 1A; Tuberous and Corm Vegetables, Subgroup 1C; Leaves of Root and Tuber Vegetables, Group 2; Bulb Onion, Subgroup 3–07A; Green Onion, Subgroup 3–07B; Leafy Vegetables, except Head Lettuce, Group 4–16; Head and Stem *Brassica* Vegetables, Group 5–16; Edible Podded Legume Vegetables, Subgroup 6A; Succulent Shelled Pea and Bean, Subgroup 6B; Fruiting Vegetables, Group 8–10; Cucurbit Vegetables, Group 9; Tree Nuts, Group 14–12; Sunflower, Subgroup 20B; Cottonseed, Subgroup 20C; Leaf Petiole Vegetables, Subgroup 22B; Head Lettuce; Almond; Alfalfa; Peanut; and Grass, Forage, Fodder, and Hay, Group 17'' in docket ID number EPA–HQ–OPP–2017–0429.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some

degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www2.epa.gov/pesticide-science-and-assessing-pesticide-risks/assessing-human-health-risk-pesticides.* A summary of the toxicological endpoints for picoxystrobin used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PICOXYSTROBIN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age) ...	An acute dietary risk assessment is not required since no endpoint attributable to a single exposure was identified from the relevant studies.		
Acute dietary (General population including infants and children).	UF_A = 10x ..... UF_H = 10x FQPA SF/UF_L = 10x	Acute RfD/aPAD = 0.2 mg/kg/day.	Acute Neurotoxicity—Rat LOAEL = 200 mg/kg/day based on low arousal and decreased motor activities in males, decreased rearing in females, in addition to decreased bodyweight gain and food consumption in both sexes on Day 1.
Chronic dietary (All populations)	NOAEL= 4.6 mg/kg/day UF_A = 10x. UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.046 mg/kg/day. cPAD = 0.046 mg/kg/day	Chronic Toxicity—Dog LOAEL = 15.7 mg/kg/day based on decreased body weights, body weight gains, and food consumption in both sexes.
Cancer (Oral, dermal, inhalation)	''Suggestive Evidence of Carcinogenic Potential'' based on tumors in one species and one sex: a treatment-related increase in testicular interstitial cell benign tumors in high dose male rats. Quantification of cancer risk is based on a non-linear (i.e., RfD) approach.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_L = use of a LOAEL to extrapolate a NOAEL.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to picoxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing picoxystrobin tolerances in 40 CFR 180.669. EPA assessed dietary exposures from picoxystrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for picoxystrobin. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA's assumption of this dietary assessment included tolerance-level residues for all crops. In addition, default processing factors and 100% percent crop treated (PCT) were assumed for all commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues for all crops. In addition, default processing factors and 100 PCT were assumed for all commodities.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that a linear (RfD) approach is appropriate for assessing cancer risk to picoxystrobin. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii., *chronic exposure.*

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for picoxystrobin. Tolerance-level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening-level water exposure models in the dietary exposure analysis and risk assessment for picoxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of picoxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of picoxystrobin for acute exposures are estimated to be 15.7 parts per billion (ppb) for surface water and 1.40 ppb for ground water. Chronic exposures for non-cancer assessments are estimated to be 5.53 ppb for surface water and 1.36 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 15.7 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 5.53 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control,

indoor pest control, termiticides, and flea and tick control on pets).

Picoxystrobin is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found picoxystrobin to share a common mechanism of toxicity with any other substances, and picoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that picoxystrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicity studies include rat and rabbit prenatal developmental studies in addition to reproduction and fertility effects studies in rats. In the rat- and rabbit-developmental toxicity studies, developmental toxicity was expressed as skeletal variations at doses causing maternal toxicity (*i.e.* diarrhea, decreased body-weight, body-weight gain, food consumption, and clinical signs of toxicity). In the reproduction study, parental/systemic toxicity manifested as decreased body-weight and body-weight gain in both the parents and offspring. No evidence of increased susceptibility/sensitivity is seen in any of these studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x for chronic dietary. For acute dietary exposures for the general population, including infants and children where the acute neurotoxicity study is used as an endpoint for risk assessment, EPA is retaining a 10x FQPA SF. That decision is based on the following findings:

i. The toxicity database for picoxystrobin is complete, except for the lack of a NOAEL in the acute neurotoxicity test, which is used to establish a toxicological endpoint for acute dietary exposure scenarios.

ii. Although there is some effect on behavior after exposure to picoxystrobin, EPA has concluded that picoxystrobin is not a neurotoxic chemical due to lack of neuropathological findings; there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that picoxystrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to picoxystrobin in drinking water. These assessments will not underestimate the exposure and risks posed by picoxystrobin.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to picoxystrobin will occupy 23% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to picoxystrobin from food and water will utilize 36% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for picoxystrobin.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short-term or intermediate-term adverse effect was identified and picoxystrobin is not registered for any residential uses, picoxystrobin is not expected to pose a short- or intermediate-term risk.

4. *Aggregate cancer risk for U.S. population.* The Agency considers the chronic aggregate risk assessment, making use of the cPAD, to be protective of any aggregate cancer risk. As chronic risks are below the Agency's level of concern, the Agency concludes there is no cancer risk of concern from aggregate exposure to picoxystrobin.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to picoxystrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography with tandem mass spectrometry (HPLC/ESI–MS/MS)) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for picoxystrobin.

C. Response to Comments

Comments were received in response to the Notices of Filing of E.I. Du Pont De Nemours and Company's petition. Two comments were filed within the comment period, one irrelevant and one expressing confusion about whether this action duplicated a previous action. The comment copied an excerpt from a tolerance rulemaking that was finalized in 2012; the tolerances requested in this petition are not the same as those finalized in 2012. Several other comments were submitted after the comment period had closed.

D. Revisions to Petitioned-For Tolerances

The Agency has revised several of the commodity definitions to be consistent with the food and feed commodity vocabulary the Agency uses to establish tolerances. The Agency is also establishing tolerance levels that are slightly lower than the petitioner requested because Agency calculated tolerances (except alfalfa and sorghum) using proportionality to extrapolate data which would be reflective of a 1x maximum annual application rate rather the exaggerated application rates in the field trial studies for the following commodities: Almond hulls at 15 ppm to almond, hulls at 7.0 ppm; cotton, gin by-products at 40 ppm to cotton gin byproducts at 20 ppm; cottonseed (Crop Subgroup 20C) at 4 ppm to cottonseed subgroup 20C at 2.0 ppm; head lettuce at 7 ppm to lettuce, head at 4.0 ppm; onion, bulb (Crop Subgroup 3–07A) at 0.8 ppm to onion, bulb, subgroup 3–07A at 0.50 ppm; onion, green (Crop Subgroup 3–07B) at 15 ppm to onion, green, subgroup 3–07B at 10 ppm; pea and bean, succulent shelled (Crop Subgroup 6B) at 3 ppm to pea and bean, succulent shelled, subgroup 6B at 0.90 ppm; peanut at 0.1 ppm to 0.05 ppm; peanut, hay at 40 ppm to 30 ppm; sunflower (Crop Subgroup 20B) at 3 ppm to sunflower subgroup 20B to 2.0 ppm; tree nut except hulls (Crop Group 14–12) at 0.15 ppm to nut, tree, group 14–12 at 0.08 ppm; vegetable, brassica head and stem (Crop Group 5–16) at 5 ppm to vegetable, brassica, head and stem, group 5–16 at 2.0 ppm; vegetable, cucurbit (Crop Group 9) at 0.7 ppm to vegetable, cucurbit, group 9 at 0.30 ppm; vegetable, fruiting (Crop Group 8–10) at 1.5 ppm to vegetable, fruiting, group 8–10 at 0.70 ppm; vegetable, leaf petiole (Crop Subgroup 22B) at 40 ppm to leaf petiole vegetable subgroup 22B at 20 ppm; vegetable, leafy except head lettuce (Crop Group 4–16) at 60 ppm to vegetable, leafy, group 4–16, except lettuce, head at 30 ppm; vegetable, leaves of root and tuber (Crop Group 2) at 40 ppm to vegetable, leaves of root and tuber, group 2 at 30 ppm; vegetable, legume, edible podded (Crop Subgroup 6A) at 4 ppm to vegetable, legume, edible podded, subgroup 6A at 2.0 ppm; vegetable, root (Crop Subgroup 1A) at 0.6 ppm to vegetable, root, subgroup 1A at 0.50 ppm; and vegetable, tuberous and corm (Crop Subgroup 1C) at 0.06 ppm to vegetable, tuberous and corm, subgroup 1C at 0.03 ppm.

For alfalfa, forage, hay, and seed, the tolerances have been modified to represent the appropriate number of significant figures; however, the numerical value is no different than requested by the petition.

The petition requested ''grass, forage (Grown for Seed)'' at 40 ppm and ''grass, hay (Grown for Seed)'' at 80 ppm. Because ''grass grown for seed'' is ambiguous, the Agency is establishing individual tolerances for the hay and forage forms of specific grasses for which residue data were submitted and that are grown for seed purposes: Bluegrass, forage at 30 ppm; bluegrass, hay at 60 ppm, bromegrass, forage at 30 ppm; bromegrass, hay at 60 ppm; fescue, forage at 30 ppm; fescue, hay at 60 ppm; orchardgrass, forage at 30 ppm; orchardgrass, hay at 60 ppm; ryegrass, forage at 30 ppm; ryegrass, hay at 60 ppm; switchgrass, forage at 30 ppm; and switchgrass, hay at 60 ppm.

EPA is also establishing tolerances for beet, sugar, dried pulp at 1.5 ppm and potato, wet peel at 0.10 ppm, pursuant to 40 CFR 180.40(f)(1)(i)(A). These tolerances are necessary to cover concentrated residues in processed commodities of raw agricultural commodities contained in subgroups 1A and 1C, respectively.

V. Conclusion

Therefore, tolerances are established for residues of picoxystrobin, methyl (αE)-α-(methoxymethylene)-2-[[[6-(trifluoromethyl)-2-pyridinyl]oxy]methyl]benzeneacetate, in or on alfalfa, forage at 4.0 ppm; alfalfa, hay at 5.0 ppm; alfalfa, seed at 9.0 ppm; almond, hulls at 7.0 ppm; beet, sugar, dried pulp at 1.5 ppm; bluegrass, forage at 30 ppm; bluegrass, hay at 60 ppm; bromegrass, forage at 30 ppm; bromegrass, hay at 60 ppm; cotton, gin byproducts at 20 ppm; cottonseed subgroup 20C at 2.0 ppm; fescue, forage at 30 ppm; fescue, hay at 60 ppm; leaf petiole vegetable subgroup 22B at 20 ppm; lettuce, head at 4.0 ppm; nut, tree, group 14–12 at 0.08 ppm; onion, bulb, subgroup 3–07A at 0.50 ppm; onion, green, subgroup 3–07B at 10 ppm; orchardgrass, forage at 30 ppm; orchardgrass, hay at 60 ppm; pea and bean, succulent shelled, subgroup 6B at 0.90 ppm; peanut at 0.05 ppm; peanut, hay at 30 ppm; potato, wet peel at 0.10 ppm; ryegrass, forage at 30 ppm; ryegrass, hay at 60 ppm; sunflower subgroup 20B to 2.0 ppm; switchgrass, forage at 30 ppm; switchgrass, hay at 60 ppm; vegetable, brassica, head and stem, group 5–16 at 2.0 ppm; vegetable, cucurbit, group 9 at 0.30 ppm; vegetable, fruiting, group 8–10 at 0.70 ppm; vegetable, leafy, group 4–16, except lettuce, head at 30 ppm; vegetable, leaves of root and tuber, group 2 at 30 ppm; vegetable, legume, edible podded, subgroup 6A at 2.0 ppm; vegetable, root, subgroup 1A at 0.50 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.03 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 25, 2018.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.669, add alphabetically the following commodities: Alfalfa, forage; Alfalfa, hay; Alfalfa, seed; Almond, hulls; Beet, sugar, dried pulp; Bluegrass, forage; Bluegrass, hay; Bromegrass, forage; Bromegrass, hay; Cotton, gin byproducts; Cottonseed subgroup 20C; Fescue, forage; Fescue, hay; Leaf petiole vegetable subgroup 22B; Lettuce, head; Nut, tree, group 14–12; Onion, bulb, subgroup 3–07A; Onion, green, subgroup 3–07B; Orchardgrass, forage; Orchardgrass, hay; Pea and bean, succulent shelled, subgroup 6B; Peanut; Peanut, hay; Potato, wet peel; Ryegrass, forage; Ryegrass, hay; Sunflower subgroup 20B; Switchgrass, forage; Switchgrass, hay; Vegetable, brassica, head and stem, group 5–16; Vegetable, cucurbit, group 9; Vegetable, fruiting, group 8–10; Vegetable, leafy, group 4–16, except lettuce, head; Vegetable, leaves of root and tuber, group 2; Vegetable, legume, edible podded, subgroup 6A; Vegetable, root, subgroup 1A; and Vegetable, tuberous and corm, subgroup 1C to the table in paragraph (a) to read as follows:

§ 180.669 Picoxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
Alfalfa, forage	4.0
Alfalfa, hay	5.0
Alfalfa, seed	9.0
Almond, hulls	7.0
* * * * *	
Beet, sugar, dried pulp	1.5
Bluegrass, forage	30
Bluegrass, hay	60
Bromegrass, forage	30
Bromegrass, hay	60
* * * * *	
Cotton, gin byproducts	20
Cottonseed subgroup 20C	2.0
* * * * *	
Fescue, forage	30
Fescue, hay	60
* * * * *	
Leaf petiole vegetable subgroup 22B	20
Lettuce, head	4.0
* * * * *	
Nut, tree, group 14–12	0.08
Onion, bulb, subgroup 3–07A	0.50
Onion, green, subgroup 3–07B	10
Orchardgrass, forage	30
Orchardgrass, hay	60
* * * * *	
Pea and bean, succulent shelled, subgroup 6B	0.90
Peanut	0.05
Peanut, hay	30
Potato, wet peel	0.10
* * * * *	
Ryegrass, forage	30
Ryegrass, hay	60
* * * * *	
Sunflower subgroup 20B	2.0
Switchgrass, forage	30
Switchgrass, hay	60
* * * * *	
Vegetable, brassica, head and stem, group 5–16	2.0
Vegetable, cucurbit, group 9	0.30
* * * * *	
Vegetable, fruiting, group 8–10	0.70
Vegetable, leafy, group 4–16, except lettuce, head	30
Vegetable, leaves of root and tuber, group 2	30
Vegetable, legume, edible podded, subgroup 6A	2.0
Vegetable, root, subgroup 1A	0.50
Vegetable, tuberous and corm, subgroup 1C	0.03
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket Nos. 15–94, 15–91; FCC 18–94]

Emergency Alert System; Wireless Emergency Alerts

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts changes to its rules governing the Emergency Alert System (EAS) to facilitate ''Live Code Tests'' of the EAS; permit use of the EAS Attention Signal and EAS Header Code

tones in Public Service Announcements; implement certain alert authentication and validation procedures; and require reporting of false alerts.

DATES: Effective September 10, 2018, except for the amendments to 47 CFR 11.33 and 11.56, which are effective August 12, 2019, and the amendments to 47 CFR 11.45(b) and 11.61, which contain modifications to information collection requirements that were previously approved by the Office of Management and Budget (OMB). Once OMB has approved the modifications to these collections, the Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Gregory.Cooke@fcc.gov.* For additional information concerning the information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, Office of Managing Director, Performance Evaluation and Records Management, 202–418–2991, or by email to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*Order*) in PS Docket Nos. 15–94 and 15–91, FCC 18–94, adopted on July 12, 2018, and released on July 13, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Synopsis

1. In the *Order,* the Commission adopts changes to its Part 11 EAS rules to improve the effectiveness and public utility of the EAS by facilitating more effective public safety tests and exercises using the EAS, implementing measures to help prevent distribution of false alerts over the EAS, and requiring reporting of false alerts.

I. Background

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies. The primary purpose of the EAS is to provide the President of the United States (President) with ''the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency.'' State and local authorities also use this common distribution architecture of the EAS to distribute voluntary weather-related and other emergency alerts. Further, testing of the system at the state and local level increases the proficiency of local emergency personnel, provides insight into the system's functionality and effectiveness at the federal level, and enhances the public's ability to respond to EAS alerts when they occur. The integrity of the EAS is maintained through the Commission's EAS rules, which set forth the parameters and frequency with which EAS Participants must test the system, prohibit the unauthorized use of the EAS Attention Signal and codes, and require EAS Participants to keep their EAS equipment in good working order.

II. Discussion

A. Building Effective Alerting Exercise Programs

1. Live Code Testing

3. Section 11.31(e) of the Commission's rules sets forth the event header codes that are used for alerts in specific emergency situations (*e.g.,* TOR for tornado), as well as the specific test codes to be used for national periodic tests (NPT), required monthly tests (RMT), and required weekly tests (RWT). Section 11.45 of the EAS rules states that ''[n]o person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS.'' EAS Participants regularly have sought waivers of these rules to use the event codes used for actual alerts (*i.e.,* ''live'' event header codes) and the EAS Attention Signal to conduct local EAS public awareness and proficiency training exercises. In the Notice of Proposed Rulemaking (*NPRM*) in PS Docket Nos. 15–94 and 15–91, 81 FR 15792 (March 24, 2016), the Commission proposed amending the rules to allow EAS Participants to conduct tests that use live EAS header codes and the EAS Attention Signal under specific circumstances without submitting a waiver request. The Commission also proposed amending section 11.45 to exempt state-designed EAS live code exercises from the prohibition against false or misleading use of the EAS Attention Signal.

4. The *Order* amends section 11.45 to exempt EAS live code exercises from the prohibition against false or misleading use of the EAS Attention Signal. The *Order* also amends section 11.61 to include ''Live Code Tests'' as a separate category of alerting exercise that EAS Participants may undertake voluntarily, provided such live code tests are conducted in accordance with specific parameters. Specifically, EAS Participants may participate in live code tests where the entity conducting the test: (1) Notifies the public before the test that live event codes will be used, but that no emergency is, in fact, occurring; (2) to the extent technically feasible, states in the test message that the event is only a test; (3) coordinates the test among EAS Participants and with state and local emergency authorities, the relevant State Emergency Communication Committee (SECC) (or SECCs, if the test could affect multiple states), and first responder organizations, such as Public Safety Answering Points (PSAPs), police, and fire agencies; and (4) consistent with the Commission's rules, provides in widely accessible formats the required notification to the public that the test is not, in fact, a warning about an actual emergency. The *Order* requires that live code tests state in the alert message that the event is only a test as a further safeguard against public confusion, especially among those who are blind, deaf and hearing impaired.

5. The Commission agrees with commenters that EAS Participants such as cable operators and broadcasters must be given sufficient notice of live code tests to benefit from them and to allow for planning and coordination to assess and mitigate the impact on downstream equipment and subscribers. Accordingly, the Commission expects test alert originators to coordinate with these stakeholders in good faith, and encourages them to provide the notice and coordination required by the rules adopted in the *Order* no later than two weeks prior to the test. As part of that coordination and outreach, the Commission encourages test alert originators to file notice of their intent to conduct a test in the EAS docket (PS Docket No. 15–94).

6. Commenters generally support voluntary live code testing, and agree that such testing can yield important public safety benefits. The record also indicates that live code testing exercises can be tailored to improve public safety at the local or community level.

7. To avoid customer exhaustion and any dissipation of the value of alerting that could come from over-testing the system to the public, the *Order* limits the number of live code tests that an alert originator may conduct under the new rules it adopts to two (2) within any calendar year. The Commission will continue to monitor the implementation of live code tests to determine whether additional measures are warranted.

2. EAS Public Service Announcements (PSAs)

8. Section 11.46 of the Commission's rules provides that PSAs, while permissible, ''may not be a part of alerts or tests, and may not simulate or attempt to copy alert tones or codes.'' The Commission has granted requests from non-governmental organizations (NGOs) and FEMA for waivers of these rules to raise public awareness about the EAS through PSAs that use the EAS Attention Signal, and, in one instance, a simulation of header code sounds. In 2016, the Commission amended its rules to allow authorized entities to use the Attention Signal in PSAs about WEA. In the NPRM, the Commission proposed allowing EAS Participants to use EAS header codes and the Attention Signal in coordination with federal, state, and local government entities without a waiver, provided that the PSAs are presented in a non-misleading manner that does not cause technical issues for downstream equipment.

9. The *Order* amends section 11.46 of the Commission's rules to allow, under certain circumstances, EAS Participants to use the Attention Signal in EAS PSAs (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, and NGOs, to raise public awareness about emergency alerting. This usage is only permitted if the PSA is presented in a non-misleading and technically harmless manner, including with the explicit statement that the Attention Signal is being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting. The *Order* also makes conforming changes to section 11.45.

10. The Commission declines to allow live EAS header codes to be used in EAS PSAs because, as suggested by some commenters, EAS PSAs containing live EAS header codes could have unintended consequences, including triggering false alerts. However, the Commission will permit the simulation of header code audio tones developed by FEMA in PSAs to deliver the familiar sounds of live EAS header codes that the public associates with the EAS in a manner that would not trigger an actual alert. Entities that want to simulate the EAS header codes in their PSAs must do so using FEMA's simulation. The Commission observes that FEMA's simulation of the header code audio tones is subject to the restrictions of section 11.45 and therefore should not be used for purposes other than the EAS PSAs described in the *Order.* In adopting these PSA rules, the Commission notes agreement with commenters that EAS PSAs can be effective tools to raise public awareness of the EAS, particularly those that may be new to this country or have limited English proficiency, who do not recognize EAS tones and could benefit from learning about the EAS's benefits.

3. Effective Dates

11. The Commission proposed that these rules would become effective 30 days from the date of their publication in the **Federal Register**. No commenters opposed this time frame. Accordingly, the rule amendments for sections 11.45(a) and 11.46, both of which relate to PSAs, will become effective 30 days after publication of the *Order* in the **Federal Register**.

12. The rule amendments for section 11.61, which cover ''Live Code Tests,'' will become effective on the date specified in a Commission notice published in the **Federal Register** announcing their approval under the Paperwork Reduction Act by the Office of Management and Budget, which date will be at least 30 days after the date that this *Order* and rules adopted herein are published in the **Federal Register**.

B. Ensuring EAS Readiness and Reliability

1. False Alert Reporting

13. The Commission agrees with commenters that false alert reporting would benefit ongoing EAS reliability, and that having timely information about false alerts could help identify and mitigate problems with the EAS. Accordingly, the Commission revises its rules to require that no later than twenty-four (24) hours of an EAS Participant's discovery that it has transmitted or otherwise sent a false alert to the public, the EAS Participant send an email to the FCC Ops Center (at *FCCOPS@fcc.gov*), informing the Commission of the event and of any details that the EAS Participant may have concerning the event. If an EAS Participant has no actual knowledge that it has issued a false alert, then it would not be required to take any action.

2. Alert Authentication

14. The *Order* revises section 11.56(c) to require that EAS Participants configure their systems to reject all CAP-formatted EAS messages that contain an invalid digital signature, thus helping to prevent the transmission of a false alert. All commenters addressing this issue supported the Commission's proposal and generally acknowledged the benefits of digitally signing CAP alerts. Although the *Order* requires EAS Participants to configure their systems in such a way as to reject alerts with invalid digital signatures, the Commission does not mandate the use of digital signatures at this time. With respect to broadcast-based, legacy alerts, the Commission believes it would be premature to adopt rules pertaining to specific authentication mechanisms for such alerts at this time. Based on the lack of consensus on an approach forward in the record, the Commission believes it would be prudent to await the recommendation from the Communications Security, Reliability and Interoperability Council VI on this issue rather than moving ahead with one of the originally proposed mechanisms.

3. Alert Validation

15. Section 11.33(a)(10) specifies certain error detection and validation requirements for decoders. Currently, the Commission's rules do not require validation of alerts based upon the time period or year parameter in the ''time stamp'' portion of the header code, *i.e.,* the portion that determines the correct date and time for the alert. Further, the Commission's rules do not require that valid alerts have an expiration time in the future. Thus, an alert's time stamp does not consistently serve as a filter through which officials can ensure an alert is confined to its relevant time frame.

16. *Alert time validation.* The alert message validation requirements in the EAS rules require that EAS decoders validate alert messages by comparing the three EAS header tone bursts that commence all EAS alerts to ensure that at least two out of three match—the content of those header tones is not reviewed for incoming alert message validity. The *Order* amends section 11.33(a)(10) so that alert message validation confirms that the alert's expiration time is set to take place in the future, and that its origination time takes place no more than 15 minutes in the future.

17. The Commission observes that commenters generally support proposals that reduce the potential for repeat broadcasts of outdated alerts by validation based on specific origination and expiration times, and support a 15-minute timeframe, and believe that such requirement will require minimal software updates. Based on the record, most EAS equipment already validates the time of EAS messages, blocking alerts that have expired. Remaining equipment can achieve this capability

by installing the necessary software as part of a regularly scheduled in-version equipment software update.

18. *Year Parameter.* The Commission declines to require a year parameter in the time stamp section of the EAS Protocol. The record indicates that adding a year parameter requirement is not technically feasible without significant modification to the current EAS Protocol, as well as all associated equipment, which would be extremely expensive and burdensome, and would cause significant disruption to the NOAA Weather Radio infrastructure.

4. Compliance Timeline

19. The *Order* adopts a one-year compliance timeframe from publication in the **Federal Register**. The record indicates that most EAS Participants already have EAS equipment capable of complying with these requirements. The Commission also observes that a one-year time frame would allow equipment manufacturers to develop and make available software updates to implement these requirements in deployed equipment that do not already meet these requirements.

20. The rule amendments for section 11.45(b), which address the filing of false alert reports will become effective on the date specified in a Commission notice published in the **Federal Register** announcing their approval under the Paperwork Reduction Act by the Office of Management and Budget, which date will be at least 30 days after the date that this *Order* and rules adopted herein are published in the **Federal Register**.

C. Benefit-Cost Analysis

21. The rule changes adopted in the *Order* reduce burdens by eliminating waiver filing time and costs. To the extent the Commission adopts new requirements, it does so in a minimally burdensome way that either imposes no additional costs or imposes only minimal costs. Other than the alert validation and authentication requirements, for which a one-year compliance timeframe is provided, only the new false alert reporting rule will involve new costs to EAS Participants. As discussed below, the Commission concludes that the benefits of these rule changes exceed their costs.

1. Benefits

22. The rule changes adopted in the *Order* will reduce regulatory burden on EAS stakeholders. Waivers will no longer be needed for live code testing. The rule changes also reduce the regulatory burden on EAS Participants by allowing them to produce PSAs using EAS header codes and a simulated Attention Signal without requesting a waiver. This change will make the process of producing a PSA less costly, and promote greater proficiency in the use of EAS, both by EAS alert initiators and EAS Participants.

23. These rule changes will also help prevent incidents of misuse and abuse of the EAS. The authentication and validation rule changes will require the use of EAS equipment's existing capabilities to help prevent misuse and abuse of the EAS, thus protecting its integrity and maintaining its credibility with the public and alerting officials. To provide an estimate of the value of the benefits of the rules adopted in the *Order,* the Commission turns to the overall value of the EAS. Scholars agree that public safety in the United States has improved over the years because its early warning systems for recurring hazards, such as lightning, floods, storms and heat waves, are continually improving. By reducing the frequency of false alerts, the rule changes adopted in the *Order* strengthen public confidence in the EAS, thus avoiding erosion in its overall value.

2. Costs

24. The rule changes to section 11.61 for live code testing and to sections 11.45 and 11.46 for public service announcements do not impose any new costs. Rather, they codify requirements that were previously imposed on waivers granted by the Commission. Removing the requirement to file a waiver removes the need for legal and other staff time associated with filing a waiver. The new rules therefore eliminate any legal or administrative costs that were associated with filing waiver requests.

25. The Commission estimates that compliance with the alert authentication and validation rule changes will involve only minimal costs to EAS Participants. Current EAS rules require that EAS Participants must have EAS equipment that is capable of being updated via software. According to the record, most EAS equipment deployed in the field is already configured to support the validation and authentication rule changes adopted in the *Order.* The one-year compliance period adopted for these rule changes will provide sufficient time for any necessary update to be deployed within a previously scheduled in-version equipment software update. In combination, these factors result in no incremental cost to EAS Participants for installing the update.

26. With respect to the new false alert reporting requirement, the Commission concludes that the cost of reporting false alerts will be $11,600 per year, based upon an average of 290 EAS participants each spending 15 minutes to file one report.

27. Therefore, based on the foregoing analysis, the Commission finds it reasonable to conclude that the benefits of the rules adopted in the *Order* will exceed the costs of their implementation. The rule changes will support greater testing and awareness of the EAS and promote the security of the EAS. They will also likely result in fewer false alerts, and thus fewer unnecessary 911 calls. The benefits of these rule changes will continue to accrue to the public each year, while the imposed costs are low.

III. Procedural Matters

A. Accessible Formats

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

B. Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*) in PS Docket Nos. 15–94 and 15–91, 81 FR 15792 (March 24, 2016). The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Report and Order

30. In today's Report and Order (*Order*), the Commission adopts rules that fall into two categories: (1) Building stronger alerting exercise programs and greater awareness of the EAS; and (2) taking steps to ensure the readiness and reliability of the EAS to protect it against accidental misuse and malicious intrusion.

31. With respect to building effective public safety exercises and supporting greater testing and awareness of the EAS, the Commission permits the use of ''live code'' EAS public safety exercises to empower communities to meet their emergency preparedness needs and to provide opportunities for system verification and proficiency training. The Commission also allows EAS Participants to use the EAS Attention Signal and simulation of the header

codes in Public Service Announcements (PSAs) provided by federal, state, and local government entities, as well as non-governmental organizations (NGOs) to raise public awareness about emergency alerting.

32. With respect to taking steps to ensure the readiness and reliability of the EAS, the Commission requires EAS Participants, upon discovery (*i.e.,* actual knowledge) that they have transmitted or otherwise sent a false alert to the public, to provide minimal reports to the Commission. The Commission also requires EAS Participants to reject any CAP-formatted EAS messages that contain an invalid digital signature, and require EAS Participants to reject all EAS alerts that they receive with header code date/time data inconsistent with the current date and time.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

33. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

3. Response To Comments by the Chief Counsel for Advocacy of the Small Business Administration

34. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

35. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

4. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

36. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted, herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

38. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of Aug. 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

39. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

40. *Radio Stations.* This Economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 shows that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

41. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,639 stations and the number of commercial FM radio stations to be 6,744, for a total number of 11,383. The Commission notes that the Commission has also estimated the number of licensed NCE radio stations to be 4,120. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

42. The Commission also notes, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. The Commission further notes, that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on this basis, thus the Commission's estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

43. *Low-Power FM Stations.* Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICs Code as licensees of radio stations. This U.S.

industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less. U.S. Census data for 2012 indicates that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Based on U.S. Census data, the Commission concludes that the majority of Low Power FM Stations are small.

44. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

45. The Commission has estimated the number of licensed commercial television stations to be 1,378. Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 395. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,367 low power television stations, including Class A stations (LPTV) and 3,750 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

46. The Commission notes, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

47. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as ''establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

48. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category which has annual receipts of $38.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for that entire year. Of that number, 319 operated with annual receipts of less than $25 million a year and 48 firms operated with annual receipts of $25 million or more. Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

49. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

50. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains

a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

51. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts under SBA rules. For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

52. All *Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by the Commission's action can be considered small.

53. *The Educational Broadcasting Services.* Cable-based Educational Broadcasting Services have been included in the broad economic census category and Small Business Administration (SBA) size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers, which was developed for small wireline businesses is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband internet services.'' The SBA has developed a small business size standard for this category, which is all such businesses having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's internal records indicate that, as of October 2014, there were 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are defined by statute as small businesses.

54. *Direct Broadcast Satellite (DBS) Service.* DBS Service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephone services, including VoIP services, wired (cable) audio, and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, the Commission concludes that the majority of wireline firms are small under the applicable standard. However, currently, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, the Commission must conclude that internally developed FCC data are persuasive, that, in general, DBS service is provided only by large firms.

55. *Wireless Telecommunications Carriers (Except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have

spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 shows that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

56. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by the Commission's actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services. Of this total, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

57. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a ''small business'' for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'', in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D-, E-, and F-Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

58. On January 26, 2001, the Commission completed the auction of 422 C- and F-Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction No. 35, including judicial and agency determinations, resulted in a total of 163 C- and F-Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A-, C-, and F-Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

59. *Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, 11 of which were obtained by small businesses. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

60. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (''MEA'') licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

61. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction

commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of five licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

62. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order. An auction of 700 MHz licenses commenced January 24, 2008, and closed on March 18, 2008, which included: 176 Economic Area licenses in the A-Block, 734 Cellular Market Area licenses in the B-Block, and 176 EA licenses in the E-Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

63. *Upper 700 MHz Band Licenses.* In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction No. 73, in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C-Block, and one nationwide license in the D-Block. The auction concluded on March 18, 2008, with three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

64. *Advanced Wireless Services.* AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although the Commission does not know for certain which entities are likely to apply for these frequencies, the Commission notes that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands, but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

65. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high-speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

66. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

67. In 2009, the Commission conducted Auction No. 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction No. 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won four licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

68. *EBS*—Educational Broadband Service has been included within the broad economic census category and the SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census Bureau data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

69. *Wireless Communications Service.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the

Commission's auction for geographic area licenses in the WCS service there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

70. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 819 establishments operated with less than 500 employees. Based on this data, the Commission concludes that a majority of manufacturers in this industry are small.

71. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction. Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers. These establishments may design, develop, and publish, or publish only. The SBA has established a size standard for this industry of annual receipts of $38.5 million per year. U.S. Census data for 2012 indicates that 5,079 firms operated in that year. Of that number, 4,697 firms had annual receipts of $25 million or less. Based on that data, the Commission concludes that a majority of firms in this industry are small.

72. *NCE and Public Broadcast Stations.* Non-commercial educational and public broadcast television stations fall within the U.S. Census Bureau's definition for Television Broadcasting. This industry comprises establishments primarily engaged in broadcasting images together with sound and operating television broadcasting studios and facilities for the programming and transmission of programs to the public. The SBA has created a small business size standard for Television Broadcasting entities, which is such firms having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission concludes that the majority of NCEs and Public Broadcast Stations are small entities under the applicable SBA size standard.

73. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of November 16, 2017, approximately 1,258 of the 1,378 licensed commercial television stations (or about 91 percent) had revenues of $38.5 million or less, and therefore these licensees qualify as small entities under the SBA definition. The Commission also estimates that there are 395 licensed noncommercial educational NCE television stations. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. In addition to licensed commercial television stations and NCEs, there are also an estimated 2,367 low power television stations (LPTV), including Class A stations and 3,750 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

74. The Commission notes, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. The Commission's estimate, therefore, likely overstates the number of small entities that might be affected by the Commission's action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. Moreover, the definition of ''small business'' also requires that an entity not be dominant in its field of operation and that the entity be independently owned and operated. The estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on these bases and is therefore over-inclusive to that extent. Further, the Commission is unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. The Commission further notes that it is difficult at times to assess these criteria in the context of media entities, and therefore the Commission's estimates of small businesses to which they apply may be over-inclusive to this extent.

5. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

75. The *Order* allows EAS Participants to take part in live code EAS public safety exercises, provided that the entity conducting the test provides notification during the test to the extent technically feasible that there is no actual emergency and provides notice to the public and coordinates with EAS Participants, state and local emergency authorities, the SECC, and other entities before the test to inform the public and other affected entities that live event codes will be used and that no emergency is occurring. In addition, the *Order* allows EAS Participants to use the EAS Attention Signal and a harmless simulation of EAS header codes in PSAs provided by federal, state, and local government entities, as well as NGOs. These measures will obviate recurring costs associated with the filing of live code waiver requests (*e.g.,* legal, administrative, printing, and mailing costs) and will not create any cost burdens for EAS Participants. The *Order* also requires that no later than twenty-four (24) hours of an EAS Participant's discovery (*i.e.,* actual knowledge) that it has transmitted or otherwise sent a false alert to the public that the it send an email to the FCC Ops Center (at *FCCOPS@fcc.gov*) informing the Commission of the event and of any details that the EAS Participant may have concerning the event. This measure will help ensure that all alerting stakeholder have sufficient situational awareness of a false alert to quickly respond to and remediate the situation.

76. The *Order* requires EAS Participants to reject all digitally-signed CAP-formatted EAS alerts that are invalidly signed. It further requires EAS Participants to reject all EAS alerts that are received with header code date/time data inconsistent with the current date and time. Most EAS equipment deployed in the field already supports these authentication and validation rules, but the Commission anticipates that a small minority of EAS Participants may need to update software to comply with these rules. Such an update should result in minimal costs to EAS Participants, as it can be performed during a scheduled in-version equipment software update.

6. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

77. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

78. The Commission does not expect its actions in the *Order* to have a significant economic impact on small entities. The rule changes to section 11.61 with respect to live code tests do not impose any new requirements or new costs for small entities or other EAS Participants. The steps taken by the Commission eliminating the waiver filing requirement will benefit small entities by reducing the need for legal and other staff time associated with filing a waiver, which will translate into cost reductions and have a positive economic impact. Thus, as an alternative to the existing process, the record supports the Commission's conclusion that removing the need for entities to request a waiver of the Commission's rules to conduct live code tests will reduce costs and remove regulatory burdens for small entities as well as other entities subject to these rules.

79. The false alert reporting rules the Commission adopts today similarly impose minimal burdens on small entities. The reporting requirement is triggered only upon discovery of the false alert, allows twenty-four hours for the submission of the report and imposes no obligation to and investigate the false report. Further, the Commission recognizes that smaller entities often face particular challenges in achieving authentication and validation of EAS messages due to limited human, financial, or technical resources. Due, in part, to the potentially significant burdens that the originally-proposed requirements would pose, the Commission declines, at this time, to adopt certain of the proposals and defer consideration of others. Those the Commission adopts are unlikely to pose burdens that are not already incurred in the normal course of business.

80. Finally, the Commission adopts implementation timeframes for each of the Commission's rules that are intended to allow EAS Participants to come into compliance with the Commission's rules in a manner that balances the need for improving EAS organization and effectiveness as soon as possible with any potential burdens that may be imposed by adoption of the Commission's proposals.

81. The Commission concludes that the adopted mandates provide small entities as well as other EAS Participants with a sufficient measure of flexibility to account for technical and cost-related concerns. The Commission has determined that implementing these improvements to the EAS is technically feasible. In the event that small entities face unique circumstances that restrict their ability to comply with the Commission's rules, the Commission can address them through the waiver process.

C. Paperwork Reduction Act Analysis

82. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Congressional Review Act

83. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

84. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613, as well as by sections 602(a),(b),(c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, and the *Twenty-First Century Communications and Video Accessibility Act of 2010,* Public Law 111–260 and Public Law 111–265, that this Report and Order *is adopted*.

85. *It is further ordered* that the rule amendments adopted herein *will become effective* September 10, 2018, except that the amendments to sections 11.33 and 11.56 *will become effective* August 12, 2019, and the amendments to sections 11.45(b) and 11.61, which contain modifications to information collection requirements that are currently approved by the Office of Management and Budget (OMB), *will become effective* on the date specified in a Commission notice published in the **Federal Register** announcing their approval (which date shall not be less than 30 days after publication of this *Report and Order* in the **Federal Register**).

86. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Amend § 11.33 by revising paragraph (a)(10) to read as follows:

§ 11.33 EAS Decoder.

(a) * * *

(10) *Message Validity.* An EAS Decoder must provide error detection and validation of the header codes of each message to ascertain if the message is valid. Header code comparisons may be accomplished through the use of a bit-by-bit compare or any other error detection and validation protocol. A header code must only be considered

valid when two of the three headers match exactly; the Origination Date/Time field (JJJHHMM) is not more than 15 minutes in the future and the expiration time (Origination Date/Time plus Valid Time TTTT) is in the future (*i.e.,* current time at the EAS equipment when the alert is received is between origination time minus 15 minutes and expiration time). Duplicate messages must not be relayed automatically.

* * * * *

■ 3. Revise § 11.45 to read as follows:

§ 11.45 Prohibition of false or deceptive EAS transmissions.

(a) No person may transmit or cause to transmit the EAS codes or Attention Signal, or a recording or simulation thereof, in any circumstance other than in an actual National, State or Local Area emergency or authorized test of the EAS; or as specified in §§ 10.520(d), 11.46, and 11.61 of this chapter.

(b) No later than twenty-four (24) hours of an EAS Participant's discovery (*i.e.,* actual knowledge) that it has transmitted or otherwise sent a false alert to the public, the EAS Participant send an email to the Commission at the FCC Ops Center at *FCCOPS@fcc.gov,* informing the Commission of the event and of any details that the EAS Participant may have concerning the event.

■ 4. Revise § 11.46 to read as follows:

§ 11.46 EAS public service announcements.

EAS Participants may use the EAS Attention Signal and a simulation of the EAS codes as provided by FEMA in EAS Public Service Announcements (PSAs) (including commercially-sponsored announcements, infomercials, or programs) provided by federal, state, and local government entities, or non-governmental organizations, to raise public awareness about emergency alerting. This usage is only permitted if the PSA is presented in a non-misleading and technically harmless manner, including with the explicit statement that the Attention Signal and EAS code simulation are being used in the context of a PSA for the purpose of educating the viewing or listening public about emergency alerting.

■ 5. Amend § 11.56 by redesignating paragraph (c) as paragraph (d) and adding new paragraph (c) to read as follows:

§ 11.56 Obligation to process CAP-formatted EAS messages.

* * * * *

(c) EAS Participants shall configure their systems to reject all CAP-formatted EAS messages that include an invalid digital signature.

* * * * *

■ 6. Amend § 11.61 by adding paragraph (a)(5) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(5) *Live Code Tests.* EAS Participants may participate in no more than two (2) ''Live Code'' EAS Tests per calendar year that are conducted to exercise the EAS and raise public awareness for it, provided that the entity conducting the test:

(i) Notifies the public before the test that live event codes will be used, but that no emergency is, in fact, occurring;

(ii) To the extent technically feasible, states in the test message that the event is only a test;

(iii) Coordinates the test among EAS Participants and with state and local emergency authorities, the relevant SECC (or SECCs, if the test could affect multiple states), and first responder organizations, such as PSAPs, police, and fire agencies); and,

(iv) Consistent with § 11.51, provides in widely accessible formats the notification to the public required by this subsection that the test is only a test, and is not a warning about an actual emergency.

* * * * *

[FR Doc. 2018–17096 Filed 8–9–18; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 83, No. 155
Friday, August 10, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

[RIN 3133–AE88]

Loans to Members and Lines of Credit to Members

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board (Board) proposes to amend its regulations regarding loans to members and lines of credit to members. The proposal would reduce regulatory burden by making amendments to improve clarity and to make compliance easier. Specifically, the Board proposes to make the NCUA's loan maturity requirements more user friendly by identifying in one section all of the various maturity limits applicable to federal credit union (FCU) loans. The Board also proposes to make explicit in its regulations that the maturity date for a ''new loan'' under generally accepted accounting principles (GAAP) is calculated from the new date of origination. Additionally, the Board seeks comment on whether the agency should provide longer maturity limits for 1–4 family real estate loans and other loans permitted by the Federal Credit Union Act (FCU Act) such as home improvement, mobile home, and second mortgage loans. Finally, the Board proposes to more clearly express the limits for loans to a single borrower or group of associated borrowers.

DATES: Comments must be received on or before October 9, 2018.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA website: https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule 701, Loans to Members and Lines of Credit to Members'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard S. Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on the NCUA's website at *https://www.ncua.gov/regulation-supervision/Pages/rules/proposed.aspx* as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in the NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas I. Zells, Staff Attorney, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 548–2478.

SUPPLEMENTARY INFORMATION:

I. Background

In August 2017, the Board published and sought comment on the NCUA's regulatory reform agenda (Agenda).[1] The Agenda identifies those regulations the Board intends to amend or repeal because they are outdated, ineffective, or excessively burdensome.[2]

A number of the items in the Agenda relate to the NCUA's regulations on loans to members and lines of credit to members.[3] In order to provide regulatory relief to credit unions, the Board proposes to address in this rulemaking the substance of several of those items and request further public comment on another. More specifically, the Board proposes to make the NCUA's regulations on loans to members and lines of credit to members more user friendly by: (1) Identifying in one section the various maturity limits applicable to FCU loans; (2) clarifying that the maturity for a lending action that qualifies as a ''new loan'' under GAAP is calculated from the new date of origination;[4] (3) seeking comment on whether the NCUA should provide for longer, more flexible maturity limits on certain loans; and (4) more clearly expressing the limits in place for loans to a single borrower or group of associated borrowers.

II. Summary of the Proposed Rule

A. Loan Maturity Limits for Federal Credit Unions

Section 107(5) of the FCU Act grants FCUs the power ''to make loans, the maturities of which shall not exceed 15 years, except as otherwise provided herein. . . .''[5] The NCUA implemented this general maturity limit in § 701.21(c)(4) of its regulations. Section 107(5)(A)(i)–(iii) of the FCU Act provide exceptions to the general 15-year maturity limit, and have been implemented in § 701.21(e) through (g) of the NCUA's regulations. Section 107(5)(A)(i) of the FCU Act, implemented in § 701.21(g) of the NCUA's regulations, states that ''a residential real estate loan on a one-to-four-family dwelling, including an individual cooperative unit, that is or will be the principal residence of a credit union member, and which is secured by a first lien upon such dwelling, may have a maturity not exceeding thirty years *or such other limits as shall be set by the National Credit Union Administration Board* (except that a loan on an individual cooperative unit shall be adequately secured as defined by the Board), subject to the rules and regulations of the Board[.]''[6] Pursuant to the authority

[1] 82 FR 39702 (Aug. 22, 2017).

[2] This is consistent with the spirit of President Trump's regulatory reform agenda and Executive Order 13777. Although the NCUA, as an independent agency, is not required to comply with Executive Order 13777, the Board has chosen to comply with it in spirit and has reviewed all of the NCUA's regulations to that end.

[3] 12 CFR 701.21.

[4] GAAP is defined as generally accepted accounting principles in the United States as set forth in the Financial Accounting Standards Board's (FASB) Accounting Standards Codification (ASC).

[5] 12 U.S.C. 1757(5).

[6] 12 U.S.C. 1757(5)(A)(i) (emphasis added); 12 CFR 701.21(g).

§ 107(5)(A)(i) of the FCU Act grants the Board to set alternate maturities for covered 1–4 family real estate loans, the Board has established a 40-year maximum maturity for such loans and has provided that longer periods may be permitted by the Board on a case-by-case basis.[7] Section 107(5)(A)(ii) of the FCU Act, implemented in § 701.21(f) of the NCUA's regulations, states that ''a loan to finance the purchase of a mobile home, which shall be secured by a first lien on such mobile home, to be used by the credit union member as his residence, a loan for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member, or a second mortgage loan secured by a residential dwelling which is the residence of a credit union member, shall have a maturity not to exceed 15 years *or any longer term which the Board may allow*[.]'' [8] Pursuant to the authority section 107(5)(A)(ii) grants the Board to set alternate maturities for covered loans, the Board has established a 20-year maximum maturity for such loans.[9] Finally, section 107(5)(A)(iii) of the FCU Act, implemented in § 701.21(e) of the NCUA's regulations, states that ''a loan secured by the insurance or guarantee of, or with advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either may be made for the maturity and under the terms and conditions specified in the law under which such insurance, guarantee, or commitment is provided[.]'' [10]

i. Identifying the Various Maturity Limits in One Section

Presently, § 701.21 of the NCUA's regulations addresses various loan maturity limits in paragraphs (c), (e), (f), and (g). Paragraph (c) provides the general rules applicable to all loans to members and, where indicated, all lines of credit (including credit cards) to members, except as otherwise provided in the remaining provisions of § 701.21. Paragraph (c)(4) implements the general 15-year maturity limit that section 107(5) of the FCU Act places on loans to members. Paragraphs (e), (f), and (g) of § 701.21 implement the three exceptions to this general 15-year limit that appear in section 107(5)(A)(i)–(iii) of the FCU Act.

Having the various maturity limits spread among numerous sections of the NCUA's regulations, often separated by large amounts of regulatory text unrelated to maturities, can be confusing to the reader and makes it more difficult to understand the lending regulations. To remedy this, the Board proposes to make the NCUA's loan maturity requirements more understandable and user-friendly by identifying in one section (§ 701.21(c)(4)), including cross-citations, all of the maturity limits applicable to FCU loans.

ii. The Treatment of Maturities for Lending Actions That Qualify as ''New Loans'' Under GAAP

The proposal also clarifies that in the case of a lending action qualifying as a ''new loan'' under GAAP, the maturity limit is calculated from the new date of origination.[11] The Board proposes to accomplish this by adding language to § 701.21(c)(4), which articulates the general 15-year maturity limit.

iii. Request for Comment on Providing Longer Maturity Limits for Certain Loans

The Board is considering providing longer maturity limits for 1–4 family real estate loans and other loans (such as certain home improvement, mobile home, and second mortgage loans) as permitted by section 107(5)(A)(i)–(ii) of the FCU Act and removing the case-by-case exception the Board can grant. As discussed earlier, these maturity limits are implemented in § 701.21(f) and (g) of the NCUA's regulations. The case-by-case exception is located in § 701.21(g)(1) of the NCUA's regulations and provides that the Board can permit an FCU to make loans with maturities that exceed the regulation's 40-year limit ''on a case-by-case basis, subject to the conditions of this paragraph (g).'' [12] The Board believes that more input is necessary to determine whether longer maturity limits should be adopted and, if so, the proper maturity lengths and the reasons such longer maturities are warranted. As such, the Board asks that commenters provide detailed comments addressing: (1) Whether the NCUA should provide longer maturity limits for certain lending actions permitted by section 107(5)(A)(i)–(ii) of the FCU Act; (2) the appropriate maturity limits for such lending actions; (3) whether the case-by-case Board exemption should be retained and, if so, under what circumstances would such exemptions be appropriate; and (4) any other issues stakeholders believe relevant. The Board also requests that commenters consider FCU Act limitations when requesting relief and changes in this area.

B. Single Borrower and Group of Associated Borrowers Limits

i. More Clearly Identifying the Various Limits

Currently, three provisions of the NCUA's regulations address limits on loans to a single borrower or group of associated borrowers: (1) § 701.21(c)(5) addresses the general limit; (2) § 701.22(b)(5)(iv) addresses the limit on loan participations; and (3) § 723.4(c) addresses the limit on commercial loans. Because these provisions are spread among several sections of the NCUA's regulations, some stakeholders are not aware that there are multiple limits that apply in different contexts. To rectify this, the proposal makes clear that all three of these limits exist. Rather than move the loans to one borrower or group of associated borrowers limits that specifically apply to loan participations and commercial loans from their current regulatory sections to the general limit section, the Board proposes to include cross-citations to the more specific loan participation and commercial loan limits in the general limit section (§ 701.21(c)(5)). The Board believes that inserting cross-citations is a more efficient and user friendly way to identify that there are multiple lending limits throughout the NCUA's regulations.

Section 701.21(c)(5), as part of the general rules on loans and lines of credit to members, imposes the FCU Act's ten percent limit on loans and lines of credit to any member.[13] Specifically, § 701.21(c)(5) requires that ''[n]o loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in the aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus.'' [14] Section 701.21(c)(5) also provides an outdated cross-citation to part 723 for the specific limit on commercial lending. The Board proposes to remove this outdated cross-citation and provide updated references to both the current loan participation

[7] 12 CFR 701.21(g)(1) (stating that ''[a] federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph[.]'').

[8] 12 U.S.C. 1757(5)(A)(ii) (emphasis added); 12 CFR 701.21(f).

[9] 12 CFR 701.21(f)(1) (stating that ''[n]otwithstanding the general 15-year maturity limit on loans to members, a federal credit union may make loans with maturities of up to 20 years'' for loans covered by this paragraph.).

[10] 12 U.S.C. 1757(5)(A)(iii); 12 CFR 701.21(e).

[11] ASC 310–20–35–9 & 10.

[12] 12 CFR 701.21(g)(1).

[13] 12 U.S.C. 1757(5)(A)(x).

[14] 12 CFR 701.21(c)(5).

limit in § 701.22(b)(5) and the commercial lending limit in § 723.4(c).

The NCUA also proposes to make conforming amendments to update cross-citations to the single borrower and group of associated borrower limits in §§ 701.20(c)(2) and 701.22(b)(1).

ii. Request for Comment Regarding the Limits Applicable to Loan Participations and Commercial Loans

In addition, the NCUA believes that providing a universal standard limit for loans to a single borrower or group of associated borrowers, in lieu of the current loan product specific standards, may help facilitate compliance and reduce regulatory burden. As such, the agency seeks stakeholder input on whether the agency should provide such a universal standard limit. Currently, a limit of 15 percent of a federally insured credit union's net worth exists for both commercial loans and loan participations that may be purchased with respect to a single borrower or group of associated borrowers. However, a waiver is available in the case of the loan participations limit and an alternate limit is available for commercial loans.

More specifically, the 15 percent limit on the aggregate amount of loan participations that may be purchased with respect to a single borrower or group of associated borrowers can be waived by the appropriate regional director, and, in the case of a federally insured, state-chartered credit union, with prior written concurrence of the appropriate state supervisory authority.[15] The limit on commercial loans does not provide for waiver. Instead, it provides that ''the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed the greater of 15 percent of the federally insured credit union's net worth or $100,000, plus an additional 10 percent of the credit union's net worth if the amount that exceeds the credit union's 15 percent general limit is fully secured at all times with a perfected security interest by readily marketable collateral as defined in § 723.2 of this part. Any insured or guaranteed portion of a commercial loan made through a program in which a federal or state agency (or its political subdivision) insures repayment, guarantees repayment, or provides an advance commitment to purchase the loan in full, is excluded from this limit.'' [16]

The Board believes that more input is necessary to determine whether a universal limit would be beneficial and should be adopted in place of the current product specific limits. As such, the Board asks that commenters provide comments addressing: (1) Whether the NCUA should provide a single universal standard limit for commercial loans and loan participations that may be purchased with respect to a single borrower or group of associated borrowers; (2) if so, the appropriate limit for such a standard; (3) if not, why not; and (4) any other issues stakeholders believe are relevant to this determination. The Board also requests that commenters consider FCU Act limitations, specifically the general limit on loans to a single borrower of ''10 per centum of the credit union's unimpaired capital and surplus'' in section 107(5)(A)(x), when commenting.[17]

III. Section-by-Section Analysis

This proposed rule reduces regulatory burden and makes the NCUA's regulations more user-friendly for credit unions. As such, it is largely clarifying and technical in nature and would maintain most of the current language in § 701.21. The proposed changes to § 701.21 and the conforming amendments to §§ 701.20 and 701.22 are discussed in more detail below.[18]

Section 701.20 Suretyship and Guaranty

The proposal would make minor conforming amendments to § 701.20(c).

The proposal would make conforming amendments to the section governing requirements for suretyship or guaranty agreements by removing outdated cross-citations to the loans to one borrower or group of associated borrowers limit in §§ 723.2 and 723.8 of the member business lending regulation and adding updated cross-citations to 701.22(b)(5)(iv) of the NCUA's loan participation regulation and 723.4(c) of the NCUA's member business lending regulation.

Section 701.21

The proposal would divide current § 701.21(c)(4) into two new subparagraphs. One paragraph, § 701.21(c)(4)(i), would state the general rule that loans carry a 15-year maturity. The other, § 701.21(c)(4)(ii), would make more explicit that there are exceptions to the general 15-year maturity limit in § 701.21 (e) through (g) for various types of credit union loans.

The proposal would maintain all of current § 701.21(c)(4) in proposed § 701.21(c)(4)(i), which articulates the general 15-year maturity limit that exists on FCU loans. However, the proposal also would add language to clarify that the maturity for a lending action that qualifies as a new loan under GAAP is calculated from the new date of origination.

Section 701.21(c)(4)(ii) of the proposal would explicitly state, in three subparagraphs, that three exceptions exist to the general 15-year maturity limit and cross-cite to §§ 701.21(e)–(g), which detail them as follows:

Paragraph (c)(4)(ii)(A) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(e) regarding covered loans secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either.

Paragraph (c)(4)(ii)(B) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(f) regarding covered home improvement, mobile home, and second mortgage loans.

Paragraph (c)(4)(ii)(C) of the proposal would explicitly cross-cite to the exception to the general 15-year maturity limit that exists in § 701.21(g) regarding covered 1–4 family real estate loans.

The proposal would revise § 701.21(c)(5) to add cross-citations to the specific requirements that exist on loans to a single borrower or group of associated borrowers in the loan participation rule, § 701.22(b)(5)(iv), and member business lending rule, § 723.4(c).

The proposal would revise § 701.21(e) to make more explicit that the maturity limits applicable to loans covered by paragraph (e) are notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

The proposal would retain almost all of current § 701.21(f), but would insert some additional language to improve clarity.

The proposal would revise § 701.21(f)(1) to make more explicit that the maturity limit applicable to loans covered by paragraph (f) is notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

The proposal would retain almost all of current § 701.21(g), but would insert some additional language to improve clarity.

[15] 12 CFR 701.22(b)(5)(iv).

[16] 12 CFR 723.4(c).

[17] 12 U.S.C. 1757(5)(A)(x).

[18] All citations to §§ 701.20, 701.21, 701.22, and part 723 in this preamble section refer to the NCUA's regulations in 12 CFR chapter VII.

The proposal would revise § 701.21(g)(1) to make more explicit that the maturity limit applicable to loans covered by paragraph (g) is notwithstanding the general 15-year limit in paragraph (c)(4). The proposal would also add a cross-citation to paragraph (c)(4).

Section 701.22

As described in more detail below, the proposal would make minor conforming amendments to § 701.22(b) regarding loan participations.

The proposal would update the cross-citation in § 701.22(b)(1), which provides that for a federally insured credit union to purchase a participation interest in a loan, the loan must comply with all regulatory requirements to the same extent as if the purchasing federally insured credit union had originated the loan. Specifically, the cross-reference in § 701.22(b)(1) is outdated and would be changed from § 723.8 to § 723.4(c).

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include credit unions with assets less than $100 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. The proposed rule reduces regulatory burden through clarifying and technical changes and will not have an impact on small credit unions. Accordingly, the NCUA certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency creates new or amends existing information collection requirements.[19] For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. The proposed rule does not contain information collection requirements that require approval by OMB under the PRA.[20] The proposed rule would only make clarifying and technical changes.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rulemaking will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[21]

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on August 2, 2018.

Gerard Poliquin,

Secretary of the Board.

For the reasons discussed above, the NCUA Board proposes to amend 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.20 [Amended]

■ 2. Amend § 701.20(c)(2) by removing the citation ''723.2 and 723.8'' and adding in its place ''701.22(b)(5)(iv) and 723.4(c)''.

■ 3. Amend § 701.21 by revising paragraphs (c)(4) and (5), (e), (f)(1) introductory text, and (g)(1) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(4) *Maturity*—(i) *In general.* The maturity of a loan to a member may not exceed 15 years. Lines of credit are not subject to a statutory or regulatory maturity limit. Amortization of line of credit balances and the type and amount of security on any line of credit shall be as determined by contract between the Federal credit union and the member/borrower. In the case of a lending action that qualifies as a ''new loan'' under GAAP, the new loan's maturity is calculated from the new date of origination.

(ii) *Exceptions.* Notwithstanding the general 15-year maturity limit on loans to members, a federal credit union may make loans with maturities:

(A) As specified in the law, regulations or program under which a loan is secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either, as provided in paragraph (e) of this section;

(B) Of up to 20 years or such longer term as is provided in paragraph (f) of this section; and

(C) Of up to 40 years or such longer term as is provided in paragraph (g) of this section.

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus. In the case of loan participations as defined in § 701.22(a) of this part and commercial loans as defined in § 723.2 of this chapter, additional limitations apply as set forth in § 701.22(b)(5)(iv) of this part and § 723.4(c) of this chapter.

* * * * *

(e) *Insured, guaranteed and advance commitment loans.* Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a loan secured, in full or in part, by the insurance or guarantee of, or with an advance commitment to purchase the loan, in full or in part, by the Federal Government, a State government or any agency of either, may be made for the maturity and under the terms and

[19] 44 U.S.C. 3507(d); 5 CFR part 1320.

[20] 44 U.S.C. chap. 35.

[21] Public Law 105–277, 112 Stat. 2681 (1998).

conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) *20-year loans.* (1) Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make loans with maturities of up to 20 years in the case of:

* * * * *

(g) *Long-term mortgage loans*—(1) *Authority.* Notwithstanding the general 15-year maturity limit on loans to members in paragraph (c)(4) of this section, a federal credit union may make residential real estate loans to members, including loans secured by manufactured homes permanently affixed to the land, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph (g).

* * * * *

§ 701.22 [Amended]

■ 3. Amend § 701.22(b)(1) by removing the citation ''§ 723.8'' and adding in its place ''§ 723.4''.

[FR Doc. 2018–17087 Filed 8–9–18; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0642; Product Identifier 2018–NM–087–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 all Dassault Aviation Model Falcon 10 airplanes. This proposed AD was prompted by a determination that 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 September 24, 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* by searching for and locating Docket No. FAA–2018–0642; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 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 St., 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–2018–0642; Product Identifier 2018–NM–087–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 Union, has issued EASA AD 2018–0078, dated April 9, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model Falcon 10 airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance instructions for the Dassault Falcon 10 aeroplanes, which are approved by EASA, are currently defined and published in the Dassault Falcon 10 [Airplane Maintenance Manual] AMM, Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane.]
>
> Previously, EASA issued AD 2008–0221 to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in the Dassault Falcon 10 AMM, Chapter 5–40, at Revision 8.
>
> Since that [EASA] AD was issued, Dassault issued the [Airworthiness Limitations Section] ALS, which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> For the reason described above, this [EASA] AD takes over the requirements for Falcon 10 aeroplanes from EASA AD 2008–0221, and requires accomplishment of the actions specified in the ALS.

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–2018–0642.

Related Service Information Under 1 CFR Part 51

Dassault has issued Falcon 10 Maintenance Manual, Airworthiness Limitations, Chapter 5–40–00, Revision 13, dated July 2017. This service information describes repetitive mandatory maintenance tasks. 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 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

This AD requires 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 (i)(1) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Difference Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Dassault maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 60 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):

Dassault Aviation: Docket No. FAA–2018–0642; Product Identifier 2018–NM–087–AD.

(a) Comments Due Date

We must receive comments by September 24, 2018.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model Falcon 10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage 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 Falcon 10 Maintenance Manual, Airworthiness Limitations, Chapter 5–40–00, Revision 13, dated July 2017. The initial compliance time for accomplishing the actions is at the applicable time specified in Falcon 10 Maintenance Manual, Airworthiness Limitations, Chapter 5–40–00, Revision 13, dated July 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 (i)(1) of this AD.

(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.* 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 2018–0078, dated April 9, 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–2018–0642.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., 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 July 24, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16498 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0706; Product Identifier 2018–NM–086–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 FAN JET FALCON, and FAN JET FALCON SERIES C, D, E, F, and G airplanes. This proposed AD was prompted by a determination of the need for a revision to the airplane airworthiness limitations to introduce changes to the maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new airworthiness limitations and maintenance requirements. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 24, 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* by searching for and locating Docket No. FAA–2018–0706; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 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 St., 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–2018–0706; Product Identifier 2018–NM–086–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 Union, has issued EASA AD 2018–0083, dated April 16, 2018 (referred to after

this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model FAN JET FALCON and FAN JET FALCON SERIES C, D, E, F, and G airplanes. The MCAI states:

The airworthiness limitations and certification maintenance instructions for the Dassault Fan Jet Falcon aeroplanes, which are approved by EASA, are currently defined and published in the Dassault Fan Jet Falcon Aircraft Maintenance Manual (AMM) chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.

Failure to accomplish these instructions could result in an unsafe condition [among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane].

Consequently, EASA issued AD 2014–0021 [which corresponds to FAA AD 2014–26–07, Amendment 39–18058 (80 FR 2815, January 21, 2015) (''AD 2014–26–07'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Fan Jet Falcon AMM chapter 5–40 Revision 15.

Since that [EASA] AD was issued, Dassault issued Revision 17 of the Dassault Fan Jet Falcon AMM chapter 5–40, which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.

For the reason described above, this [EASA] AD retains the requirements of EASA AD 2014–0021, which is superseded, and requires accomplishment of the actions specified in Revision 17 of the Dassault Fan Jet Falcon AMM chapter 5–40, (hereafter referred to as 'the ALS' in this [EASA] AD).

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–2018–0706.

Relationship Between Proposed AD and AD 2014–26–07

This NPRM does not propose to supersede AD 2014–26–07. Rather, we have determined that a stand-alone AD would be more appropriate to address the changes in the MCAI. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new airworthiness limitations and maintenance requirements. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2014–26–07.

Related Service Information Under 1 CFR Part 51

Dassault has issued Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 17, dated September 2017, of the Dassault Aviation Falcon 20 Maintenance Manual. This service information includes life limits for certain components, including the engine front mounts and the legs of the nose landing gear and main landing gear. In addition, this service information describes maintenance tasks for, among other systems, the air conditioning system and the passenger/crew door warning system. 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 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the maintenance or inspection program, as applicable, to include new airworthiness limitations and maintenance requirements.

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 inspections that will ensure the continued operational safety of the airplane.

Differences Between This Proposed AD and the MCAI

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) tasks, corrective actions must be accomplished in accordance with Dassault maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 168 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):

Dassault Aviation: Docket No. FAA–2018–0706; Product Identifier 2018–NM–086–AD.

(a) Comments Due Date

We must receive comments by September 24, 2018.

(b) Affected ADs

This AD affects AD 2014–26–07, Amendment 39–18058 (80 FR 2815, January 21, 2015) (''AD 2014–26–07'').

(c) Applicability

This AD applies to Dassault Aviation Model FAN JET FALCON, and FAN JET FALCON SERIES C, D, E, F, and G airplanes, certificated in any category, all serial numbers, except those on which the Dassault Fan Jet Falcon Supplemental Structural Inspection Program (Service Bulletin (SB) 730) has been embodied into the airplane's maintenance program.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits and Maintenance Checks.

(e) Reason

This AD was prompted by a determination of the need for a revision to the airplane airworthiness limitations to introduce changes to the maintenance requirements and airworthiness limitations. We are issuing this AD to address, among other things, fatigue cracking and damage in principal structural elements; such fatigue cracking and damage could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Revision of Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the airworthiness limitations specified in Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 17, dated September 2017, of the Dassault Aviation Falcon 20 Maintenance Manual (MM). The initial compliance time for accomplishing the actions is at the applicable time specified in Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 17, dated September 2017, of the Dassault Aviation Falcon 20 MM; or within 90 days after the effective date of this AD; whichever occurs later. Where the threshold column in the table in paragraph B, Mandatory Maintenance Operations, of Chapter 5–40, Airworthiness Limitations, DGT 131028, Revision 17, dated September 2017, of the Dassault Aviation Falcon 20 MM specifies a compliance time in years, those compliance times are since the date of issuance of the original French or European Aviation Safety Agency (EASA) airworthiness certificate or date of issuance of the original French or EASA export certificate of airworthiness.

(h) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in paragraph (j)(1) of this AD.

(i) Terminating Action for AD 2014–26–07

Accomplishing the actions required by paragraph (g) of this AD terminates all of the requirements of AD 2014–26–07.

(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. 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.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0083, dated April 16, 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–2018–0706.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., 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 July 27, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16732 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0643; Product Identifier 2018–NM–084–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 7X airplanes. This proposed AD was prompted by a determination that 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 and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by September 24, 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; phone: 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* by searching for and locating Docket No. FAA–2018–0643; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 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 St., Des Moines, WA 98198; phone 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–2018–0643; Product Identifier 2018–NM–084–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 Union, has issued EASA AD 2018–0101, dated May 3, 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 7X airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance instructions for Dassault Falcon 7X aeroplanes, which are approved by EASA, are currently defined and published in Dassault Falcon 7X AMM [airplane maintenance manual], Chapter 5–40. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition [*i.e.,* reduced structural integrity and reduced control of these airplanes due to the failure of system components].
>
> Previously, EASA issued AD 2015–0095 [which corresponds to FAA AD 2016–16–09, Amendment 39–18607 (81 FR 52752, August 10, 2016) (''AD 2016–16–09'')] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Falcon 7X AMM, Chapter 5–40, at Revision 4.
>
> Since that [EASA] AD was issued, Dassault issued the ALS [airworthiness limitations section], which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2015–0095, which is superseded, and requires accomplishment of the actions specified in the ALS.

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–2018–0643.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this 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 AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Relationship Between Proposed AD and AD 2016–16–09

This NPRM does not propose to supersede AD 2016–16–09. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. Accomplishment of the proposed actions would then terminate all requirements of AD 2016–16–09.

Related Service Information Under 1 CFR Part 51

Dassault Aviation has issued Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 5, dated September 1, 2016, of the Dassault Falcon 7X Maintenance Manual (MM). This service information introduces new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. 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 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems.

Differences Between This Proposed AD and the MCAI

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Dassault Aviation maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to Dassault Aviation Model FALCON 7X airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 67 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):

Dassault Aviation: Docket No. FAA–2018–0643; Product Identifier 2018–NM–084–AD.

(a) Comments Due Date

We must receive comments by September 24, 2018.

(b) Affected ADs

This AD affects AD 2014–16–23, Amendment 39–17947 (79 FR 52545, September 4, 2014) (''AD 2014–16–23'') and AD 2016–16–09, Amendment 39–18607 (81 FR 52752, August 10, 2016) (''AD 2016–16–09'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before September 1, 2016.

Note 1 to paragraph (c) of this AD: Model FALCON 7X airplanes with modifications M1000 and M1254 incorporated are commonly referred to as ''Model FALCON 8X'' airplanes as a marketing designation.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time limits/maintenance checks.

(e) Reason

This AD was prompted by a determination that more restrictive maintenance requirements and airworthiness limitations are necessary. We are issuing this AD to prevent reduced structural integrity and reduced control of airplanes due to the failure of system components.

(f) Compliance

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

(g) Revise the Maintenance or Inspection Program

Within 90 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the information specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 5, dated September 1, 2016, of the Dassault Falcon 7X Maintenance Manual (MM). The initial compliance times for the tasks specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 5, dated September 1, 2016, of the Dassault Falcon 7X MM are at the applicable compliance times specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 5, dated September 1, 2016, of the Dassault Falcon 7X MM, or within 90 days after the effective date of this AD, whichever occurs later.

(h) Terminating Action for Other ADs

(1) Accomplishing the actions required by paragraph (g) of this AD terminates the requirements of paragraph (q) of AD 2014–16–23.

(2) Accomplishing the actions required by paragraph (g) of this AD terminates all requirements of AD 2016–16–09.

(i) No Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(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.* 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.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0101, dated May 3, 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–2018–0643.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 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; phone: 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 July 24, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16573 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0639; Product Identifier 2018–NM–058–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. This proposed AD was prompted by a revision of a certain airworthiness limitations item (ALI) document, which specifies new or more restrictive maintenance instructions and airworthiness limitations, and a determination that those maintenance instructions and airworthiness limitations are necessary. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised maintenance instructions 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 September 24, 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—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@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–2018–0639; 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 regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

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–2018–0639; Product Identifier 2018–NM–058–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 Union, has issued EASA Airworthiness Directive 2018–0068, dated March 26, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A330–200 Freighter, A330–200, and A330–300 series airplanes. The MCAI states:

> The airworthiness limitations for Airbus A330 and A340 aeroplanes, which are approved by EASA, are currently defined and published in the A330 and A340 [Airworthiness Limitations Section] ALS document(s). The Damage Tolerant Airworthiness Limitation Items (DT ALI) are specified in the ALS Part 2. These instructions have been identified as mandatory actions for continued airworthiness.
>
> Failure to comply with these instructions could result in an unsafe condition [*i.e.,* fatigue cracking, damage, and corrosion in principal structural elements] which could result in reduced structural integrity of the airplane.
>
> Previously, EASA issued AD 2016–0152 [which corresponds to FAA AD 2017–19–13, Amendment 39–19043 (82 FR 43837, September 20, 2017) (''AD 2017–19–13'')] for A330 and A340 aeroplanes to require accomplishment of all maintenance tasks as described in ALS Part 2 Revision 01 (A330 aeroplanes) and Revision 02 (A340 aeroplanes).
>
> Since that [EASA] AD was issued, Airbus published Revision 02 of the ALS Part 2 for A330 aeroplanes, including new and/or more restrictive items.
>
> For the reason described above, this [EASA] AD takes over the requirements from EASA AD 2016–0152 for A330 aeroplanes, and requires accomplishment of all maintenance tasks as described in the ALS. EASA AD 2016–0152 has been revised accordingly, removing A330 aeroplanes from the Applicability.

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–2018–0639.

Relationship Between Proposed AD and AD 2017–19–13

This NPRM does not propose to supersede AD 2017–19–13. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This NPRM would require revising the maintenance or inspection program, as applicable, to incorporate new or revised maintenance instructions and airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2017–19–13.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A330 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 02, Issue 2, dated November 22, 2017. This service information describes maintenance instructions and airworthiness limitations applicable to the DT–ALI. 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 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 the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

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 damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Airworthiness Limitations Based on Type Design

The FAA recently became aware of an issue related to the applicability of ADs that require incorporation of an ALS revision into an operator's maintenance or inspection program.

Typically, when these types of ADs are issued by civil aviation authorities of other countries, they apply to all airplanes covered under an identified type certificate (TC). The corresponding FAA AD typically retains applicability to all of those airplanes.

In addition, U.S. operators must operate their airplanes in an airworthy condition, in accordance with 14 CFR 91.7(a). Included in this obligation is the requirement to perform any maintenance or inspections specified in the ALS, and in accordance with the ALS as specified in 14 CFR 43.16 and 91.403(c), unless an alternative has been approved by the FAA.

When a type certificate is issued for a type design, the specific ALS, including revisions, is a part of that type design, as specified in 14 CFR 21.31(c).

The sum effect of these operational and maintenance requirements is an obligation to comply with the ALS defined in the type design referenced in the manufacturer's conformity statement. This obligation may introduce a conflict with an AD that requires a specific ALS revision if new airplanes are delivered with a later revision as part of their type design.

To address this conflict, the FAA has approved alternative methods of compliance (AMOCs) that allow operators to incorporate the most recent ALS revision into their maintenance/inspection programs, in lieu of the ALS revision required by the AD. This eliminates the conflict and enables the operator to comply with both the AD and the type design.

However, compliance with AMOCs is normally optional, and we recently became aware that some operators choose to retain the AD-mandated ALS revision in their fleet-wide maintenance/inspection programs, including those for new airplanes delivered with later ALS revisions, to help standardize the maintenance of the fleet. To ensure that operators comply with the applicable ALS revision for newly delivered airplanes containing a later revision than that specified in an AD, we plan to limit the applicability of ADs that mandate ALS revisions to those airplanes that are subject to an earlier revision of the ALS, either as part of the type design or as mandated by an earlier AD.

This proposed AD therefore would apply to Model A330 airplanes with an original certificate of airworthiness or original export certificate of airworthiness that was issued on or before the date of the ALS revision identified in this proposed AD. Operators of airplanes with an original certificate of airworthiness or original export certificate of airworthiness issued after that date must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet.

Costs of Compliance

We estimate that this proposed AD affects 105 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 SAS: Docket No. FAA–2018–0639; Product Identifier 2018–NM–058–AD.

(a) Comments Due Date

We must receive comments by September 24, 2018.

(b) Affected ADs

This AD affects AD 2017–19–13, Amendment 39–19043 (82 FR 43837, September 20, 2017) (''AD 2017–19–13'').

(c) Applicability

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before November 22, 2017.

(1) Model A330–223F and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of a certain airworthiness limitations item (ALI) document, which specifies new or more restrictive maintenance instructions and airworthiness limitations, and a determination that those maintenance instructions and airworthiness limitations are necessary. We are issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements; such fatigue cracking, damage, and corrosion 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 A330 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 02, Issue 2, dated November 22, 2017. The initial compliance time for accomplishing the tasks is at the applicable times specified in Airbus A330 Airworthiness Limitations Section (ALS) Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 02, Issue 2, dated November 22, 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

Accomplishing the action required by paragraph (g) of this AD terminates all requirements of AD 2017–19–13.

(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.*

(i) 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.

(ii) AMOC letter AIR–676–18–111 R1, dated January 29, 2018, approved previously for AD 2017–19–13, is approved as an AMOC for the corresponding provisions of this AD.

(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 SAS'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 2018–0068, dated March 26, 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–2018–0639.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229.

(3) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@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 July 23, 2018.

James Cashdollar,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2018–16501 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0926]

RIN 1625–AA09

Drawbridge Operation Regulation; Hudson River, Albany and Rensselaer, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the CSX Transportation Bridge across the Hudson River, mile 146.2, between Albany and Rensselaer, New York. The bridge owner, National Railroad Passenger Corporation (Amtrak), submitted a request to allow the bridge to require four hours' notice for bridge openings. This proposed rule would extend the notice required for bridge opening during the summer months due to the infrequent number of requests, and reduce burden on the bridge tender.

DATES: Comments and related material must reach the Coast Guard on or before October 9, 2018.

ADDRESSES: You may submit comments identified by docket number USCG–2017–0926 using Federal e-Rulemaking Portal at *http://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Miss Stephanie E. Lopez, Bridge Management Specialist, First Coast Guard District, telephone (212) 514–4335, email *Stephanie.E.Lopez@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive order
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of proposed rulemaking
SNPRM Supplemental notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The CSX Transportation (Livingston Ave) Bridge at mile 146.2, across the Hudson River, between Albany and Rensselaer, New York, has a vertical clearance of 25 feet at mean high water and 32 feet at mean low water. Vertical clearance is unlimited when the draw is open. Horizontal clearance is approximately 98 feet. The waterway users include recreational and commercial vessels including tugboat/barge combinations as well as tour/dinner boats.

The existing drawbridge operating regulation, 33 CFR 117.791(c), requires the draw of CSX Transportation Bridge to open on signal; except that, from December 16 through March 31, the draw shall open on signal if at least 24 hours' notice is given.

The owner of the bridge, National Railroad Passenger Corporation, requested a change to the drawbridge operating regulations to allow the bridge owner to require 4 hours' notice before the draw opens on signal between April 1 and December 15, from 11 p.m. to 7 a.m., due to infrequent requests to open the bridge. This rule change will allow for more efficient and economical operation of the bridge while still meeting the reasonable needs of navigation.

III. Discussion of Proposed Rule

Review of the bridge logs in the last three years shows that the bridge averages a total of 24 openings annually during the period from April 1 to December 15, between 11 p.m. and 7 a.m. A preliminary notice sent September 8, 2017, to various stakeholders and agencies indicated no objection to the proposed rule change from mariners or other stakeholders. The Coast Guard proposes to permanently change the drawbridge operating regulation 33 CFR 117.791(c).

The proposed rule would provide that, from April 1 through December 15, between the hours 7 a.m. and 11 p.m., the draw shall open on signal, and between the hours of 11 p.m. and 7 a.m., the draw shall open on signal if at least 4 hours notice is given. It is our opinion that this rule meets the reasonable needs of marine and rail traffic.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on 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 NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed the NPRM and pursuant to OMB guidance, it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still open the draw and transit the bridge given advanced notice. We believe that this proposed change to the drawbridge operation regulations at 33 CFR 117.791(c) will meet the reasonable needs of navigation.

B. Impact on Small Entities

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

The bridge provides 25 feet of vertical clearance at mean high water that should accommodate all the present vessel traffic except deep draft vessels. The bridge will continue to open on signal for any vessel provided at least 4 hour advance notice is given. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally, such actions are categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal e-Rulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacynotice.*

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.791, revise paragraph (c) to read as follows:

§ 117.791 Hudson River.

* * * * *

(c) The draw of the CSX Transportation Bridge, mile 146.2, between Albany and Rensselaer, shall open on signal; except that, from April 1 through December 15, from 11 p.m. to 7 a.m., the draw shall open on signal if at least 4 hours notice is given and, from December 16 through March 31, the draw shall open on signal if at least 24 hours notice is given.

* * * * *

Dated: July 26, 2018.

A.J. Tiongson,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2018–17208 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R04–OAR–2018–0296; FRL–9982–02—Region 4]

Air Plan and Operating Permit Program Approval: AL, GA and SC; Revisions to Public Notice Provisions in Permitting Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of State Implementation Plan (SIP) revisions and the Title V Operating Permit Program revisions submitted on May 19, 2017, by the State of Alabama, through the Alabama Department of Environmental Management (ADEM); submitted on November 29, 2017, by the State of Georgia, through the Georgia Environmental Protection Division (Georgia EPD); and submitted on September 5, 2017, by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC). These revisions address the public notice rule provisions for the New Source Review (NSR) and Title V Operating Permit programs (Title V) of the Clean Air Act (CAA or Act) that remove the mandatory requirement to provide public notice of a draft air permit in a newspaper and that allow electronic notice (''e-notice'') as an alternate noticing option. EPA is proposing to approve these revisions pursuant to the CAA and implementing federal regulations.

DATES: Written comments must be received on or before September 10, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0296 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

content 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: Ms. Kelly Fortin of the Air Permitting 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. Fortin can be reached by telephone at (404) 562–9117 or via electronic mail at *fortin.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 2016, EPA finalized revised public notice rule provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions remove the mandatory requirement to provide public notice of a draft air permit through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as the Alabama, Georgia, and South Carolina EPA-approved programs. Permitting authorities are not required to adopt e-notice. Nothing in the final rules prevents a permitting authority of an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit. Generally, state and local agencies intend to post the draft permits and public notices in a designated location on their agency websites. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use ''a consistent noticing method'' for all permit notices under the specific permitting program.

EPA anticipates that e-notice, which is already being practiced by many permitting authorities, will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently and will provide cost savings over newspaper publication. EPA further anticipates that e-access will expand access to permit-related documents. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016 (81 FR 71613), publication.

II. Analysis of Alabama's E-Notice Rule Revisions

Chapter 335–3–14, *Air Permits;* Chapter 335–3–15, *Synthetic Minor Operating Permits;* and Chapter 335–3–16, *Major Source Operating Permits,* were revised to incorporate EPA's amendments to the federal public notice regulations discussed above. Specifically, ADEM revised 335–3–14–.01(7) (General Provisions), –.04(16) (Prevention of Significant Deterioration Permitting; Public Participation), –.04(19) (Prevention of Significant Deterioration Permitting; Permit Rescission), –.05(16) (Air Permits Authorizing Construction in or near Non-Attainment Areas; Public Participation), –.06(3)(e) (Public Participation for permitting involving maximum achievable control technology determinations), –15–.05 (Synthetic Minor Operating Permits; Public Participation), and –16–.15(4) (Major Source Operating Permits; Public Participation). ADEM's regulations were the subject of a public hearing on March 8, 2017, were adopted on April 21, 2017, and became effective on June 9, 2017. Based on a review of these proposed revisions, EPA has preliminarily determined that they meet the requirements of the revised federal e-notice provisions. ADEM's revised rules require that for all draft permits for potential major NSR, Title V, and synthetic minor sources, all public notices, a copy of all materials submitted by the applicant, the preliminary determination, and a link to the draft permit will be posted on the Department's website for the duration of the public comment period.

Chapters 335–3–14 (Air Permits) and 335–3–15 (Synthetic Minor Operating Permits) are SIP elements and the public notice revisions to these SIP-approved rules are proposed to be incorporated into the Alabama SIP, which also applies to permits issued by Jefferson County Department of Health and the City of Huntsville, Alabama.[1] Chapter 335–3–16 (Major Source Operating Permits) is part of ADEM's EPA-approved Title V Operating Permit program, which is not part of the Alabama SIP.[2] EPA is proposing to approve these Title V program revisions pursuant to 40 CFR 70.4. Jefferson County Department of Health and the City of Huntsville, Alabama, have Title V operating permit programs that were originally approved by EPA separately from ADEM's Title V Operating Permit program, as these local programs have authority under Alabama State law to develop local regulations that ensure applicants are required, at a minimum, to satisfy the requirements of State law. Hence, EPA will take separate action on the revisions to the Jefferson County Department of Health and City of Huntsville, Alabama, Title V programs upon receipt of their respective submittals.

III. Analysis of Georgia's E-Notice Rule Revisions

Rule 391–3–1–.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality,* and Rule 391–3–1–.03(10), *Title V Operating Permits,* of *Georgia's Rules for Air Quality Control, Chapter 391–3–1,* were revised to incorporate EPA's amendments to the federal public notice regulations, as discussed above. Georgia EPD's revisions were the subject of a public hearing on May 9, 2017, were adopted on June 28, 2017, and became effective on July 20, 2017. Based on a review of the proposed revisions, EPA has preliminarily determined that Georgia EPD's provisions for the PSD and Title V Operating Permit programs meet the requirements of the revised federal e-notice provisions at 40 CFR 51.166 and 40 CFR 70.7.

Rule 391–3–1–.02(7)(a)1, *Prevention of Significant Deterioration of Air Quality* is a required SIP element and, hence, the revision to this SIP-approved rule is proposed to be incorporated into the Georgia SIP. Georgia EPD's SIP-approved PSD rules incorporate by reference the public participation requirements of 40 CFR 52.21(q). In this revision, Georgia EPD updated the incorporation by reference date to include EPA's October 18, 2016, promulgation of the e-notice revisions. These provisions require both e-notice and e-access.

Rule 391–3–1–.03(10), *Title V Operating Permits,* of *Georgia's Rules for Air Quality Control* is part of Georgia's EPA-approved Title V Operating Permit program, which is not part of the Georgia SIP.[3] Georgia EPD's Title V program incorporates by reference public participation

[1] EPA is not proposing to act on the portion of Alabama's May 19, 2017 SIP revision regarding 335–3–14–.06 because that rule is not part of the federally-approved Alabama SIP.

[2] EPA fully approved Alabama's Title V Operating Permit program on October 29, 2001 (66 FR 54444).

[3] EPA fully approved Georgia's Title V Operating Permit program on June 8, 2000 (65 FR 36358).

requirements of the federal provisions at 40 CFR 70.7(h). In this revision, Georgia EPD updated the incorporation by reference date to include EPA's October 18, 2016, promulgation of the e-notice revisions, which allow for either electronic notice or newspaper notice, and require that the State use a consistent noticing method. The Georgia Air Quality Act, however, requires newspaper notice upon receipt of a complete application for a Title V permit or Title V permit modification. *See* O.C.G.A. § 12–9–9. Until such time that requirement is lifted, Georgia EPD will continue to publish both a newspaper notice and electronic notice, and will inform the public and EPA when Georgia EPD intends to move to electronic notices only. EPA is proposing to approve the public notice revision to Georgia's EPA-approved Title V Operating Permit program.[4]

IV. Analysis of South Carolina's E-Notice Rule Revisions

Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* and Regulation 61–62.70, *Title V Operating Permit Program* of the South Carolina *Air Pollution Control Regulations and Standards,* were revised to incorporate EPA's amendments to the federal public notice regulations discussed above. Specifically, SC DHEC revised Regulation 61–62.5, Standard No. 7 at Sections (q) and (w)(4) and Regulation 61–62.70 at Section 7(h). SC DHEC's regulations were the subject of a public hearing on August 10, 2017, and were adopted and became effective on August 25, 2017.

SC DHEC's revisions add language allowing the Department to use e-notice and requiring e-access if e-notice is used as the consistent noticing method. Based on a review of the proposed revisions, EPA has preliminarily determined that SC DHEC's revisions meet the requirements of the revised federal e-notice provisions. SC DHEC's revised rules require that for all proposed PSD and Title V permits, the Department will use a ''consistent noticing method.'' SC DHEC has indicated that they intend to use a public website identified by the Department as their consistent noticing method.[5]

Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration* is a required SIP element and, hence, the public notice revisions to this SIP-approved rule are proposed to be incorporated into the South Carolina SIP. Regulation 61–62.70, *Title V Operating Permit Program* is part of South Carolina's EPA-approved Title V Operating Permit program, which is not part of the South Carolina SIP, and the public notice revisions are therefore being proposed for approval pursuant to 40 CFR 70.4.[6]

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following provisions that all address the public notice requirements for CAA permitting: Alabama Chapter 335–3–14, ''Air Permits'' at 335–3–14–.01, –.04, –.05 and –.06 and Chapter 335–3–15 ''Synthetic Minor Operating Permits'' at 335–3–15–.05 effective December June 9, 2017; Georgia Rule 391–3–1–.02, ''Prevention of Significant Deterioration of Air Quality'' at 391–3–1–.02(7)(a)1, effective July 20, 2017; and South Carolina Regulation 61–62.5, Standard No. 7, ''Prevention of Significant Deterioration'' at Sections (q) and (w)(4), effective August 25, 2017. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Proposed Action

EPA is proposing to approve the portions of Alabama's May 19, 2017, Georgia's November 29, 2017, and South Carolina's September 5, 2017, SIP and Title V program revisions addressing the public notice requirements for CAA permitting. EPA has preliminarily concluded that the States' submissions meet the plan revisions requirements of CAA section 110 and the SIP requirements of 40 CFR 51.161, 51.165, and 51.166, as well as the public notice and revisions requirements of 40 CFR 70.4 and 70.7.

VII. Statutory and Executive Order Reviews

In reviewing SIP and Title V submissions, EPA's role is to approve such submissions, provided that they meet the criteria of the CAA and EPA's implementing regulations. These actions merely propose to approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because the actions are not significant under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIPs subject to these proposed actions, with the exception of the South Carolina SIP, are 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

[4] In its November 29, 2017, submittal, GA EPD also sought to revise its EPA-approved Title V Operating Permit program to ''exempt fire pumps from permitting and to specify fire pumps as an insignificant activity for the purposes of Title V.'' EPA is not proposing to act on this proposed revision at this time.

[5] *See* Letter from Myra C. Reese, SC DHEC, to Trey Glenn, EPA (Sept. 1, 2017) transmitting the SIP revisions and Title V permit revisions received by EPA on September 5, 2017. This letter is included in the docket for this proposed action.

[6] EPA fully approved South Carolina's Title V Operating Permit program on June 26, 1995 (60 FR 32913).

country, the proposed rules regarding SIPs do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law. With respect to the South Carolina SIP, EPA notes that the Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina, and 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.'' Thus, the South Carolina SIP applies to the Catawba Reservation; however, because the proposed action related to South Carolina is merely modifying public notice provisions for certain types of air permits issued by SC DHEC, EPA has preliminarily determined that there are no substantial direct effects on the Catawba Indian Nation. EPA has also preliminarily determined that the proposed action related to South Carolina's SIP will not impose any substantial direct costs on tribal governments or preempt tribal law.

Furthermore, the proposed rules regarding Title V Operating Permit programs do not have tribal implications because they are not approved to apply to any source of air pollution over which an Indian Tribe has jurisdiction, nor will these proposed rules impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

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

Dated: July 31, 2018.

Onis ''Trey'' Glenn, III,

Regional Administrator, Region 4.

[FR Doc. 2018–17207 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[EPA–R06–OAR–2008–0063; FRL–9972–26—Region 6]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Oklahoma Department of Environmental Quality (ODEQ) has submitted updated regulations for receiving delegation and approval of its program for the implementation and enforcement of certain National Emission Standards for Hazardous Air Pollutants (NESHAP) for all sources (both part 70 and non-part 70 sources), as provided for under previously approved delegation mechanisms. The updated state regulations incorporate by reference certain NESHAP promulgated by the EPA at parts 61 and 63, as they existed through September 1, 2016. The EPA is proposing to approve ODEQ's requested delegation update.

DATES: Written comments on this proposed rule must be received on or before September 10, 2018.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0063, at *http://www.regulations.gov* or via email to *barrett.richard@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Rick Barrett, 214–665–7227, *barrett.richard@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6MM–AP), (214) 665–7227; email: *barrett.richard@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Mr. Rick Barrett or Mr. Bill Deese at (214) 665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. What does this action do?

EPA is proposing to update its approval of Oklahoma's program for the implementation and enforcement of certain NESHAP. If finalized, the delegation will provide ODEQ with the primary responsibility to implement and enforce the delegated standards.

II. What is the authority for delegation?

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorize the EPA to delegate authority for the implementation and enforcement of emission standards for hazardous air pollutants to a State or local agency that satisfies the statutory and regulatory requirements in subpart E. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

III. What criteria must Oklahoma's program meet to be approved?

Section 112(l)(5) of the CAA requires the EPA to disapprove any program submitted by a State for the delegation

of NESHAP standards if the EPA determines that:

(A) The authorities contained in the program are not adequate to assure compliance by the sources within the State with respect to each applicable standard, regulation, or requirement established under section 112;

(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

(D) the program is otherwise not in compliance with the guidance issued by the EPA under section 112(l)(2) or is not likely to satisfy, in whole or in part, the objectives of the CAA.

In carrying out its responsibilities under section 112(l), the EPA promulgated regulations at 40 CFR part 63, subpart E setting forth criteria for the approval of submitted programs. For example, in order to obtain approval of a program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation) for part 70 sources, a State must demonstrate that it meets the criteria of 40 CFR 63.91(d). 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d).[1] The NESHAP delegation for Oklahoma, as it applies to both part 70 and non-part 70 sources, was most recently approved on December 13, 2005 (70 FR 73595).

IV. How did ODEQ meet the NESHAP program approval criteria?

As to the NESHAP standards in 40 CFR parts 61 and 63, as part of its Title V submission ODEQ stated that it intended to use the mechanism of incorporation by reference to adopt unchanged Federal section 112 into its regulations. This commitment applied to both existing and future standards as they applied to part 70 sources. EPA's final interim approval of Oklahoma's Title V operating permits program delegated the authority to implement certain NESHAP, effective March 6, 1996 (61 FR 4220, February 5, 1996). On December 5, 2001, EPA granted final full approval of the State's operating permits program (66 FR 63170). These interim and final Title V program approvals satisfy the up-front approval criteria of 40 CFR 63.91(d). Under 40 CFR 63.91(d)(2), once a State has satisfied up-front approval criteria, it needs only to reference the previous demonstration and reaffirm that it still meets the criteria for any subsequent submittals for delegation of the section 112 standards. ODEQ has affirmed that it still meets the up-front approval criteria. With respect to non-part 70 sources, the EPA has previously approved delegation of NESHAP authorities to ODEQ after finding adequate authorities to implement and enforce the NESHAP for such sources. *See* 66 FR 1584 (January 9, 2001).

V. What is being delegated?

By letter dated June 25, 2018, the EPA received a request from ODEQ to update its existing NESHAP delegation.[2] With certain exceptions noted in section VI below, Oklahoma's request included NESHAP in 40 CFR part 61 and 40 CFR part 63. ODEQ's request included newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as they existed though September 1, 2016. This proposed action is being taken in reponse to ODEQ's request noted above.

VI. What is not being delegated?

All authorities not affirmatively and expressly proposed for delegation by this action will not be delegated. These include the following part 61 and 63 authorities listed below:

- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings);
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings); and
- 40 CFR part 63, subpart J (National Emission Standards for Polyvinyl Choride and Copolymers Production).

In addition, the EPA regulations provide that we cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. Also, some part 61 and part 63 standards have certain provisions that cannot be delegated to the States. Furthermore, no authorities are being proposed for delegation that require rulemaking in the **Federal Register** to implement, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, this action does not propose delegation of any authority under section 112(r), the accidental release program.

If finalized, all questions concerning implementation and enforcement of the excluded standards in the State of Oklahoma should be directed to the EPA Region 6 Office.

EPA is proposing a determination that the NESHAP program submitted by Oklahoma meets the applicable requirements of CAA section 112(l)(5) and 40 CFR part 63, subpart E. This delegation to ODEQ to implement and enforce certain NESHAP does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Oklahoma is not seeking delegation for such areas, and neither the EPA nor ODEQ is aware of any existing facilities in Indian country subject to the NESHAP being delegated. ODEQ may submit a request to expand this program to non-reservation areas of Indian country in the future, at which time the EPA would evaluate the request through the appropriate process.

[1] Some NESHAP standards do not require a source to obtain a title V permit (*e.g.,* certain area sources that are exempt from the requirement to obtain a title V permit). For these non-title V sources, the EPA believes that the State must assure the EPA that it can implement and enforce the NESHAP for such sources. *See* 65 FR 55810, 55813 (Sept. 14, 2000). EPA previously approved Oklahoma's program to implement and enforce the NESHAP as they apply to non-part 70 sources. *See* 66 FR 1584 (Dec. 5, 2001).

[2] ODEQ's June 25, 2018 letter rescinds its previous three letters, dated January 11, 2008, August 23, 2012, and October 16, 2017, requesting EPA approval to update Oklahoma's NESHAP delegation. As such, the EPA's proposed rulemaking (80 FR 9678, February 24, 2015) associated with ODEQ's January 11, 2008 letter is hereby withdrawn.

VII. How will statutory and regulatory interpretations be made?

If this NESHAP delegation is finalized, ODEQ will obtain concurrence from the EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR parts 61 and 63 to the extent that implementation or enforcement of these provisions have not been covered by prior EPA determinations or guidance.

VIII. What authority does the EPA have?

We retain the right, as provided by CAA section 112(l)(7) and 40 CFR 63.90(d)(2), to enforce any applicable emission standard or requirement under section 112. In addition, the EPA may enforce any federally approved State rule, requirement, or program under 40 CFR 63.90(e) and 63.91(c)(1)(i). The EPA also has the authority to make certain decisions under the General Provisions (subpart A) of parts 61 and 63. We are proposing to delegate to the ODEQ some of these authorities, and retaining others, as explained in sections V and VI above. In addition, the EPA may review and disapprove State determinations and subsequently require corrections. *See* 40 CFR 63.91(g)(1)(ii). EPA also has the authority to review ODEQ's implementation and enforcement of approved rules or programs and to withdraw approval if we find inadequate implementation or enforcement. *See* 40 CFR 63.96.

Furthermore, we retain any authority in an individual emission standard that may not be delegated according to provisions of the standard. Finally, we retain the authorities stated in the original delegation agreement. *See* ''Provisions for the Implementation and Enforcement of NSPS and NESHAP in Oklahoma,'' effective March 25, 1982, a copy of which is included in the docket for this action. The delegation table as of now and how it would look if this proposal is finalized may be found in the Technical Support Document (TSD) included in the docket for this action. The table also shows the authorities that cannot be delegated to any State or local agency.

IX. What information must ODEQ provide to the EPA?

ODEQ must provide any additional compliance related information to EPA, Region 6, Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, ODEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. *See* 40 CFR 63.91(g)(1)(ii). For part 63 standards, these determinations include: § 63.1, Applicability Determinations; § 63.6(e), Operation and Maintenance Requirements—Responsibility for Determining Compliance; § 63.6(f), Compliance with Non-Opacity Standards—Responsibility for Determining Compliance; § 63.6(h), Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance; § 63.7(c)(2)(i) and (d), Approval of Site-Specific Test Plans; § 63.7(e)(2)(i), Approval of Minor Alternatives to Test Methods; § 63.7(e)(2)(ii) and (f), Approval of Intermediate Alternatives to Test Methods; § 63.7(e)(iii), Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors; § 63.7(e)(2)(iv), (h)(2) and (3), Waiver of Performance Testing; § 63.8(c)(1) and (e)(1), Approval of Site-Specific Performance Evaluation (Monitoring) Test Plans; § 63.8(f), Approval of Minor Alternatives to Monitoring; § 63.8(f), Approval of Intermediate Alternatives to Monitoring; §§ 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports; § 63.10(f), Approval of Minor Alternatives to Recordkeeping and Reporting; and § 63.7(a)(4), Extension of Performance Test Deadline.

X. What is the EPA's oversight role?

The EPA oversees ODEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that ODEQ made decisions that decreased the stringency of the delegated standards, then ODEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii) and (b). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient. *See* 51 FR 20648 (June 6, 1986).

XI. Should sources submit notices to the EPA or ODEQ?

For the delegated NESHAP standards and authorities covered by this proposed action, if finalized, sources would submit all of the information required pursuant to the general provisions and the relevant subpart(s) of the delegated NESHAP (40 CFR parts 61 and 63) directly to the ODEQ at the following address: State of Oklahoma, Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101–1677. The ODEQ is the primary point of contact with respect to delegated NESHAP. Sources do not need to send a copy to the EPA. The EPA Region 6 proposes to waive the requirement that notifications and reports for delegated standards be submitted to EPA in addition to ODEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii).[3] For those standards and authorties not delegated as discussed above, sources must continue to submit all appropriate information to the EPA.

XII. How will unchanged authorities be delegated to ODEQ in the future?

As stated in previous NESHAP delegation actions, the EPA has approved Oklahoma's mechanism of incorporation by reference of NESHAP standards into ODEQ regulations, as they apply to both part 70 and non-part 70 sources. *See, e.g.,* 61 FR 4224 (February 5, 1996) and 66 FR 1584 (January 9, 2001). Consistent with the EPA regulations and guidance,[4] ODEQ may request future updates to Oklahoma's NESHAP delegation by submitting a letter to the EPA that appropriately identifies the specific NESHAP which have been incorporated by reference into state regulation, reaffirms that it still meets up-front approval delegation criteria for part 70 sources, and demonstrates that ODEQ maintains adequate authorites and resources to implememnt and enforce the delegated NESHAP requirements for all sources. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the updated delegation, indicate where source notifications and reports should be sent, and amend the relevant portions of the Code of Federal Regulations identifying which NESHAP standards have been delegated to the ODEQ. We have not been using this informational notice process but intend to from now on upon

[3] This waiver only extends to the submission of *copies* of notifications and reports; the EPA does not waive the requirements in delegated standards that require notifications and reports be submitted to an electronic database (*e.g.,* 40 CFR part 63, subpart HHHHHHH).

[4] *See* Harardous Air Pollutants: Amendments to the Approval of State Programs and Delegation of Federal Authorities, Final Rule (65 FR 55810, September 14, 2000); and ''Straight Delegation Issues Concerning Sections 111 and 112 Requirements and Title V,'' by John S. Seitz, Director of Air Qualirty Planning and Standards, EPA, dated December 10, 1993.

receipt of the next NESHAP delegation request from ODEQ.[5]

XIII. Proposed Action

In today's action, the EPA is proposing to approve an update to the Oklahoma NESHAP delegation that would provide the ODEQ with the authority to implement and enforce certain newly incorporated NESHAP promulgated by the EPA and amendments to existing standards currently delegated, as they existed though September 1, 2016. As requested in ODEQ's June 25, 2018 letter, this proposed delegation to ODEQ does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151.

XIV. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve section 112(l) submissions that comply with the provisions of the Act and applicable Federal regulations. In reviewing section 112(l) submissions, the EPA's role is to approve state choices, provided that they meet the criteria and objectives of the CAA and of the EPA's implementing regulations. Accordingly, this proposed action would merely approve the State's request as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- 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).

List of Subjects

40 CFR Part 61

Environmental protection, Administrative practice and procedure, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Intergovernmental relations, Reporting and recordkeeping requirements, Vinyl chloride.

40 CFR Part 63

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

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

Dated: July 25, 2018.

Wren Stenger,

Multimedia Division Director, Region 6.

[FR Doc. 2018–17139 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

[5] A request from ODEQ that raises an isuse not previously subject to comment, presents new data, requires EPA to examine its interpretion of the applicable law, or where EPA wishes to re-examine its present position on a matter will be processed through notice and comment rulemaking in the **Federal Register**.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 153

[CMS–9919–P]

RIN 0938–AT66

Patient Protection and Affordable Care Act; Adoption of the Methodology for the HHS-Operated Permanent Risk Adjustment Program for the 2018 Benefit Year Proposed Rule

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This rule proposes to adopt the risk adjustment methodology that HHS previously established for the 2018 benefit year. In February 2018, a district court vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014 through 2018 benefit years. HHS is proposing to adopt the HHS-operated risk adjustment methodology for the 2018 benefit year as established in the final rules published in the March 23, 2012 **Federal Register** and the December 22, 2016 **Federal Register**.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5:00 p.m. on September 7, 2018.

ADDRESSES: In commenting, please refer to file code CMS–9919–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9919–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9919–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Krutika Amin, (301) 492–5153; Jaya Ghildiyal, (301) 492–5149; or Adrianne Patterson, (410) 786–0686.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

A. Legislative and Regulatory Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010; the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was enacted on March 30, 2010. These statutes are collectively referred to as ''PPACA'' in this document. Section 1343 of the PPACA established an annual permanent risk adjustment program under which payments are collected from health insurance issuers that enroll relatively low-risk populations, and payments are made to health insurance issuers that enroll relatively higher-risk populations. Consistent with section 1321(c)(1) of the PPACA, the Secretary is responsible for operating the risk adjustment program on behalf of any state that elected not to do so. For the 2018 benefit year, HHS is responsible for operation of the risk adjustment program in all 50 states and the District of Columbia.

HHS sets the risk adjustment methodology that it uses in states that elect not to operate the program in advance of each benefit year through a notice-and-comment rulemaking process with the intention that issuers will be able to rely on the methodology to price their plans appropriately (see 45 CFR 153.320; 76 FR 41930, 41932 through 41933; 81 FR 94058, 94702 (explaining the importance of setting rules ahead of time and describing comments supporting that practice)).

In the July 15, 2011 **Federal Register** (76 FR 41929), we published a proposed rule outlining the framework for the risk adjustment program. We implemented the risk adjustment program in a final rule, published in the March 23, 2012 **Federal Register** (77 FR 17219) (Premium Stabilization Rule). In the December 7, 2012 **Federal Register** (77 FR 73117), we published a proposed rule outlining the proposed Federally certified risk adjustment methodologies for the 2014 benefit year and other parameters related to the risk adjustment program (proposed 2014 Payment Notice). We published the 2014 Payment Notice final rule in the March 11, 2013 **Federal Register** (78 FR 15409). In the June 19, 2013 **Federal Register** (78 FR 37032), we proposed a modification to the HHS-operated methodology related to community rating states. In the October 30, 2013 **Federal Register** (78 FR 65046), we finalized the proposed modification to the HHS-operated methodology related to community rating states. We published a correcting amendment to the 2014 Payment Notice final rule in the November 6, 2013 **Federal Register** (78 FR 66653) to address how an enrollee's age for the risk score calculation would be determined under the HHS-operated risk adjustment methodology.

In the December 2, 2013 **Federal Register** (78 FR 72321), we published a proposed rule outlining the Federally certified risk adjustment methodologies for the 2015 benefit year and other parameters related to the risk adjustment program (proposed 2015 Payment Notice). We published the 2015 Payment Notice final rule in the March 11, 2014 **Federal Register** (79 FR 13743). In the May 27, 2014 **Federal Register** (79 FR 30240), the 2015 fiscal year sequestration rate for the risk adjustment program was announced.

In the November 26, 2014 **Federal Register** (79 FR 70673), we published a proposed rule outlining the proposed Federally certified risk adjustment methodologies for the 2016 benefit year and other parameters related to the risk adjustment program (proposed 2016 Payment Notice). We published the 2016 Payment Notice final rule in the February 27, 2015 **Federal Register** (80 FR 10749).

In the December 2, 2015 **Federal Register** (80 FR 75487), we published a proposed rule outlining the Federally certified risk adjustment methodology for the 2017 benefit year and other parameters related to the risk adjustment program (proposed 2017 Payment Notice). We published the 2017 Payment Notice final rule in the March 8, 2016 **Federal Register** (81 FR 12204).

In the September 6, 2016 **Federal Register** (81 FR 61455), we published a proposed rule outlining the Federally certified risk adjustment methodology for the 2018 benefit year and other parameters related to the risk adjustment program (proposed 2018 Payment Notice). We published the 2018 Payment Notice final rule in the December 22, 2016 **Federal Register** (81 FR 94058).

In the November 2, 2017 **Federal Register** (82 FR 51042), we published a proposed rule outlining the Federally certified risk adjustment methodology for the 2019 benefit year, and to further promote stable premiums in the individual and small group markets. We proposed updates to the risk adjustment methodology and amendments to the risk adjustment data validation process (proposed 2019 Payment Notice). We published the 2019 Payment Notice final rule in the April 17, 2018 **Federal Register** (83 FR 16930). We published a correction to the 2019 risk adjustment coefficients in the 2019 Payment Notice final rule in the May 11, 2018 **Federal Register** (83 FR 21925). On July 27, 2018, consistent with 45 CFR 153.320(b)(1)(i), we updated the 2019 benefit year final risk adjustment model coefficients to reflect an additional recalibration related to an update to the 2016 enrollee-level EDGE dataset.[1]

In the July 30, 2018 **Federal Register** (83 FR 36456), we published a final rule that adopted the 2017 benefit year risk adjustment methodology in the March 23, 2012 **Federal Register** (77 FR 17220 through 17252) and in the March 8, 2016 **Federal Register** (81 FR 12204 through 12352). In light of the court order described below, this final rule sets forth additional explanation of the rationale supporting the use of statewide average premium in the HHS-operated risk adjustment payment transfer formula for the 2017 benefit year, including the reasons why the program is operated in a budget neutral manner. This final rule permitted HHS to resume 2017 benefit year program operations, including collection of risk adjustment charges and distribution of risk adjustment payments. HHS also provided guidance as to the operation of the HHS-operated risk adjustment program for the 2017 benefit year in light of publication of this final rule.[2]

B. The New Mexico Health Connections Court's Order

On February 28, 2018, in a suit brought by the health insurance issuer New Mexico Health Connections, the United States District Court for the District of New Mexico (the district court) vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014, 2015, 2016, 2017, and 2018 benefit years. The district court reasoned that HHS had not adequately explained its decision to adopt a methodology that used statewide

[1] See, Updated 2019 Benefit Year Final HHS Risk Adjustment Model Coefficients. July 27, 2018. Available at *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2019-Updtd-Final-HHS-RA-Model-Coefficients.pdf.*

[2] See, *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2017-RA-Final-Rule-Resumption-RAOps.pdf.*

average premium as the cost-scaling factor to ensure that amounts collected from issuers equal the amount of payments made to issuers for the applicable benefit year, that is, a methodology that maintains the budget neutrality of the program for the applicable benefit year.[3] The district court otherwise rejected New Mexico Health Connections' arguments. HHS's motion for reconsideration remains pending with the district court.

II. Provisions of the Proposed Rule

This rule proposes to adopt the HHS-operated risk adjustment methodology that was previously published at 81 FR 94058 for the 2018 benefit year with an additional explanation regarding the use of statewide average premium and the budget neutral nature of the risk adjustment program. This rule does not propose to make any changes to the previously published HHS-operated risk adjustment methodology for the 2018 benefit year.

The risk adjustment program provides payments to health insurance issuers that enroll higher-risk populations, such as those with chronic conditions, thereby reducing incentives for issuers to structure their plan benefit designs or marketing strategies to avoid these enrollees and lessening the potential influence of risk selection on the premiums that issuers charge. Instead, issuers are expected to set rates based on average risk and compete based on plan features rather than selection of healthier enrollees. The program applies to any health insurance issuer offering plans in the individual or small group markets, with the exception of grandfathered health plans, group health insurance coverage described in 45 CFR 146.145(c), individual health insurance coverage described in 45 CFR 148.220, and any plan determined not to be a risk adjustment covered plan in the applicable Federally certified risk adjustment methodology.[4] In 45 CFR part 153, subparts A, B, D, G, and H, HHS established standards for the administration of the permanent risk adjustment program. In accordance with § 153.320, any risk adjustment methodology used by a state, or by HHS on behalf of the state, must be a Federally certified risk adjustment methodology.

As stated in the 2014 Payment Notice final rule, the Federally certified risk adjustment methodology developed and used by HHS in states that elect not to operate the program is based on the premise that premiums for that state market should reflect the differences in plan benefits, quality, and efficiency—not the health status of the enrolled population.[5] HHS developed the risk adjustment payment transfer formula that calculates the difference between the revenues required by a plan based on the projected health risk of the plan's enrollees and the revenues that a plan can generate for those enrollees. These differences are then compared across plans in the state market risk pool and converted to a dollar amount based on the statewide average premium. HHS chose to use statewide average premium and normalize the risk adjustment transfer formula to reflect state average factors so that each plan's enrollment characteristics are compared to the state average and the total calculated payment amounts equal total calculated charges in each state market risk pool. Thus, each plan in the risk pool receives a risk adjustment payment or charge designed to compensate for risk for a plan with average risk in a budget neutral manner. This approach supports the overall goal of the risk adjustment program to encourage issuers to rate for the average risk in the applicable state market risk pool, and avoids the creation of incentives for issuers to operate less efficiently, set higher prices, develop benefit designs or create marketing strategies to avoid high-risk enrollees. Such incentives could arise if HHS used each issuer's plan's own premium in the payment transfer formula, instead of statewide average premium.

As explained above, the district court vacated the use of statewide average premium in the HHS-operated risk adjustment methodology for the 2014 through 2018 benefit years on the ground that HHS did not adequately explain its decision to adopt that aspect of the risk adjustment methodology. The district court recognized that use of statewide average premium maintained the budget neutrality of the program, but concluded that HHS had not adequately explained the underlying decision to adopt a methodology that kept the program budget neutral, that is, that ensured that amounts collected from issuers would equal payments made to issuers for the applicable benefit year. Accordingly, HHS is providing additional explanation herein.

First, Congress designed the risk adjustment program to be implemented and operated by states if they chose to do so. Nothing in section 1343 of the PPACA requires a state to spend its own funds on risk adjustment payments, or allows HHS to impose such a requirement. Thus, while section 1343 may have provided leeway for states to spend additional funds on the program if they voluntarily chose to do so, HHS could not have required such additional funding.

Second, while the PPACA did not include an explicit requirement that the risk adjustment program be operated in a budget neutral manner, it also did not prohibit HHS from designing the program in that manner. In fact, although the statutory provisions for many other PPACA programs appropriated or authorized amounts to be appropriated from the U.S. Treasury, or provided budget authority in advance of appropriations,[6] the PPACA neither authorized nor appropriated additional funding for risk adjustment payments beyond the amount of charges paid in, nor authorized HHS to obligate itself for risk adjustment payments in excess of charges collected.[7] Indeed, unlike the Medicare Part D statute, which expressly authorizes the appropriation of funds and provides budget authority in advance of appropriations to make Part D risk-adjusted payments, the PPACA's risk adjustment statute makes no reference to additional appropriations.[8] Because Congress omitted from the PPACA any provision appropriating independent funding or creating budget authority in advance of an appropriation for the risk adjustment program, HHS could not—absent another source of appropriations—have designed the program in a way that required payments in excess of collections consistent with binding appropriations law. Thus, as a practical matter, Congress did not give HHS discretion to implement a program that was not budget neutral.

Furthermore, if HHS elected to adopt a risk adjustment methodology that was contingent on appropriations from

[3] *New Mexico Health Connections* v. *United States Department of Health and Human Services et al.,* No. CIV 16–0878 JB/JHR (D.N.M. 2018).

[4] See the definition for ''risk adjustment covered plan'' at 45 CFR 153.20.

[5] See 78 FR 15409 at 15417.

[6] For examples of PPACA provisions appropriating funds, *see* PPACA secs. 1101(g)(1), 1311(a)(1), 1322(g), 1323(c). For examples of PPACA provisions authorizing the appropriation of funds, *see* PPACA secs. 1002, 2705(f), 2706(e), 3013(c), 3015, 3504(b), 3505(a)(5), 3505(b), 3506, 3509(a)(1), 3509(b), 3509(e), 3509(f), 3509(g), 3511, 4003(a), 4003(b), 4004(j), 4101(b), 4102(a), 4102(c), 4102(d)(1)(C), 4102(d)(4), 4201(f), 4202(a)(5), 4204(b), 4206, 4302(a), 4304, 4305(a), 4305(c), 5101(h), 5102(e), 5103(a)(3), 5203, 5204, 5206(b), 5207, 5208(b), 5210, 5301, 5302, 5303, 5304, 5305(a), 5306(a), 5307(a), and 5309(b).

[7] *See* 42 U.S.C. 18063.

[8] *Compare* 42 U.S.C. 18063 (failing to specify source of funding other than risk adjustment charges), *with* 42 U.S.C. 1395w–116(c)(3) (authorizing appropriations for Medicare Part D risk adjusted payments); 42 U.S.C. 1395w–115(a) (establishing ''budget authority in advance of appropriations Acts'' for risk adjusted payments under Medicare Part D).

Congress through the annual appropriations process, that would have created uncertainty for issuers regarding the amount of risk adjustment payments they could expect for a given benefit year. That uncertainty would have undermined one of the central objectives of the risk adjustment program, which is to assure issuers in advance that they will receive risk adjustment payments if, for the applicable benefit year, they enroll a higher-risk population compared to other issuers in the state market risk pool. The budget-neutral framework spreads the costs of covering higher-risk enrollees across issuers throughout a given state market risk pool, thereby reducing incentives for issuers to engage in risk-avoidance techniques such as designing or marketing their plans in ways that tend to attract healthier individuals, who cost less to insure.

Moreover, relying on each year's budget process for appropriation of additional funds to HHS that could be used to supplement risk adjustment transfers would have required HHS to delay setting the parameters for any risk adjustment payment proration rates until well after the plans were in effect for the applicable benefit year. Any later-authorized program management appropriations made to CMS, moreover, were not intended to be used for supplementing risk adjustment payments, and were allocated by the agency for other, primarily administrative, purposes.[9] Without the adoption of a budget-neutral framework, HHS would have needed to assess a charge or otherwise collect additional funds, or prorate risk adjustment payments to balance the calculated risk adjustment transfer amounts. The resulting uncertainty would have conflicted with the overall goals of the risk adjustment program—to stabilize premiums and to reduce incentives for issuers to avoid enrolling individuals with higher than average actuarial risk.

In light of the budget neutral framework discussed above, HHS also chose not to use a different parameter for the payment transfer formula under the HHS-operated methodology, such as each plan's own premium, that would not have automatically achieved equality between risk adjustment payments and charges in each benefit year. As set forth in prior discussions,[10] use of the plan's own premium or a similar parameter would have required the application of a balancing adjustment in light of the program's budget neutrality—either reducing payments to issuers owed a payment, increasing charges on issuers due a charge, or splitting the difference in some fashion between issuers owed payments and issuers assessed charges. Such adjustments would have impaired the risk adjustment program's goals, as discussed above, of encouraging issuers to rate for the average risk in the applicable state market risk pool, and avoiding the creation of incentives for issuers to operate less efficiently, set higher prices, or develop benefit designs or create marketing strategies to avoid high-risk enrollees. Use of an after-the-fact balancing adjustment is also less predictable for issuers than a methodology that can be calculated in advance of a benefit year. Such predictability is important to serving the risk adjustment program's goals of premium stabilization and reducing issuer incentives to avoid enrolling higher-risk populations. Additionally, using a plan's own premium to scale transfers may provide additional incentive for plans with high-risk enrollees to increase premiums in order to receive additional risk adjustment payments. As noted by commenters to the 2014 Payment Notice proposed rule, transfers may be more volatile from year to year and sensitive to anomalous premiums if they were scaled to a plan's own premium instead of the statewide average premium. In the 2014 Payment Notice final rule, we noted that we received a number of comments in support of our proposal to use statewide average premium as the basis for risk adjustment transfers, while some commenters expressed a desire for HHS to use a plan's own premium. HHS addressed those comments by reiterating that we had considered the use of a plan's own premium instead of statewide average premium and chose to use statewide average premium, as this approach supports the overall goals of the risk adjustment program to encourage issuers to rate for the average risk in the applicable state market risk pool, and avoids the creation of incentives for issuers to employ risk-avoidance techniques.

Although HHS has not yet calculated risk adjustment payments and charges for the 2018 benefit year, immediate administrative action is imperative to maintain the stability and predictability in the individual and small group insurance markets. This proposed rule would ensure that collections and payments may be made for the 2018 benefit year in a timely manner. Without this administrative action, the uncertainty related to the HHS-operated risk adjustment methodology for the 2018 benefit year could add uncertainty to the individual and small group markets, as issuers are now in the process of determining the extent of their market participation and the rates and benefit designs for plans they will offer for the 2019 benefit year. Issuers file rates for the 2019 benefit year during the summer of 2018, and if there is uncertainty as to whether payments for the 2018 benefit year will be made, there is a serious risk that issuers will substantially increase 2019 premiums to account for the uncompensated risk associated with high-risk enrollees. Consumers enrolled in certain plans could see a significant premium increase, which could make coverage in those plans particularly unaffordable for unsubsidized enrollees. Furthermore, issuers are currently making decisions on whether to offer qualified health plans (QHPs) through the Exchanges for the 2019 benefit year, and, for the Federally-facilitated Exchange (FFE), this decision must be made before the August 2018 deadline to finalize QHP agreements. In states with limited Exchange options, a QHP issuer exit would restrict consumer choice, and put additional upward pressure on Exchange premiums, thereby increasing the cost of coverage for unsubsidized individuals and federal spending for premium tax credits. The combination of these effects could lead to significant, involuntary coverage losses in certain state market risk pools.

Additionally, HHS's failure to make timely risk adjustment payments could impact the solvency of plans providing coverage to sicker (and costlier) than average enrollees that require the influx of risk adjustment payments to continue operations. When state regulators determine issuer solvency, any uncertainty surrounding risk adjustment transfers jeopardizes regulators' ability to make decisions that protect consumers and support the long-term health of insurance markets.

[9] It has been suggested that the annual lump sum appropriation to CMS for program management was potentially available for risk adjustment payments. The lump sum appropriation for each year was not enacted until after the applicable rule announcing payments for the applicable benefit year. Moreover, HHS does not believe that the lump sum is legally available for risk adjustment payments. As the underlying budget requests reflect, the annual lump sum was for program management expenses, such as administrative costs for various CMS programs such as Medicaid, Medicare, the Children's Health Insurance Program, and the PPACA's insurance market reforms—not for the program payments themselves. CMS would have elected to use the lump sum for these important program management expenses even if CMS had discretion to use all or part of the lump sum for risk adjustment payments.

[10] See for example, September 12, 2011, *Risk Adjustment Implementation Issues*, White Paper, available at: *https://www.cms.gov/CCIIO/Resources/Files/Downloads/riskadjustment_whitepaper_web.pdf*.

In light of the district court's decision to vacate the use of statewide average premium in the risk adjustment methodology on the ground that HHS did not adequately explain its decision to adopt that aspect of the methodology, we offer an additional explanation in this rule and are proposing to maintain the use of statewide average premium in the applicable state market risk pool for the payment transfer formula under the HHS-operated risk adjustment methodology for the 2018 benefit year. Therefore, HHS proposes to adopt the methodology previously established for the 2018 benefit year in the **Federal Register** publications cited above that applies to the calculation, collection and payment of risk adjustment transfers under the HHS-operated methodology for the 2018 benefit year. This includes the adjustment to the statewide average premium, reducing it by 14 percent, to account for an estimated proportion of administrative costs that do not vary with claims.[11] We seek comment on the proposal to use the statewide average premium. However, in order to protect the settled expectations of issuers that structured their pricing and offering decisions in reliance on the previously promulgated 2018 benefit year methodology, all other aspects of the risk adjustment methodology are outside of the scope of this rulemaking, and HHS does not seek comment on those finalized aspects.

III. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

IV. Regulatory Impact Analysis

A. Statement of Need

This rule proposes to maintain statewide average premium as the cost-scaling factor in the HHS-operated risk adjustment methodology and continue the operation of the program in a budget neutral manner for the 2018 benefit year to protect consumers from the effects of adverse selection and premium increases due to issuer uncertainty. The Premium Stabilization Rule, previous Payment Notices, and other rulemakings noted above provided detail on the implementation of the risk adjustment program, including the specific parameters applicable for the 2018 benefit year.

B. Overall Impact

We have examined the impact of this 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) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2)), and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs. 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year).

OMB has determined that this proposed rule is ''economically significant'' within the meaning of section 3(f)(1) of Executive Order 12866, because it is likely to have an annual effect of $100 million in any 1 year. In addition, for the reasons noted above, OMB has determined that this is a major rule under the Congressional Review Act.

This proposed rule offers further explanation of budget neutrality and the use of statewide average premium in the risk adjustment payment transfer formula when HHS is operating the permanent risk adjustment program established in section 1343 of the PPACA on behalf of a state for the 2018 benefit year. We note that we previously estimated transfers associated with the risk adjustment program in the Premium Stabilization Rule and the 2018 Payment Notice, and that the provisions of this proposed rule do not change the risk adjustment transfers previously estimated under the HHS-operated risk adjustment methodology established in those final rules. The approximate estimated risk adjustment transfers for the 2018 benefit year are $4.8 billion. As such, we also incorporate into this proposed rule the RIA in the 2018 Payment Notice proposed and final rules.

V. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this proposed rule, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: July 30, 2018.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: August 2, 2018.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2018–17142 Filed 8–8–18; 4:15 pm]

BILLING CODE 4120–01–P

[11] See 81 FR 94058 at 94099.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket Nos. 15–94, 15–91; FCC 18–94]

Emergency Alert System; Wireless Emergency Alerts

AGENCY: Federal Communications Commission.

ACTION: Further motice of proposed rulemaking.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) seeks comment on whether additional alert reporting measures are needed; whether State EAS Plans should be required to include procedures to help prevent false alerts, or to swiftly mitigate their consequences should a false alert occur; and on factors that might delay or prevent delivery of Wireless Emergency Alerts (WEA) to members of the public and measures the Commission could take to address inconsistent WEA delivery.

DATES: Comments are due on or before September 10, 2018 and reply comments are due on or before October 9, 2018.

ADDRESSES: You may submit comments, identified by PS Docket Nos. 15–94, 15–91 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Website: http://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by email at *Gregory.Cooke@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in PS Docket Nos. 15–94 and 15–91, FCC 18–94, adopted on July 12, 2018, and released on July 13, 2018. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Synopsis of the FNPRM

1. In the FNPRM, to further enhance the efficacy and utility of the EAS and WEA, the Commission seeks comment on whether to adopt false alert reporting measures; proposals to require that State EAS Plans include procedures to help prevent and mitigate the consequences of false alerts; factors that might delay or prevent delivery of WEA alerts to the public; and measures the Commission could take to address inconsistent WEA delivery.

I. Background

2. The EAS is a national public warning system through which EAS Participants deliver alerts to the public to warn them of impending emergencies. The primary purpose of the EAS is to provide the President of the United States (President) with ''the capability to provide immediate communications and information to the general public at the National, State and Local Area levels during periods of national emergency.'' State and local authorities also use this common distribution architecture of the EAS to distribute voluntary weather-related and other emergency alerts. Further, testing of the system at the state and local level increases the proficiency of local emergency personnel, provides insight into the system's functionality and effectiveness at the federal level, and enhances the public's ability to respond to EAS alerts when they occur. The integrity of the EAS is maintained through the Commission's EAS rules, which set forth the parameters and frequency with which EAS Participants must test the system, prohibit the unauthorized use of the EAS Attention Signal and codes, and require EAS Participants to keep their EAS equipment in good working order.

II. Discussion

A. False Alert Reporting

3. In the FNPRM, the Commission seeks further comment on whether there is a need for additional false alert and lockout reporting beyond the reporting rule adopted in the companion *Report and Order* in PS Docket Nos. 15–94 and 15–91, FCC 18–94, adopted on July 12, 2018, and released on July 13, 2018. Should there be a dedicated mechanism by which EAS Participants, Participating CMS Providers, other stakeholders and the public can report false alerts? What form should such a reporting mechanism take? Should it be integrated into the Alert Reporting System (ARS)? Should it be mandatory for EAS Participants and Participating CMS Providers? If such reporting were mandatory, what time frame, if any, should be established for the false alert report to be made (*e.g.,* should such reports be required within five minutes of discovery)?

4. Alternatively, the Commission seeks comment on whether, in lieu of adopting a dedicated reporting mechanism for false EAS or WEA alerts or EAS lockouts, it should instead implement a process by which EAS Participants, Participating CMS Providers, emergency managers, and members of the public could inform the Commission about false alerts through currently available means other than that adopted in the companion Report and Order (also in PS Docket Nos. 15–94 and 15–91, FCC 18–94, adopted on July 12, 2018, and released on July 13, 2018). Regardless of what type of system might be used to facilitate false alert reporting, could and should the Commission incorporate reporting parameters to minimize reports concerning the same EAS or WEA false alert, or are there benefits from receiving different descriptions, times, locations and reporting identities covering the same false alert?

5. The Commission seeks comment on the costs and benefits of this proposal. What burdens, if any, would a dedicated false alert reporting system impose on anyone who might want to make such a report? Would incorporating some kind of feedback mechanism into the false alert reporting system on false alerts already reported be helpful to reduce burdens on other entities that might otherwise make identical reports covering the same false alert? What quantifiable benefits might be expected to result from implementation of such reporting? To the extent offering a standard way to report on false alerts could speed corrective action, would the benefits of such an outcome outweigh whatever burdens might be associated with making the false alert report?

B. State EAS Plan Revisions

6. Section 11.21 of the Commission's EAS rules specifies that State EAS Plans include ''procedures for State emergency management and other State officials, the NWS, and EAS Participants' personnel to transmit emergency information to the public during a State emergency using the EAS.'' Section 11.21, however, does not specify that these procedures include those to prevent and correct false alerts.

7. In the Public Safety & Homeland Security Bureau's (Bureau) report released in April 2018 concerning the false ballistic missile alert issued in Hawaii on January 13, 2018 (*Report on Hawaii False Alert*), the Bureau made several recommendations to state, local, Tribal, and territorial emergency alert originators and managers to help prevent the recurrence of a false alert and to improve preparedness for responding to any false alert that may occur. To the extent the Commission can aid states and localities in effecting mechanisms to prevent and correct false alerts over EAS and WEA, and promote regular communication with the SECCs to further that end, such endeavor fulfills the Commission's statutory goal promoting of safety of life and property through the regulation of wire and radio communications networks.

8. In light of the foregoing, the Commission proposes ways it can aid states and localities in implementing the Bureau's recommendations in the *Report on Hawaii False Alert.* In particular, the Commission proposes to revise Section 11.21 to require State EAS Plans to include procedures to help prevent false alerts, or to swiftly

mitigate their consequences should a false alert occur. Such information could be supplied by state and local emergency management authorities, at their discretion, to SECCs for inclusion in the State EAS Plans they administer, and would then be available to other emergency management authorities within the state for quick and easy reference. The Commission further proposes that the State EAS Plan template recently adopted by the Commission should be revised to require SECCs to identify their states' procedures for the reporting and mitigation of false alerts, (or, where the state and local emergency management authorities either do not have or will not share such information with the SECC, to specifically note that in the EAS Plan). With regard to this proposal, should any listing of such procedures contain any or all of the following:

- The standard operating procedures that state and local alert initiators follow to prepare for ''live code'' and other public facing EAS tests and alerts.
- The standard operating procedures that state and local alert initiators have developed for the reporting and correction of false alerts, including how the alert initiator would issue any corrections to false alerts over the same systems used to issue the false alert, including the EAS and WEA.
- The procedures agreed upon by the SECC and state emergency management agency or other State-authorized alert initiator by which they plan to consult with each other on a regular basis—at least annually—to ensure that EAS procedures, including initiation and cancellation of actual alerts and tests, are mutually understood, agreed upon, and documented in the State EAS Plan.
- The procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.
- Other information that could prevent or mitigate the issuance of false alerts.

Would inclusion of this information in State EAS Plans be beneficial to alert originators and state and local emergency management authorities in preventing and correcting false alerts, and conducting tests of the EAS? Would this action spur greater communication between alert originators and state and local emergency management authorities and their respective SECCs? Would its inclusion provide a single source of information to which state, local, Tribal and territorial emergency alert originators and managers might refer if the need arose? Alternatively, are there reasons why such information should not be included in State EAS Plans? The Commission seeks comment on these proposals. As to the development of the false alert procedures themselves, the FNPRM asks which agency or agencies are best situated to require their creation or otherwise have oversight over these processes. Is the FCC best positioned to take action with respect to helping prevent the transmission of false alerts, or is this better left to other agencies, such as DHS/FEMA or local alert originators?

9. The Commission seeks comment on the costs and benefits of this proposal. What costs or burdens, if any, would fall on SECCs or state, local, Tribal and territorial emergency alert originators and managers, by the inclusion of the state and local alerting procedures in State EAS Plans, as described above? What quantifiable benefits might be expected to result from such action? To the extent including state and local alerting procedures in State EAS Plans might prevent false alerts from occurring, and speed corrective action with respect to any false alerts that might issue, would the potential benefits of such outcomes, such as minimizing public confusion and disruptions caused by false alerts, outweigh whatever burdens might be associated with that process? Would the inclusion of this information in State EAS Plans more generally enhance the efficacy of state and local alerting?

C. Delivery of WEA to Subscriber Handsets

10. In the *Report on Hawaii False Alert,* the Bureau indicated that some wireless subscribers did not receive either the false alert or the subsequent correction over WEA. Further, news reports in connection with the recent National Capital Region end-to-end WEA test, the recent Vail Colorado test and Ellicott City floods indicate that some subscribers did not receive timely WEA tests or alerts. Wireless providers have identified possible reasons that members of the public, who have not opted out of receipt of WEA alerts on their mobile devices, may not receive a particular WEA message, including: (1) Whether a mobile device can receive WEA messages; (2) whether the mobile device falls within the radio coverage of a cell site transmitting a WEA message and is not impacted with adverse radio frequency conditions such as interference, building or natural obstructions, etc.; (3) whether a handset is being served by a 3G cell site during a voice call or data session (in which case a WEA message would not be received until the voice or data session is ended); and (4) whether the device remains connected to the provider's network. Are there other reasons why a WEA may not be received by a member of the public? Are WEA alert messages broadcast from all cell sites inside the alert's geo-targeted area? What about an instance where the consumer inside the geo-targeted area may be served by a tower outside the geo-targeted area? Will the manner of delivering a WEA message to a mobile device within a geo-targeted area change after the Commission's new geolocation rules go into effect in November of 2019, and if so, how? Is it possible that due to certain network conditions, such as congestion, certain cell sites within the alert's geo-target area may not transmit a particular alert message? Are there any network conditions or resource scheduler-related issues that may cause the Participating CMS Provider's network to delay or fail to transmit WEA alert messages that it has received from IPAWS? The Commission also invites commenters to address what, if any, role that handsets and handset manufacturers play in ensuring WEA capable devices can receive WEA alerts.

11. How should WEA performance be measured and reported? The Commission seeks comment regarding WEA delivery issues that stakeholders have encountered or are aware of, either in connection with a live alert or with a regional end-to-end test.

12. The Commission also seeks comment on how stakeholders could report WEA performance. Commenters should discuss the technical feasibility, usefulness, and desirability of this option. Are there other technical ways to get feedback automatically from a WEA recipient? What might the appropriate data points look like? Who should receive such data, and how would it be protected? Should the Commission develop a testing template for state and local governments that want to test the effectiveness of WEA alerts, including how precisely WEA alerts geotarget the desired area for various carriers?

13. The Commission also seeks comment on whether and if so, how, it should take measures to address inconsistent WEA delivery. For example, should the Commission adopt technical standards (or benchmarks) for WEA performance and delivery? What form should these take? Should these be focused on internal network performance or mobile device performance, or both? Is there any practical way to ameliorate the impact of external factors (such as interference, building or natural obstructions, etc.) on WEA delivery? Should the Commission adopt rules related to WEA performance

(and if so, what form should those take), or would best practices be sufficient? What are the costs and benefits of the various options available to address inconsistent WEA delivery?

III. Procedural Matters

A. Ex Parte Rules

14. The proceeding this FNPRM initiates shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

15. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

C. Accessible Formats

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

D. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

18. In the FNPRM, the Commission proposes actions to prevent and correct false alerts and to otherwise improve the effectiveness of the EAS and WEA. First, the Commission seeks comment on whether to adopt a dedicated reporting system, or use currently available means, such as the Commission's Operations Center or Public Safety Support Center, so that EAS Participants, Participating CMS Providers, emergency managers, and members of the public can inform the Commission about false alerts. Second, the Commission proposes to revise its rules governing State EAS Plans to require the inclusion of standard operating procedures implemented within states to prevent and correct false alerts, where such information has been provided by state and local emergency management authorities. Finally, the Commission seeks comment on whether to adopt technical benchmarks or best practices to help ensure effective delivery of WEA alerts to the public. These proposed and contemplated actions and rule revisions potentially would enhance the Commission's awareness of false alerts issued over the EAS and WEA, and provide state, local, Tribal and territorial emergency alert originators and managers with a common source to find standard operating procedure applicable within their jurisdictions to conduct EAS tests and correct false alerts. To the extent these proposed and contemplated actions may prevent the transmittal of false alerts and hasten corrective action of any false alerts issued, they would benefit the public by minimizing confusion and disruption caused by false alerts.

2. Legal Basis

19. The proposed action is taken pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706, and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

20. The RFA directs agencies to provide a description of and, where feasible, an estimate of, the number of small entities that may be affected by the proposed actions, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

21. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

22. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

23. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

24. *Radio Stations.* This Economic Census category comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources.'' The SBA has established a small business size standard for this category as firms having $38.5 million or less in annual receipts. Economic Census data for 2012 show that 2,849 radio station firms operated during that year. Of that number, 2,806 firms operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the majority of such entities are small entities.

25. According to Commission staff review of the BIA/Kelsey, LLC's Media Access Pro Radio Database as of January 2018, about 11,261 (or about 99.9 percent) of 11,383 commercial radio stations had revenues of $38.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed commercial AM radio stations to be 4,639 stations and the number of commercial FM radio stations to be 6,744, for a total number of 11,383. The Commission notes that the Commission has also estimated the number of licensed noncommercial (NCE) FM radio stations to be 4,120. Nevertheless, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

26. The Commission also notes, that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The Commission's estimate therefore likely overstates the number of small entities that might be affected by its action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, to be determined a ''small business,'' an entity may not be dominant in its field of operation. The Commission further notes that it is difficult at times to assess these criteria in the context of media entities, and the estimate of small businesses to which these rules may apply does not exclude any radio station from the definition of a small business on these basis, thus our estimate of small businesses may therefore be over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

27. *FM Translator Stations and Low-Power FM Stations.* FM translators and Low Power FM Stations are classified in the category of Radio Stations and are assigned the same NAICs Code as licensees of radio stations. This U.S. industry, Radio Stations, comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has established a small business size standard which consists of all radio stations whose annual receipts are $38.5 million dollars or less. U.S. Census Bureau data for 2012 indicate that 2,849 radio station firms operated during that year. Of that number, 2,806 operated with annual receipts of less than $25 million per year, 17 with annual receipts between $25 million and $49,999,999 million and 26 with annual receipts of $50 million or more. Therefore, based on the SBA's size standard the Commission concludes that the majority of FM Translator Stations and Low Power FM Stations are small.

28. *Television Broadcasting.* This Economic Census category ''comprises establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA has created the following small business size standard for such businesses: Those having $38.5 million or less in annual receipts. The 2012 Economic Census reports that 751 firms in this category

operated in that year. Of that number, 656 had annual receipts of $25,000,000 or less, 25 had annual receipts between $25,000,000 and $49,999,999 and 70 had annual receipts of $50,000,000 or more. Based on this data the Commission therefore estimates that the majority of commercial television broadcasters are small entities under the applicable SBA size standard.

29. The Commission has estimated the number of licensed commercial television stations to be 1,378. Of this total, 1,258 stations (or about 91 percent) had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on November 16, 2017, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission has estimated the number of licensed noncommercial educational television stations to be 395. Notwithstanding, the Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities. There are also 2,367 low power television stations, including Class A stations (LPTV) and 3,750 TV translator stations. Given the nature of these services, the Commission will presume that all of these entities qualify as small entities under the above SBA small business size standard.

30. The Commission notes, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Our estimate, therefore likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of ''small business'' requires that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific television broadcast station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive. Also, as noted above, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and its estimates of small businesses to which they apply may be over-inclusive to this extent.

31. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA size standard for this industry establishes as small, any company in this category which receives annual receipts of $38.5 million or less. According to 2012 U.S. Census Bureau data, 367 firms operated for the entire year. Of that number, 319 operated with annual receipts of less than $25 million a year and 48 firms operated with annual receipts of $25 million or more. Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

32. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, the Commission estimates that most cable systems are small entities.

33. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission finds that all but nine incumbent cable operators are small entities under this size standard. The Commission notes that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, the Commission is unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

34. *Satellite Telecommunications.* This category comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than $25 million. Consequently, the Commission estimates that the majority of satellite telecommunications providers are small entities.

35. *All Other Telecommunications.* The ''All Other Telecommunications'' category is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet

protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

36. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).

37. *BRS*—In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 86 incumbent BRS licensees that are considered small entities (18 incumbent BRS licensees do not meet the small business size standard). After adding the number of small business auction licensees to the number of incumbent licensees not already counted, there are currently approximately 133 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

38. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

39. *EBS*—Educational Broadband Service has been included within the broad economic census category and SBA size standard for Wired Telecommunications Carriers since 2007. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA's small business size standard for this category is all such firms having 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition to Census data, the Commission's Universal Licensing System indicates that as of October 2014, there are 2,206 active EBS licenses. The Commission estimates that of these 2,206 licenses, the majority are held by non-profit educational institutions and school districts, which are by statute defined as small businesses.

40. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in SBA's economic census category ''Wired Telecommunications Carriers.'' The Wired Telecommunications Carriers industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA determines that a wireline business is small if it has fewer than 1,500 employees. U.S. Census Bureau data for 2012 indicates that 3,117 wireline companies were operational during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on that data, the Commission concludes that the majority of wireline firms are small under the applicable SBA standard. Currently, however, only two entities provide DBS service, which requires a great deal of capital for operation: DIRECTV (owned by AT&T) and DISH Network. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Accordingly, the Commission must conclude that internally developed FCC data are persuasive that, in general, DBS service is provided only by large firms.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

41. The Commission expects the actions proposed in the FNPRM, if adopted, will impose additional reporting, recordkeeping and/or other compliance obligations on small as well as other entities who inform the Commission about false alerts, and who submit additional information in State EAS Plans about the procedures they are using to prevent and correct false alerts. More specifically, the FNPRM seeks comment on implementing a mechanized process, or utilizing currently available means, such as the Public Safety Support Center reporting portal, to enable EAS Participants, Participating CMS Providers, emergency managers, and members of the public to inform the Commission about false alerts. Additionally, the FNPRM seeks comment on whether the Commission

should adopt additional requirements regarding false alert reporting in light of the Hawaii false alert and the recommendations in the *Report on Hawaii False Alert,* which has the potential to impact reporting requirements. For example, the Commission seeks comment on whether requiring false alert reporting, or specifying the false alert information required in a false alert report, would encourage implementation of standard operating procedures for reporting and responding to false alerts by alert originators.

42. The FNPRM also proposes to amend its rules governing State EAS Plans to allow them to include procedures implemented by alert originators within states to prevent and correct false alerts. This information includes standard operating procedures that alert initiators follow to prepare for ''live code'' and other public facing EAS tests and alerts; standard operating procedures that alert initiators have developed for the reporting and correction of false alerts; procedures agreed upon by the SECC and state emergency management agency or other State-authorized alert initiator by which they plan to consult with each other on a regular basis; and the procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.

43. Finally, the FNPRM seeks comment on whether to adopt technical benchmarks or best practices to help ensure effective delivery of WEA alerts to the public.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

44. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.''

45. The Commission does not expect the actions in the FNPRM to have a significant economic impact on small entities. Although the Commission seeks further comment on additional requirements regarding false alert reporting in light of the Hawaii false alert and the recommendations in the Report on Hawaii False Alert, the comments are designed to be minimally burdensome to all affected entities, including small businesses. A potential burden associated filing a false alert report would likely be limited to the time expended to make such report—which would entail entering false alert information into an online filing portal. Given the relatively rare occurrence of false alerts, however, the number of individuals or entities that might ultimately use the online filing portal is likely to be extremely small.

46. The proposed changes to the State EAS Plan requirements will enable state and local alert originators to include procedures implemented by alert originators within states to prevent and correct false alerts, standard operating procedures that alert initiators follow to prepare for ''live code'' and other public facing EAS tests and alerts; standard operating procedures that alert initiators have developed for the reporting and correction of false alerts. To the extent that there are costs associated with submitting this information to SECCs, and to the Commission, these costs are expected to be *de minimis.* With respect to the Commission's request for comment on whether and how to address inconsistent WEA delivery, there is a range of measures that could ultimately be adopted. The Commission has requested comment on the relative costs and benefits of these various approaches to ensure it has input from small entities and others to minimize the economic impacts of whatever actions it might take. Nevertheless, in addition to the steps taken by the Commission discussed herein, commenters are invited to propose steps that the Commission may take to further minimize any economic impact on small entities. When considering proposals made by other parties, commenters are also invited to propose alternatives that serve the goals of these proposals.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

E. Paperwork Reduction Analysis

48. The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In addition, the Commission have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the IRFA, *supra.*

49. The FNPRM in this document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995 (PRA). Public and agency comments are due 60 days after publication of this document in the **Federal Register**. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission will submit the FNPRM to the Office of Management and Budget for review under Section 3507(d) of the PRA.

50. The Commission specifically seek comment on the time and cost burdens associated with the voluntary false alert and lockout, and State EAS Plan reporting proposals contained in the FNPRM and whether there are ways of minimizing the costs burdens associated therewith.

F. Ordering Clauses

51. Accordingly, *it is ordered,* pursuant to Sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g), 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 613, as well as by sections 602(a), (b), (c), (f), 603, 604 and 606 of the WARN Act, 47 U.S.C. 1202(a), (b), (c), (f), 1203, 1204 and 1206, and the *Twenty-First Century Communications and Video Accessibility Act of 2010,* Public Law 111–260 and Public Law 111–265, that this Further Notice of Proposed Rulemaking *is adopted.*

52. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

53. *It is further ordered* that pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before September 10, 2018, and interested parties may file reply comments on or before October 9, 2018.

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

■ 1. The authority citation for 47 CFR part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

■ 2. Amend § 11.21 by adding paragraph (g) to read as follows:

§ 11.21 State and Local Area plans and FCC Mapbook.

* * * * *

(g) The State EAS Plan must contain procedures implemented within the state to prevent and correct false alerts initiated over the EAS and Wireless Emergency Alert systems, including:

(1) The standard operating procedures that state and local alert initiators follow to prepare for ''live code'' and other public facing EAS tests and alerts.

(2) The standard operating procedures that state and local alert initiators have developed for the reporting and correction of false alerts, including how the alert initiator would issue any corrections to false alerts over the same systems used to issue the false alert, including the EAS and WEA.

(3) The procedures agreed upon by the SECC and state emergency management agency or other State-authorized alert initiator by which they plan to consult with each other on a regular basis to ensure that EAS procedures, including initiation and cancellation of actual alerts and tests, are mutually understood, agreed upon, and documented in the State EAS Plan.

(4) The procedures ensuring redundant and effective lines of communication between the SECC and key stakeholders during emergencies.

(5) Other information that could prevent or mitigate the issuance of false alerts.

Where the state and local emergency management authorities either do not have or will not share the foregoing information with the SECC, the SECC must specifically note that in the EAS Plan.

* * * * *

[FR Doc. 2018–17097 Filed 8–9–18; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 83, No. 155
Friday, August 10, 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

Agricultural Marketing Service

[DOC. NO. AMS–FGIS–18–0059]

Grain Inspection Advisory Committee Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, this constitutes notice of the upcoming meeting of the Agricultural Marketing Service (AMS) Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise the AMS on the programs and services delivered under the U.S. Grain Standards Act. Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace. The realignment of offices within the U.S. Department of Agriculture authorized by the Secretary's Memorandum dated November 14, 2017, eliminates the Grain Inspection, Packers and Stockyards Administration (GIPSA) as a standalone agency. The grain inspection activities formerly part of GIPSA are now organized under AMS.

DATES: September 5–6, 2018, 8:00 a.m. to 4:30 p.m.

ADDRESSES: The Advisory Committee meeting will take place at AMS National Grain Center, 10383 N Ambassador Drive, Kansas City, Missouri 64153.

Requests to orally address the Advisory Committee during the meeting or written comments to be distributed during the meeting may be sent to: Kendra Kline, AMS–FGIS, U.S. Department of Agriculture, 1400 Independence Avenue SW, STOP 3614, Washington, DC 20250–3601. Requests and comments may also be emailed to *Kendra.C.Kline@ams.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Kendra Kline by phone at (202) 690–2410 or by email at *Kendra.C.Kline@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to AMS with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71–87k). Information about the Advisory Committee is available on the AMS website at *https://www.gipsa.usda.gov/fgis/advisorycommittee.aspx.*

The agenda will include service delivery overview, quality assurance and compliance updates, field management overview, international program updates as they relate to outreach, technology and science initiatives, and other relevant grain inspection topics.

Public participation will be limited to written statements and interested parties who have registered to present comments orally to the Advisory Committee. If interested in submitting a written statement or presenting comments orally, please contact Kendra Kline at the telephone number or email listed above. Oral commenting opportunities will be first come, first serve. The meeting will be open to the public.

Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Kendra Kline at the telephone number or email listed above.

Dated: August 6, 2018.

Greg Ibach,

Under Secretary, Marketing and Regulatory Programs.

[FR Doc. 2018–17114 Filed 8–9–18; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2018 Through June 30, 2019

Correction

In notice document 2018–15464, appearing on pages 34108 through 34110, in the issue of Thursday, July 19, 2018, make the following correction:

On page 34110, in the table, in the ''Lunch and supper'' column, under ''Tier II'', under ''Next 150'', in the last row, ''195'' should read ''105''.

[FR Doc. C1–2018–15464 Filed 8–9–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Request for Extension of a Current Information Collection; Comment Request—Evaluation of Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) Pilots

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public and other public agencies to comment on this proposed information collection. This is a request for an extension of a current information collection for the purpose of evaluating the Fiscal Year 2015 Pilot Projects to Reduce Dependency and Increase Work Requirements and Work Effort Under the Supplemental Nutrition Assistance Program (SNAP).

DATES: Written comments must be received on or before October 9, 2018.

ADDRESSES: 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 collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Danielle Deemer, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Danielle Deemer at 703–305–2576 or via email to *danielle.deemer@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 written comments will be open for public inspection at the Office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Danielle Deemer, Office of Policy Support, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of SNAP E&T Pilots.

OMB Number: 0584–0604.

Expiration Date: 01/31/2019.

Type of Request: Extension of a Current Information Collection without Change.

Abstract: The Supplemental Nutrition Assistance Program (SNAP) is a critical work support for low-income people and families. SNAP benefits help eligible low-income families put food on the table in times of need. It also supports critical and needed skills and job training so that recipients can obtain good jobs that lead to self-sufficiency. SNAP's long-standing mission of helping unemployed and underemployed people is challenging. To help them and their families achieve self-sufficiency, strategies are needed to impart the skills employers want, and to help address other barriers to employment. Some participants need assistance developing a resume and accessing job leads, others need education and training, and still others need help overcoming barriers that prevent them from working steadily. The SNAP Employment and Training (E&T) program provides assistance to unemployed and underemployed clients in the form of job search, job skills training, education (basic, post-secondary, vocational), work experience or training and workfare, but limited information exists on what is most effective in connecting these participants to gainful employment.

The Agriculture Act of 2014 (Pub. L. 113–79, Section 4022), otherwise known as the 2014 Farm Bill, authorized grants for up to 10 pilot sites to develop and rigorously test innovative SNAP E&T strategies for engaging more SNAP work registrants in unsubsidized employment, increasing participants' earnings, and reducing reliance on public assistance. The pilots' significant funding can expand the reach of employment and training services and enable States to experiment with promising strategies to increase engagement and promote employment. An evaluation of the pilot sites will be critical in helping Congress and FNS identify strategies that effectively assist SNAP participants to succeed in the labor market and become self-sufficient.

The 10 States receiving grants to fund pilot projects are California, Delaware, Georgia, Kansas, Kentucky, Illinois, Mississippi, Vermont, Virginia and Washington State. The evaluation will collect data from all 10 pilot sites in 2015–2016 (baseline), 2016–2018 (12-month follow-up) and 2018–2020 (36-month follow-up). The data collected for this evaluation will be used for implementation, impact, participant and cost-benefit analyses for each pilot site. Research objectives include: (1) Documenting the context and operations of each pilot, identifying lessons learned, and helping to interpret and understand impacts within each pilot and across pilots, (2) identifying the impacts on employment, earnings, and reliance on public assistance and food security and other outcomes to determine what works and what works for whom, (3) examining the characteristics of service paths of pilot participants and the control group to assess whether the mere presence of the pilots and their offer of services or participation requirements influence whether people apply for SNAP (entry effects), and (4) estimating the total and component costs of each pilot to provide an estimate of the return to each dollar invested in the pilot services.

Primary outcomes will be participant employment, earnings, and participation in public assistance programs, which will be measured through State administrative records, a baseline survey administered during enrollment into the study, and follow-up telephone surveys conducted at approximately 12 months and 36 months after participants enroll in the pilot. Impacts on secondary outcomes, such as food security, health status, and self-esteem will be measured through the follow-up telephone surveys as well. The end products (interim and final reports) will provide scientifically valid evidence of the pilot project impacts.

Affected Public: Members of the public affected by the data collection include individuals and households; State and local governments; and Businesses from the Private sector (for-profit and not-for-profit). Respondent types identified include (1) individuals and households eligible for SNAP E&T participation; (2) directors and managers from State and local government agencies supporting the SNAP E&T programs; (3) staff from State and local government agencies providing direct services to SNAP E&T participants; (4) directors and managers from private sector for-profit businesses providing SNAP E&T services; and (5) directors and managers from private sector not-for-profit agencies providing SNAP E&T services.

Estimated Number of Respondents: The total estimated number of respondents is 53,830. This includes 52,870 individuals, 190 State and local government directors/managers and staff, and 770 private sector for-profit business and not-for-profit agency directors/managers. Of the 52,852 individuals completing a baseline survey when applying for services, FNS will contact 25,000 out of which 18,240 individuals in the treatment and comparison groups will complete a 12-month follow-up telephone survey (6,760 will be non-responders). Of 18,240 respondents to the 12-month follow-up, 11,090 will complete a 36-month follow-up telephone survey (7,150 nonrespondents). Among the individuals contacted for the telephone surveys, 1,200 may also be contacted for a focus group and 200 for a case study on topics of special interest to FNS. Of the individuals contacted for the focus groups and case studies, 280 participants will participate and 1,120 will decline and be considered nonrespondents. 18 individuals were contacted separately to pretest surveys and focus groups. 170 State and local

government agency directors/managers will be contacted for in-person interviews. 150 of those will be interviewed two additional times; 10 of the directors/managers will provide case study data, 10 will provide documents for review, 10 will complete the MOU, 10 will provide wage data, 10 will provide entry effects data, and 10 will provide entry effects data. A separate group of 10 data director/managers will be contacted for cost/benefit interviews and 10 will be contacted to provide cost data. 200 Private sector not-for-profit and for-profit agency directors/managers and staff will be contacted for cost/benefit interviews. These individuals will also be contacted for in-person interviews, and the directors and managers for the case study will be recruited from this group. 160 individuals will be contacted for a time-use survey. This sample will also be used to recruit staff to participate in the case study. 210 staff members responsible for data management will also be contacted for the provision of administrative data. Additionally, 200 private sector not-for-profit employer training supervisors will be recruited to participate in employer focus groups.

Estimated Frequency of Responses per Respondent: Average of 5.49 response for individuals per instrument or activity, 5.79 responses for State and local government representatives for all contacts, and 13.8 responses for private sector representatives for all contacts. The number of contacts per activity average 5.6 across all participants.

Estimated Total Annual Responses: 317,108.

Estimated Time per Response: About 0.15 hours (9.26 minutes). The estimated time per response varies from 0.02 to 4 hours depending on the respondent group and data collection activity, as shown in the table below.

Estimated Total Annual Burden on Respondents: The total annual burden is 49,972 hours.

BILLING CODE 3410–30–P

			RESPONDENTS						NON-RESPONDENTS							
Affected public	**Respondents type**	**Instrument**	**Sample size**	**Estimated number of respondents**	**Frequency of response**	**Total responses**	**Average time per response (hours)**	**Total Estimated annual burden (hours)**	**Estimated number of non-respondents**	**Frequency of response**	**Total responses**	**Average time per response (hours)**	**Total Estimated annual burden (hours)**	**Grand Total burden estimate**	**Hourly Wage rate****	**Estimate Total Annual Cost to Respondents**
Individuals/households																
Individuals	Participant	Registration Document	52,852	52,852	1	52,852	0.20	10,570.40	0	0	0	0	0.00	10,570.40	$7.25	$76,635.40
	Participant	Consent Document	52,852	52,852	1	52,852	0.05	2,642.60	0	0	0	0	0.00	2,642.60	$7.25	$19,158.85
	Participant	Pretest	18	9	1	9	0.66	5.94	9	1	9	0.05	0.45	6.39	$7.25	$46.33
	Participant	Welcome Packet and Study Brochure	25,000	25,000	1	25,000	0.05	1,250.00	0	1	0	0.05	0.00	1,250.00	$7.25	$9,062.50
	Participant	Seasonal Postcard	25,000	25,000	1	25,000	0.17	4,250.00	0	1	0	0.05	0.00	4,250.00	$7.25	$30,812.50
	Participant	Survey Advance Letter (12-mon follow-up)	25,000	18,240	1	18,240	0.03	601.92	0	1	0	0.05	0.00	601.92	$7.25	$4,363.92
	Participant	Survey Reminder Letter (12-mon follow-up)	12,500	12,500	1	12,500	0.03	412.50	0	1	0	0.05	0.00	412.50	$7.25	$2,990.63
	Participant	Survey Reminder Postcard (12-mon follow-up)	12,500	12,500	1	12,500	0.02	208.75	0	1	0	0.05	0.00	208.75	$7.25	$1,513.44
	Participant	Survey Refusal Letter (12-mon follow-up)	3,750	3,750	1	3,750	0.03	123.75	0	1	0	0.05	0.00	123.75	$7.25	$897.19
	Participant	Telephone survey (12-mon follow-up)	25,000	18,240	1	18,240	0.53	9,667.20	6,760	1	6,760	0.05	338.00	10,005.20	$7.25	$72,537.70
	Participant	Seasonal Postcard	18,240	18,240	1	18,240	0.02	304.61	0	1	0	0.05	0.00	304.61	$7.25	$2,208.41
	Participant	Survey Advance Letter (36-mon follow-up)	18,240	18,240	1	18,240	0.03	601.92	0	1	0	0.05	0.00	601.92	$7.25	$4,363.92
	Participant	Survey Reminder Letter (36-mon follow-up)	9,120	9,120	1	9,120	0.03	300.96	0	1	0	0.05	0.00	300.96	$7.25	$2,181.96

	Participant	Survey Reminder Postcard (36-mon follow-up)	9,120	9,120	1	9,120	0.02	152.30	0	1	0	0.05	0.00	152.30	$7.25	$1,104.20
	Participant	Survey Refusalr Letter (36-mon follow-up)	2,736	2,736	1	2,736	0.03	90.29	0	1	0	0.05	0.00	90.29	$7.25	$654.59
	Participant	Telephone survey (36-mon follow-up)	18,240	11,090	1	11,090	0.53	5,877.70	7,150	1	7,150	0.05	357.50	6,235.20	$7.25	$45,205.20
	Participant	Focus Group Recruitment Guide	1,200	240	1	240	0.17	40.08	960	1	960	0.08	80.00	120.08	$7.25	$870.58
	Participant	Focus Group Confirmation Letter	240	240	1	240	0.03	7.92	0	1	0	0.08	0.00	7.92	$7.25	$57.42
	Participant	Focus Group & Information Survey	1,200	240	1	240	1.67	400.00	960	1	960	0.08	80.00	480.00	$7.25	$3,480.00
	Participant	Case Study	200	40	1	40	1.67	66.67	160	1	160	0.08	13.33	80.00	$7.25	$580.00
Subtotal of unique individuals/households			**52,870**	**52,861**	**5.49**	**290,249**	**0.13**	**37,576**	-*	-	**15,999**	-	**869**	**38,445**	-	**278,725**
State, local, and Tribal government																
State, local, and Tribal govern-ment	State, local, or Tribal agency director/ manager	In-person interview (round 1) and Cost/benefit interivews	170	170	1	170	1.00	170.00	0	0	0	0	0.00	170.00	$54.08	$9,193.60
	State, local, or Tribal agency director/ manager	In-person interview (round 2)	150	150	1	150	1.00	150.00	0	0	0	0	0.00	150.00	$54.08	$8,112.00
	State, local, or Tribal agency direct service staff	In-person interview (round 3)	150	150	1	150	1.00	150.00	0	0	0	0	0.00	150.00	$21.79	$3,268.50
	State, local, or Tribal agency direct service staff	Case Study	10	10	1	10	1.00	10.00	0	0	0	0	0.00	10.00	$21.79	$217.90
	State, local, or Tribal agency direct service staff	Provide documents for review	10	10	4	40	0.25	10.00	0	0	0	0	0.00	10.00	$21.79	$217.90
	State, local, or Tribal	Complete MOU	10	10	1	10	1.00	10.00	0	0	0	0	0.00	10.00	$21.79	$217.90

	agency direct service staff															
	State, local, or Tribal agency director/ manager	Provide wage data	10	10	5	50	2.50	125.00	0	0	0	0	0.00	125.00	$54.08	$6,760.00
	State, local, or Tribal agency director /manager	Provide SNAP/ Medicaid/ TANF data	10	10	20	200	2.50	500.00	0	0	0	0	0.00	500.00	$54.08	$27,040.00
	State, local, or Tribal agency director/ manager	Provide entry effects data	10	10	2	20	2.50	50.00	0	0	0	0	0.00	50.00	$54.08	$2,704.00
	State, local, or Tribal agency director/ manager	Cost/benefit interviews (after visit 1)	10	10	19	190	1.00	190.00	0	0	0	0	0.00	190.00	$54.08	$10,275.20
	State, local, or Tribal agency director/ manager	Provide cost data	10	10	11	110	2.00	220.00	0	0	0	0	0.00	220.00	$54.08	$11,897.60
Subtotal unique State, local, and Tribal government			**190**	**190**	**5.79**	**1,100**	**1.44**	**1,585.00**	**0**	-	**0**	-	**0.00**	**1,585.00**		**79,905**
Business for-not-for profit																
Private sector	Private sector for-profit business director/ manager	In-person interview (round 1)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$54.08	$4,056.00
	Private sector for-profit business director/ manager	In-person interview (round 2)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$54.08	$4,056.00
	Private sector for-profit business director/ manager	In-person interview (round 3)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$54.08	$4,056.00
	Private sector for-profit business director/ manager	Case Study	55	55	1	55	1.00	55.00	0	0	0	0	0.00	55.00	$54.08	$2,974.40

	Private sector for-profit business director/ manager	Provide administrative data	50	50	12	600	4.00	2,400.00	0	0	0	0	0.00	2,400.00	$54.08	$129,792.00
	Private sector for-profit business director/ manager	Cost/benefit interviews	100	100	20	2,000	0.50	1,000.00	0	0	0	0	0.00	1,000.00	$54.08	$54,080.00
	Private sector for-profit business director/ manager	Provide cost data	10	100	11	1,100	1.00	1,100.00	0	0	0	0	0.00	1,100.00	$54.08	$59,488.00
	Private sector for-profit direct service staff	Time Use Survey Initial Email	80	80	3	240	0.02	4.01	0	0	0	0	0.00	4.01	$21.03	$84.29
	Private sector for-profit direct service staff	Time Use Survey Reminder Letter	40	40	3	120	0.03	3.96	0	0	0	0	0.00	3.96	$21.03	$83.28
	Private sector for-profit direct service staff	Time Use Survey	80	80	3	240	0.33	79.20	0	0	0	0	0.00	79.20	$21.03	$1,665.58
	Private sector not-for-profit agency director/ manager	In-person interview (round 1)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$32.56	$2,442.00
	Private sector not-for-profit agency director/ manager	In-person interview (round 2)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$32.56	$2,442.00
	Private sector not-for-profit agency director/ manager	In-person interview (round 3)	75	75	1	75	1.00	75.00	0	0	0	0	0.00	75.00	$32.56	$2,442.00
	Private sector not-for-profit agency director/ manager	Case Study	55	55	1	55	1.00	55.00	0	0	0	0	0.00	55.00	$32.56	$1,790.80
	Private sector not-for-profit agency	Provide administrative data	50	50	12	600	4.00	2,400.00	0	0	0	0	0.00	2,400.00	$32.56	$78,144.00

director/ manager																			
Private sector not-for-profit agency director/manager	Cost/benefit interviews	100	100	20	2,000	0.50	1,000.00	0	0	0	0	0.00	1,000.00	$32.56	$32,560.00				
Private sector not-for-profit agency director/manager	Provide cost data	100	100	11	1,100	1.00	1,100.00	0	0	0	0	0.00	1,100.00	$32.56	$35,816.00				
Private sector for-profit direct service staff	Time Use Survey Initial Email	80	80	3	240	0.02	4.01	0	0	0	0	0.00	4.01	$21.03	$84.29				
Private sector for-profit direct service staff	Time Use Survey Reminder Letter	40	40	3	120	0.03	3.96	0	0	0	0	0.00	3.96	$21.03	$83.28				
Private sector not-for-profit agency director/manager	Time Use Survey	80	80	3	240	0.33	79.20	0	0	0	0	0.00	79.20	$32.56	$2,578.75				
Private sector not-for-profit employer training supervisor	Focus Group Recruitment Email	200	120	1	120	0.02	2.00	80	1	80	0.05	4.00	6.00	$21.03	$126.26				
Private sector not-for-profit employer training supervisor	Focus Group Confirmation Letter	200	120	1	120	0.03	3.96	80	1	80	0.05	4.00	7.96	$21.03	$167.40				
Private sector not-for-profit employer training supervisor	Focus Group	200	120	1	120	1.58	190.00	80	1	80	0.05	4.00	194.00	$21.03	$4,079.82				
Subtotal unique private/business sector		**770**	**690**	**13.80**	**9,520**	**1.04**	**9,930**	**240**	-	**240**	-	**12**	**9,942.30**	-	**$423,092.15**				
Grand total		**53,830**	**53,741**	**5.60**	**300,869**	**0.16**	**49,090.81**	*	**1.00**	**16,239**	**0.05**	**881.28**	**49,972.09**		**$781,721.47**				

Dated: August 1, 2018.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2018–17186 Filed 8–9–18; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs, National Average Payments/Maximum Reimbursement Rates

Correction

In notice document 2018–15465, appearing on pages 34105 through 34108, in the issue of Thursday, July 19, 2018, make the following correction:

On page 34107, in the table, in the ''Maximum Rate'' column, in the first row, ''0.30'' should read ''0.39''.

[FR Doc. C1–2018–15465 Filed 8–9–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region Recreation Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Region Recreation Resource Advisory Committee (Recreation RAC) will hold its next meeting in Asheville, North Carolina. The meeting is open to the public. The purpose of the meeting is to receive recommendations concerning recreation fee proposals on areas managed by the Forest Service in Florida, Georgia, Arkansas, Oklahoma, North Carolina, Texas and South Carolina. A summary of the proposals that may be discussed at this meeting will be posted at least 15 days prior to the meeting at *https://www.fs.usda.gov/main/r8/recreation/racs*.

The Southern Region Recreation RAC is established consistent with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C. App. II), and Federal Lands Recreation Enhancement Act of 2004 (the Act) (Pub. L. 108–447). Additional information concerning the Southern Region Recreation RAC can be found by visiting the committee's website noted above.

DATES: The meeting will be held August 27 and August 28, 2018, 8:30 a.m.–5:30 p.m. Eastern Standard Time. All Recreation RAC meetings are subject to cancellation. For status of the meeting, please contact the **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held in Asheville, North Carolina and the address of the meeting location will be posted on the committee's website: *https://www.fs.usda.gov/main/r8/recreation/racs* at least 15 days before the meeting. When possible, the meeting will be available via teleconference at 1–888–844–9904, participant code 1482357. Portions of the meeting may be field-based with limited phone coverage, in which case the teleconference will not be available.

FOR FURTHER INFORMATION CONTACT: Tiffany Williams, Southern Region Recreation RAC Coordinator by phone at 404–347–2769, or by email at *r8_rrac@fs.fed.us*. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. An agenda will be posted on *https://www.fs.usda.gov/main/r8/recreation/racs* at least 7 days prior to the meeting. Anyone who would like to bring related matters to the attention of the committee may provide written or oral comments. Written comments should be submitted to Chris Sporl, Designated Federal Official for the Southern Recreation RAC, U.S. Forest Service, 1720 Peachtree Road NW, Atlanta, GA 30309, or *r8_rrac@fs.fed.us* at least 5 days prior to the meeting.

All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments at the USDA Forest Service, 1720 Peachtree Road NW, Atlanta, GA 30309. Visitors are encouraged to call ahead at 404–347–2769 to facilitate entry into the USDA Forest Service building.

Meeting Accommodations: If you require reasonable accommodation, please make your request in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation, please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 2, 2018.

Chris Iverson,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2018–17134 Filed 8–9–18; 8:45 am]

BILLING CODE 3411–15–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Public Business meeting.

DATES: Friday, August 17, 2018, 10:00 a.m. EST.

ADDRESSES: Place: National Place Building, 1331 Pennsylvania Ave. NW, 11th Floor, Suite 1150, Washington, DC 20425. (Entrance on F Street NW.)

FOR FURTHER INFORMATION CONTACT: Brian Walch: (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov*.

SUPPLEMENTARY INFORMATION: This business meeting is open to the public. There will also be a call-in line for individuals who desire to listen to the presentations: 877–260–1479; Conference ID 3752191. The event will also live-stream at *https://www.youtube.com/user/USCCR/videos*. (Please note that streaming information is subject to change.) Persons with disabilities who need accommodation should contact Pamela Dunston at (202) 376–8105 or at *access@usccr.gov* at least seven (7) business days before the scheduled date of the meeting.

Meeting Agenda

I. Approval of Agenda
II. Business Meeting
- A. Presentation by Maine Advisory Committee Chair on the Committee's recently released report, Voting Rights in Maine
- B. Presentation by Arizona Advisory Committee Chair on the Committee's recently released report, Voting Rights in Arizona
- C. Discussion and Vote on Commission report, An Examination of Excessive Force and Modern Policing Practices
- D. Discussion and Vote on Commission report, Contemporary Civil Rights Challenges: A View from the States, 2018 Survey of the State Advisory Committees to the U.S. Commission on Civil Rights
- E. Discussion and Vote on 2019 Business Meeting Calendar
- F. Discussion and Vote on Fiscal Year 2019 Program Planning
- G. Discussion and Vote on Fiscal Year 2020 Program Planning for Statutory Enforcement Report
- H. Discussion and Vote on Commission's Oregon Advisory Committee Chair

I. Management and Operations
- Staff Director's Report

J. Presentation on Remembering Filipina/o American History & Its Intersection with Civil Rights
- Dawn Bohulano Mabalon, Ph.D., Associate Professor of History, San Francisco State University

III. Adjourn Meeting

Dated: August 7, 2018.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2018–17238 Filed 8–8–18; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878]

Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminary determines that Dongkuk Steel Mill Co., Ltd. (Dongkuk) and Hyundai Steel Company (Hyundai), producers/exporters of merchandise subject to this administrative review, made sales of subject merchandise at less than normal value. The period of review (POR) is January 4, 2016, through June 30, 2017.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang (Dongkuk) or Elfi Blum-Page (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2316 or (202) 482 -0197.

Scope of the Order

The merchandise covered by the order is certain corrosion-resistant steel products. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period January 4, 2016, through June 30, 2017:

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd./ Union Steel Manufacturing Co., Ltd [1]	4.14
Hyundai Steel Company	10.32

Review-Specific Average Rate Applicable to the Following Companies: [2]

Exporter/producer	Weighted-average dumping margin (percent)
Dongbu Steel Co., Ltd	5.55
POSCO	5.55

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where the mandatory respondents reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the mandatory respondents did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [3] of the cash deposit rates calculated for the two mandatory respondents. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[4]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this

[1] Commerce found Dongkuk to be the successor-in-interest to Union Steel Manufacturing Co., Ltd. in the underlying investigation. *See Certain Corrosion-Resistant Steel Products from the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 78 (January 4, 2016), and accompanying Decision Memorandum at 7, unchanged in *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 81 FR 35303 (June 2, 2016), and accompanying Issues and Decision Memorandum at 6.

[2] This rate is based on the weighted-average margin using the publicly-ranged sales value of mandatory respondents, and is the best proxy of the actual weighted-average margin determined for the mandatory respondents. Due to requests to protect business proprietary information, we cannot apply our normal methodology of calculating a weighted-average margin. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum re: Calculation of the Review-Specific Average Rate for the Preliminary Results, dated concurrently with this notice.

[3] This rate was calculated as discussed in footnote 2, above.

[4] *See* section 751(a)(2)(C) of the Act.

review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the underlying investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 8.32 percent, the all-others rate established in the underlying investigation.[5] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[6] Interested parties may submit case briefs not later than 30 days after the date of publication of this notice.[7] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[8] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[9] Case and rebuttal briefs should be filed using ACCESS.[10]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed request for a hearing must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[11] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[12]

Commerce intends to issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[13]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: August 3, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17155 Filed 8–9–18; 8:45 am]

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[5] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), as amended by *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination of Investigation and Notice of Amended Final Results,* issued July 23, 2018.

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)(1)(ii).

[8] *See* 19 CFR 351.309(d)(1).

[9] *See* 19 CFR 351.309(c)(2) and (d)(2).

[10] *See* 19 CFR 351.303.

[11] *See* 19 CFR 351.310(c); 19 CFR 351.303(b)(1).

[12] *See* 19 CFR 351.310(c).

[13] *See* Section 751(a)(3)(A) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India. The period of review (POR) is July 1, 2016, through June 30, 2017. This review covers mandatory respondents Jindal Poly Films Ltd. (India) and SRF Limited of India, producers and exporters of PET film from India. Commerce preliminarily determines that sales of subject merchandise have been made below normal value by Jindal Poly Films Ltd. (India), and that sales of subject merchandise have not been made below normal value by SRF Limited of India during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2017, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PET film from India, for the period July 1, 2016, through June 30, 2017.[1] In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b)(1), in July 2017, we received requests for reviews of the following companies: Chiripal Poly Films Limited (Chiripal); Ester Industries Limited (Ester); Garware Polyester Ltd. (Garware); MTZ Polyesters Ltd. (MTZ); Polyplex Corporation Ltd. (Polyplex); SRF Limited; SRF Limited of India; Jindal Poly Films Ltd. (India); Uflex Ltd. (Uflex); and Vacmet India Limited (Vacmet).[2]

Subsequently, on September 13, 2017, in accordance with 19 CFR 351.222(c)(1)(i), Commerce published a notice of initiation of an administrative review of the antidumping duty order on PET film from India.[3]

On September 27, 2017, we released U.S. Customs and Border Protection (CBP) import data to eligible parties under the Administrative Protective Order and invited interested parties to submit comments with respect to the selection of respondents for individual examination.[4]

On November 20, 2017, Commerce determined to limit the number of companies subject to individual examination in this administrative review, and selected Jindal Poly Films Ltd. (India) (Jindal) and SRF Limited of India (SRF) as mandatory respondents.[5]

We issued our initial questionnaires to Jindal and SRF on November 24, 2017, and November 27, 2017, respectively. The deadline for withdrawal requests was December 12, 2017.[6] All review requests were timely withdrawn for two companies, MTZ and Uflex.

On January 23, 2018, Commerce issued a memorandum tolling all deadlines for this investigation by three days due to the shutdown of the federal government.[7] On March 22, 2018, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results by an additional 60 days, from April 5, 2018, to June 4, 2018.[8] On June 1, 2018, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce extended the due date for the preliminary results by an additional 60 days. The current deadline is August 3, 2018.[9]

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Partial Rescission of Administrative Review

Commerce initiated a review of ten companies in this proceeding.[10] We are rescinding this administrative review with respect to MTZ and Uflex, pursuant to 19 CFR 351.213(d)(1), because all review request of these companies were timely withdrawn.[11] Accordingly, the companies that remain subject to the instant review are: Chiripal; Ester; Garware; Jindal; Polyplex, SRF; and Vacmet India Limited.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Act. Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

[1] *See* A*ntidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 30833 (July 3, 2017).

[2] *See* the Petitioners' Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, Request for Antidumping Duty Administrative Review,'' dated July 31, 2017. *See also* the Petitioners' Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, Amended Request for Antidumping Duty Administrative Review,'' dated August 11, 2017. *See also* the Petitioners' Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India, Amended Request for Antidumping Duty Administrative Review,'' dated August 30, 2017; *see also* Polyplex USA LLC's Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India: Request for Antidumping Duty Administrative Review,'' dated July 28, 2017. *See also* Polyplex's Letter, ''Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) from India: Request for Antidumping Duty Administrative Review,'' dated August 29, 2017; *see also* SRF Limited's Letter, ''Polyethylene Terephthalate Film, (PET Film) from India/Request for Antidumping Admin Review/SRF Limited,'' dated July 31, 2017; *see also* Jindal's Letter, ''Polyethylene Terephthalate Film, (PET Film) from India/Request for Antidumping Admin Review/ Jindal Poly Films Limited,'' dated July 27, 2017; *see also* Chiripal's Letter, ''Polyethylene Terephthalate (PET) Film, Sheet and Strip from India: Request for Administrative Review of Anti-Dumping Duty of Chiripal Poly Films Limited,'' dated July 31, 2017.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip (PET) Film from India: U.S. Customs Entries,'' dated September 27, 2017.

[5] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination,'' dated November 20, 2017 (Respondent Selection Memorandum). SRF Limited of India and SRF limited are the same company. *See* Memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from India; 2016–2017,'' dated concurrently with, and hereby adopted, by this notice (Preliminary Decision Memorandum) at 2–3.

[6] *See* 19 CFR 351.213(d)(1).

[7] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[8] *See* Memorandum ''Polyethylene Terephthalate Film, Sheet and Strip from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review (2016–2017),'' dated March 22, 2018.

[9] *See* Memorandum, ''Polyethylene Terephthalate Film from Taiwan: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review (2016–2017),'' dated June 1, 2018.

[10] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[11] *See* Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

In accordance with section 735(c)(5) of the Tariff Act of 1930, as amended (the Act), we preliminarily assign to those companies not selected for individual review the rate calculated for Jindal in this review, because SRF's rate is *de minimis.*[12]

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period July 1, 2016, through June 30, 2017.

Manufacturer/exporter	Weighted-average margin (percent)
Jindal Poly Films Ltd. (India) [13]	5.50
SRF Limited of India	0.00
Garware Polyester Ltd	5.50
Chiripal Poly Films Limited	5.50
Polyplex Corporation Ltd	5.50
Ester Industries Limited	5.50
Vacmet India Limited	5.50

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[14] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[16] This clarification applies to entries of subject merchandise during the POR produced by a respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Assessment and Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET film from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters is 5.71 percent.[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: August 3, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[12] *See* the Preliminary Decision Memorandum.

[13] The *Initiation Notice* also lists the company as Jindal Poly Films Limited of India. Commerce has previously determined that Jindal Poly Films Limited of India is the same company as Jindal Poly Films Ltd. (India). *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 36735 (August 7, 2017), and accompanying Preliminary Decision Memorandum at FN 1 (unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 6162 (February 13, 2018)).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.303 (for general filing requirements).

[16] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[17] *See Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 6162 (February 13, 2018).

[FR Doc. 2018–17178 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–864]

Certain Corrosion-Resistant Steel Products From India: Preliminary Results of the Countervailing Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from India are being, or are likely to be, sold in the United States at less than normal value during the period of review (POR) November 6, 2015, through December 31, 2016.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Justin Neuman or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0486 or (202) 482–2312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2017, Commerce initiated this administrative review on CORE from India covering JSW Steel Limited and Uttam Galva Steels Limited.[1] The events that have occurred between initiation and these preliminary results are discussed in the Preliminary Decision Memorandum dated concurrently with and hereby adopted by this notice.[2]

Scope of the Order

The products covered by the order are certain corrosion-resistant steel products from India. For a full description of the scope, see the Preliminary Decision Memorandum.[3]

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[4] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine the total estimated net countervailable subsidy rates for the period November 6, 2015, through December 31, 2016 to be:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
JSW Steel Limited and JSW Steel Coated Products Limited[5]	11.30
Uttam Galva Steels Limited and Uttam Value Steels Limited[6]	15.45

Disclosure and Public Comment

Commerce intends to disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results in the **Federal Register**.[7] Interested parties may submit written comments (case briefs) within 30 days after the date of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[8] Rebuttal briefs must be limited to issues raised in the case briefs.[9] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[11] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we intend to inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[12] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[13] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 42974 (September 13, 2017).

[2] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Adminsitrative Review: Certain Corrosion-Resistant Steel Products from India,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *Id.*

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

[5] Cross-owned affiliates are: JSW Steel Coated Products Limited (a producer and exporter of subject merchandise), Amba River Coke Limited, JSW Steel (Salav) Limited, and JSW Steel Processing Centers Limited.

[6] Cross-owned affiliates are: Uttam Value Steels Limited (a producer and exporter of subject merchandise) and Uttam Galva Metallics Limited.

[7] *See* 19 CFR 351.224(b).

[8] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[9] *See* 19 CFR 351.309(d)(2).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.310.

[13] *See* 19 CFR 351.310(c).

comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above, for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.221(b)(4).

Dated: August 3, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Subsidies Valuation Information
V. Analysis of Programs
VI. Verification
VII. Conclusion

[FR Doc. 2018–17161 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–879]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent To Rescind, in Part; 2015–16

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on certain corrosion-resistant steel products (CORE) from the Republic of Korea (Korea). The period of review (POR) is November 6, 2015, through December 31, 2016. We preliminarily determine that Dongbu Steel Co., Ltd/Dongbu Incheon Steel Co., Ltd. (Dongbu) and Hyundai Steel Company (Hyundai Steel) received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Jun Jack Zhao, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2371 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 2017, Commerce published a notice of initiation of an administrative review of the CVD order on CORE from Korea.[1] On June 20, 2018, Commerce extended the deadline for the preliminary results to August 3, 2018.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the order is certain corrosion-resistant steel products. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Commerce initiated a review of 22 companies in this segment of the proceeding.[4] Two of these companies, Dongkuk Steel Mill Co., Ltd. and Union Steel Manufacturing Co. Ltd. are not subject to the CVD order on CORE from Korea.[5] Accordingly, we are rescinding the review with respect to these two companies.

Intent To Rescind Administrative Review, in Part

Based on information submitted by Mitsubishi International Corporation after the initiation of this administrative review, and because there is no evidence on the record to indicate that

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*). *See also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 48051 (October 16, 2017) (*Initiation Notice Correction*), at footnote 8.

[2] *See* Memorandum regarding Corrosion-Resistant Steel Products from the Republic of Korea: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review—2015–2016, dated March 23, 2018; *see also* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Administrative Review—2015–2016,'' dated June 20, 2018.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, Rescission of Review, in Part, and Intent to Rescind, in Part; 2015–2016: Certain Corrosion-Resistant Steel Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Initiation Notice and Initiation Notice Correction.* The 22 companies were: Bukook Steel Co., Ltd.; CJ Korea Express; DK Dongshin Co., Ltd.; Dongbu Steel Co., Ltd., Dongbu Incheon (collectively, Dongbu) Steel Co., Ltd.; Dongbu Express; Dongkuk Steel Mill Co., Ltd.; Hongyi (HK) Hardware Products Co., Ltd.; Hyundai Steel; Jeil Sanup Co., Ltd.; Mitsubishi International Corp.; POSCO; POSCO C&C; POSCO Daewoo Corp.; Sejung Shipping Co., Ltd.; SeAH Steel, Seil Steel Co., Ltd.; Soon Hong Trading Co., Ltd.; Taisan Construction Co., Ltd.; TCC Steel Co., Ltd.; Union Steel Manufacturing Co., Ltd.; and Young Sun Steel Co.

[5] *See* Preliminary Decision Memorandum.

this company had entries of subject merchandise during the POR, we preliminarily intend to rescind the review with respect to Mitsubishi International Corporation.[6] A final decision regarding whether to rescind the review of this company will be issued with the final results of review.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Dongbu and Hyundai Steel were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted-average of the subsidy rates calculated for Dongbu and Hyundai Steel using publicly ranged sales data submitted by respondents. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, consistent with section 705(c)(5)(A) of the Act.

Preliminary Results of Review

In accordance with 19 CFR 351.224(b)(4)(i), we preliminarily determine that the following subsidy rates exist for the 2015 and 2016 periods. The 2015 rate applies to the November 6, 2015, through December 31, 2015, period when liquidation of entries was suspended. The 2016 rate applies to entries suspended during 2016 and to establish the cash deposit rate for exports of subject merchandise subsequent to the final results.

Company	Subsidy rate (percent *ad valorem*)	
	2015	2016
Dongbu Steel Co., Ltd./Dongbu Incheon Steel Co., Ltd	7.63	8.47
Hyundai Steel Company	0.55	0.57
Bukook Steel Co., Ltd	3.09	3.34
CJ Korea Express	3.09	3.34
DK Dongshin Co., Ltd	3.09	3.34
Dongbu Express	3.09	3.34
Hongyi (HK) Hardware Products Co., Ltd	3.09	3.34
Jeil Sanup Co., Ltd	3.09	3.34
POSCO	3.09	3.34
POSCO C&C	3.09	3.34
POSCO Daewoo Corp	3.09	3.34
Sejung Shipping Co., Ltd	3.09	3.34
SeAH Steel	3.09	3.34
Seil Steel Co., Ltd	3.09	3.34
Soon Hong Trading Co., Ltd	3.09	3.34
Taisan Construction Co., Ltd	3.09	3.34
TCC Steel Co., Ltd	3.09	3.34
Young Sun Steel Co	3.09	3.34

Assessment Rate

Consistent with section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review. For companies for which this review is rescinded, Commerce will instruct CBP to liquidate entries without regard to countervailing duties. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Cash Deposit Rate

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[8] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[9] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.[11] Requests should contain the party's

[6] *Id.*

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

[8] *See* 19 CFR 224(b).

[9] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[10] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[11] *See* 19 CFR 351.310(c).

name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce will inform parties of the scheduled date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[12] Issues addressed during the hearing will be limited to those raised in the briefs.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: August 3, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17156 Filed 8–9–18; 8:45 am]

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[12] *See* 19 CFR 351.310.

[13] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that certain companies covered by this administrative review made sales of subject merchandise at less than normal value.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or Joshua Poole, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–1293, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (China). The period of review (POR) is November 1, 2016, through October 31, 2017. Commerce has preliminarily determined that certain companies covered by this review made sales of subject merchandise at less than normal value. Interested parties are invited to comment on these preliminary results.

Scope of the Order

The merchandise subject to the order is diamond sawblades and parts thereof. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive. A full description of the scope of the order is contained in the Preliminary Decision Memorandum.[1]

Preliminary Determination of No Shipments

Six companies that received a separate rate in previous segments of the proceeding and are subject to this review reported that they did not have any exports of subject merchandise during the POR.[2] We requested that U.S. Customs and Border Protection (CBP) report any contrary information.[3] To date, we have not received any contrary information from either CBP in response to our inquiry or any other sources that these companies had any shipments of the subject merchandise sold to the United States during the POR.[4] Further, consistent with our practice, we find that it is not appropriate to rescind the review with respect to these companies but, rather, to complete the review and issue appropriate instructions to CBP based on the final results of review.[5]

Separate Rates

Commerce preliminarily determines that 14 respondents are eligible to receive separate rates in this review.[6]

Separate Rates for Eligible Non-Selected Respondents

Because we denied the separate rate eligibility for the two respondents selected for individual examination, Danyang Huachang Diamond Tools Manufacturing Co., Ltd. (Danyang Huachang) and Jiangsu Youhe Tool Manufacturer Co., Ltd. (Jiangsu Youhe), and treated them as part of the China-wide entity, we preliminarily applied to non-selected respondents the separate rate assigned to eligible respondents in the last completed administrative review, which is 82.05 percent.[7]

China-Wide Entity

Under Commerce's current policy regarding the conditional review of the

[1] *See* the Memorandum, ''Diamond Sawblades and Parts Thereof from the People's Republic of China: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review; 2016–2017,'' dated concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[2] *See* the February 9, 2018, no-shipment letter from Weihai Xiangguang Mechanical Industrial Co., Ltd., and the February 12, 2018, no-shipment letters from Danyang Hantronic Import & Export Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Jiangsu Huachang Tools Manufacturing Co., Ltd., Shanghai Starcraft Tools Company Limited, and Wuhan Wanbang Laser Diamond Tools Co., Ltd.

[3] *See* the CBP message numbers 8129311–8129313 dated May 9, 2018, and 8130301–8130303 dated May 10, 2018, available at *http://adcvd.cbp.dhs.gov/adcvdweb/.*

[4] *See* Preliminary Decision Memorandum at 3–4 for a detailed discussion.

[5] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013,* 80 FR 34619 (June 17, 2015).

[6] *See* Preliminary Decision Memorandum at 4–8, for more details.

[7] *Id.* at 8.

China-wide entity,[8] the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 82.05 percent).[9] Aside from the no-shipments and separate rate companies discussed above, Commerce considers all other companies for which a review was requested (which did not file a separate rate application) to be part of the China-wide entity.[10]

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For Danyang Huachang and Jiangsu Youhe, we denied the separate rate eligibility and treated them as part of the China-wide entity.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Margin (percent)
Chengdu Huifeng New Material Technology Co., Ltd	82.05
Danyang Weiwang Tools Manufacturing Co., Ltd	82.05
Guilin Tebon Superhard Material Co., Ltd	82.05
Hangzhou Deer King Industrial and Trading Co., Ltd	82.05
Henan Huanghe Whirlwind International Co., Ltd	82.05
Huzhou Gu's Import & Export Co., Ltd	82.05
Jiangsu Fengtai Single Entity	82.05
Jiangsu Inter-China Group Corporation	82.05
Quanzhou Zhongzhi Diamond Tool Co., Ltd	82.05
Rizhao Hein Saw Co., Ltd	82.05
Saint-Gobain Abrasives (Shanghai) Co., Ltd	82.05
Shanghai Jingquan Industrial Trade Co., Ltd	82.05
Xiamen ZL Diamond Technology Co., Ltd	82.05
Zhejiang Wanli Tools Group Co., Ltd	82.05

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary results of review within five days after public announcement of the preliminary results of review in accordance with 19 CFR 351.224(b). Because Commerce preliminarily denied the separate rate eligibility for the two respondents selected for individual examination and treated them as part of the China-wide entity, there are no calculations to disclose.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the cases briefs are filed.[13]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[14] Hearing requests should contain (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless extended, Commerce intends to issue the final results of this review, including the results of its analysis of issues raised by parties in their comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuing the final results of review, Commerce will determine, and CBP shall assess, antidumping duties on

[8] *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).

[9] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 32344, 32345 (June 8, 2015).

[10] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 1329, 1331–32 (January 11, 2018) (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.''). Companies that are subject to this administrative review that are considered to be part of the China-wide entity are ASHINE Diamond Tools Co., Ltd., Danyang City Ou Di Ma Tools Co., Ltd., Danyang Like Tools Manufacturing Co., Ltd., Danyang Youhe Tool Manufacturer Co., Ltd., Hangzhou Kingburg Import & Export Co., Ltd., Hebei XMF Tools Group Co., Ltd., Henan Huanghe Whirlwind Co., Ltd., Hong Kong Hao Xin International Group Limited, Hubei Changjiang Precision Engineering Materials Technology Co., Ltd., Hubei ShengBaiRui Diamond Tools Co., Ltd., Orient Gain International Limited, Pantos Logistics (HK) Company Limited, Pujiang Talent Diamond Tools Co., Ltd., Qingdao Hyosung Diamond Tools Co., Ltd., Qingdao Shinhan Diamond Industrial Co., Ltd., Sino Tools Co., Ltd., Wuhan Baiyi Diamond Tools Co., Ltd., Wuhan Sadia Trading Co., Ltd., and Wuhan ZhaoHua Technology Co., Ltd. *See* Preliminary Decision Memorandum at 8–9. In addition, Danyang Huachang, Jiangsu Youhe, and Qingyuan Shangtai Diamond Tools Co., Ltd., are preliminarily treated as part of the China-wide entity. *Id.* at 6, 9.

[11] *See* 19 CFR 351.309(c).

[12] *See* 19 CFR 351.309(c)(2).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.310(c).

all appropriate entries covered by this review.[15] If the preliminary results are unchanged for the final results, we will instruct CBP to apply an ad valorem assessment rate of 82.05 percent to all entries of subject merchandise during the POR which were exported by the non-selected respondents eligible for a separate rate. If Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide rate.[16] Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be that established in the final results of review (except, if the rate is zero or *de minimis,* then zero cash deposit will be required); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: August 6, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17065 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–854]

Certain Steel Nails From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Bonuts Logistics Co., LLC made U.S. sales of subject merchandise below normal value. Commerce preliminarily determines that Unicatch Industrial Co. Ltd., PT Enterprise, Inc. and its affiliated producer Pro-Team Coil Nail Enterprise, Inc. did not make U.S. sales of subject merchandise below normal value. We are rescinding the review with respect to 92 companies for which the request for review was timely withdrawn. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Scott Hoefke or Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–4947 or (202) 482–1979, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on certain steel nails from Taiwan. The period of review (POR) is July 1, 2016, to June 30, 2017. This review covers Bonuts Logistics Co., LLC (Bonuts); PT Enterprise, Inc. (PT Enterprise) and its affiliated producer Pro-Team Coil Nail Enterprise, Inc. (Pro-Team) (collectively, PT); and Unicatch Industrial Co. Ltd. (Unicatch). Commerce published the notice of initiation of this administrative review [1] on September 13, 2017.[2] The preliminary results are listed below in the section titled ''Preliminary Results of Review.''

On January 23, 2018, Commerce exercised its discretion to toll all deadlines for the duration of the closure of the Federal Government from January 20, 2018, through January 22, 2018.[3] On March 22, 2018, we extended the deadline for the preliminary results to July 16, 2018.[4] On July 12, 2018, we extended the deadline for the preliminary results to August 3, 2018.[5]

For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[6]

[15] *See* 19 CFR 351.212(b)(1).

[16] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

[1] PT Enterprise, Unicatch, and Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic producer and interested party, requested the instant administrative review. See PT July 31, 2017 Request for Administrative Review; Unicatch July 31, 2017 Request for Administrative Review; Mid Continent July 31, 2017 Request for Administrative Reviews.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[3] *See* Memorandum, ''Deadlines Affected by the Shutdown of the Federal Government,'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Certain Steel Nails from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 22, 2018 (First Prelim Extension).

[5] *See* Memorandum, ''Certain Steel Nails from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,'' dated July 12, 2018 (Second Prelim Extension).

[6] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Scope of the Order [7]

The merchandise covered by this order is certain steel nails. The certain steel nails subject to the order are currently classifiable under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Certain steel nails subject to these orders also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

The full description of the scope of the order is contained in the memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Nails from Taiwan; 2016–2017'' (Preliminary Decision Memorandum), which is hereby adopted by this notice. The written description of the scope of the order is dispositive.

Methodology

For PT and Unicatch, Commerce has conducted this review in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (the Act). Normal value (NV) is calculated in accordance with section 773 of the Act. Export price or constructed export price is calculated in accordance with section 772 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Application of Facts Available and Adverse Facts Available

Pursuant to section 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences (AFA) for Bonuts because this respondent did not respond to Commerce's antidumping duty questionnaire, and thus failed to cooperate to the best of its ability in responding to Commerce's requests for information. For a complete explanation of the methodology and rationale underlying our preliminary application of AFA, *see* the Preliminary Decision Memorandum.

Partial Rescission of Review

Commerce received timely requests to conduct an administrative review of certain exporters covering the POR. On December 8, 2017, Mid Continent Steel & Wire, Inc. (Mid Continent), a domestic producer and interested party, timely withdrew its review requests for certain companies. Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Accordingly, we are rescinding this administrative review with respect to the companies for which all review requests have been withdrawn.[8] For a full description of the methodology and rationale underlying our conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist:

Producer/exporter	Dumping margin (percent)
Bonuts Logistics Co., LLC	78.13
PT Enterprise, Inc./Pro-Team Coil Nail Enterprise, Inc	0.00
Unicatch Industrial Co. Ltd	0.00

Disclosure and Public Comment

Commerce intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[9] Interested parties may submit cases briefs no later than 30 days after the date of publication of this notice.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the due date for filing case briefs.[11] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12] Case and rebuttal briefs should be filed using ACCESS.[13] In order to be properly filed, ACCESS must successfully receive an electronically filed document in its entirety by 5 p.m. Eastern Time.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a

[7] *See Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 80 FR 39994 (July 13, 2015) (*Order*).

[8] Those companies are: Air Sea Transport, Inc.; All Precision Co., Ltd.; Apex Maritime Co., Inc.; Aplus Pneumatic Corp.; Astrotech Steels Private Ltd.; Basso Industry Corporation; Bollore Logistics (Vietnam) Co. Ltd.; C.H. Robinson Freight Services; Challenge Industrial Co., Ltd.; Cheng Ch International Co. Ltd.; Chia Pao Metal Co. Ltd.; China International Freight Co. Ltd.; Chite Enterprises Co., Ltd.; Crown Run Industrial Corp.; Daejin Steel Company Ltd.; E&E Transport International Co., Ltd.; Easylink Industrial Co., Ltd.; ECI Taiwan Co., Ltd.; Everise Global Logistics Co., Ltd.; Faithful Engineering Products Co. Ltd.; Fastenal Asia Pacific Ltd.; Four Winds Corporation; Fuzhou Important Countries Import & Export; Fuzhou Royal Floor Co., Ltd.; Fuzhou Top Golden Import & Export Co.; General Merchandise Consolidators; Ginfa World Co. Ltd.; Gloex Company; H&W International Forwarders Co., Ltd.; Hanbit Logistics Co., Ltd.; Hecny Shipping Limited; Hi-Sharp Industrial Corp. Ltd.; Home Value Co., Ltd.; Honour Lane Logistics Co., Ltd.; Hor Liang Industrial Corp.; Hyup Sung Indonesia; Inmax Industries Sdn. Bhd.; Jade Shuttle Enterprise Co., Ltd.; Jia Jue Industry Co. Ltd.; Jinhai Hardware Co., Ltd.; Jinsco International Corp.; Joo Sung Sea & Air Co., Ltd.; K Win Fasteners Inc.; King Freight International Corporation; Korea Wire Co., Ltd.; Liang Chyuan Industrial Co., Ltd.; Locksure Inc.; Lu Kang Hand Tools Industrial Co., Ltd.; ML Global Ltd.; Master United Corp.; Nailermate Enterprise Corporation; Newrex Screw Corporation; NMC Logistics International Company; Noble Shipping Pvt. Ltd.; NS International Ltd.; OOCL Logistics Ltd.; Orient Express Container Co., Ltd.; Oriental Power Logistics Co., Ltd.; Oriental Vanguard Logistics Co. Ltd.; Pacific Concord International Ltd.; Pacific Star Express Corp.; Panda Logistics Co., Ltd.; Panther T&H Industry Co.; Patek Tool Co., Ltd.; Point Edge Corp.; President Industrial Inc.; Romp Coil Nail Industries Inc.; Scanwell, Schenker, Seamaster Logistics Sdn Bhd; Star World Product and Trading Co., Ltd.; Sun VN Transport Co.; T.H.I. Logistics Co. Ltd.; Taiwan Wakisangyo Co. Ltd.; The Ultimate Freight Management; Topps Wang International Ltd.; Trans Wagon International Co. Ltd.; Trans-Top Enterprise Co., Ltd.; Transwell Logistics Co., Ltd.; Transworld Transportation Co., Ltd.; Trim International Inc.; Tsi-Translink (Taiwan) Co. Ltd.; UC Freight Forwarding Co. Ltd.; U-Can-Do Hardware Corp.; Universal Power Shipping Ltd.; UPS Supply Chain Solutions; VIM International Enterprise Co., Ltd.; Wictory Co. Ltd.; Yeh Fong Hsin; Yehdyi Enterprise Co., Ltd.; Yu Tai World Co., Ltd.; and Yusen Logistics (Taiwan) Ltd.

[9] *See* 19 CFR 351.224(b).

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.309(c)(2) and (d)(2).

[13] *See* 19 CFR 351.303.

hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS, within 30 days after the date of publication of this notice.[14] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b)(1). We intend to issue instructions to CBP 15 days after the date of publication of the final results of this review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[15] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[16] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[17] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[18]

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by Bonuts, PT, or Unicatch, for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[19]

For the firms covered by this review, we intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review. For the non-reviewed firms for which we are rescinding this administrative review, Commerce intends to instruct CBP 15 days after publication of these preliminary results of review to assess antidumping duties at rates equal to the rates of cash deposits for estimated antidumping duties required at the time of entry, or withdrawn from warehouse, for consumption, during the period May 20, 2016, through June 30, 2017, in accordance with 19 CFR 351.212(c)(2).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Bonuts, PT, and Unicatch will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for other manufacturers and exporters covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 2.24 percent, the all-others rate in the LTFV investigation.[20] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notifications

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

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

Dated: August 3, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Partial Rescission of Administrative Review
5. Duty Absorption
6. Use of Facts Available With an Adverse Inference
7. Comparisons to Normal Value
8. Date of Sale
9. Export Price and Constructed Export Price
10. Normal Value
11. Currency Conversion
12. Verification
13. Recommendation

[FR Doc. 2018–17163 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2016

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *Id.*

[18] *See* 19 CFR 351.106(c)(2).

[19] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[20] *See Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value,* 80 FR 28959 (May 20, 2015).

countervailing duty (CVD) order on polyethylene terephthalate film, sheet, and strip (PET film) from India. The period of review (POR) is January 1, 2016, through December 31, 2016. We preliminarily determine that Jindal Poly Films Limited of India (Jindal) and SRF Limited/SRF Limited of India (SRF) received countervailable subsidies during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Elfi Blum and Kathryn Wallace, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0197 and (202) 482–6251, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2017, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on PET film from India, for the period July 1, 2016, through June 30, 2017.[1] In accordance with sections 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(2) and (3), in July 2017, we received five review requests. DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc. (collectively, the petitioners) requested reviews of Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Polyplex Corporation Ltd. (Polyplex), SRF, Jindal, and Vacmet India Limited (Vacmet). Additionally, Polyplex USA LLC requested reviews for Ester, Garware, Jindal, MTZ Polyesters Ltd. (MTZ), Polyplex, SRF Limited, Uflex Ltd. (Uflex), and Vacmet. Finally, Chiripal Poly Films Limited (Chiripal), SRF, and Jindal each self-requested to be reviewed in the instant review.

Subsequently, on September 13, 2017, in accordance with 19 CFR 351.222(c)(1)(i), Commerce published a notice of initiation of an administrative review of the antidumping duty order on PET Film from India.[2]

On October 3, 2017, we placed on the record U.S. Customs and Border Protection (CBP) import data for purposes of respondent selection, and invited parties to comment.[3] On October 10, 2017, SRF and Jindal each submitted comments requesting selection for individual examination.[4] Subsequently, SRF,[5] Jindal Poly Films Ltd. (India)[6] each timely withdrew their requests for review. Polyplex USA timely withdrew its requests for a review on December 12, 2016, for all companies.[7]

On January 23, 2018, Commerce issued a memorandum tolling all deadlines for this investigation by three days due to the shutdown of the federal government.[8] On March 23, 2018,[9] and June 1, 2018, we extended the deadline for the preliminary results of this review to August 3, 2018.

Scope of the Order

The products covered by this order are all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet and strip, whether extruded or coextruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches thick. Imports of PET film are classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 3920.62.00.90. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

Partial Rescission of Administrative Review

Commerce initiated a review of ten companies in this segment of the proceeding.[10] In response to timely filed withdrawal requests, we are rescinding this administrative review with respect to Uflex and MTZ, pursuant to 19 CFR 351.213(d)(1). Accordingly, the companies subject to the instant review are: Ester Industries Ltd.; Garware Polyester Ltd.; Jindal; Polyplex Corporation Ltd.; SRF; and Vacmet India Limited, of which Commerce has selected Jindal and SRF as the mandatory respondents.[11]

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Act. For each of the subsidy programs found countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[12] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum, dated concurrently with, and hereby adopted by, this notice. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Jindal and SRF were above *de minimis* and not based entirely on facts available, we applied,

[1] *See Antidumping or Countervailing Duty Order, Finding or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 30833 (July 3, 2017).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[3] *See* Memorandum ''Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Release of U.S. Customs Entry Data for Respondent Selection'' dated October 3, 2017.

[4] *See* SRF's CBP Comments; *see also* Jindal's Letter, ''PET Film from India: Comments on CBP Data'' dated October 10, 2017.

[5] *See* SRF's Letter, ''Withdrawal of Request for Countervailing Duty Admin Review of SRF Limited (SRF)'' dated December 11, 2017.

[6] *See* Jindal's Letter, ''Withdraw Requests for Administrative Review of the Antidumping Duty Order and Countervailing Duty Order'' dated December 10, 2017.

[7] Polyplex USA's Letter, ''Polyethylene Terephthalate (PET) Film, Sheet, and Strip from India: Request of Partial Withdrawal of Administrative Review,'' dated December 12, 2017.

[8] *See* Memorandum,'' Deadlines Affected by the Shutdown of the Federal Government'' dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

[9] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review—2016'' dated March 23, 2018; *see also* Memorandum, ''Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review'' dated June 1, 2018.

[10] *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews, 82 FR 42974, 42974 (September 13, 2017). The ten companies were Chiripal, Ester, Garware, Jindal, MTZ, Polyplex, SRF (as SRF Limited and SRF Limited of India), Uflex, and Vacmet).

[11] *See* Memorandum, ''Administrative Review of the Countervailing Duty Order on Polyethylene Terephthalate Film, Sheet, and Strip from India: Selection of Respondents for Individual Examination'' dated November 27, 2017.

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

consistent with section 705(c)(5)(A) of the Act, a subsidy rate based on a simple average of the subsidy rates calculated for Jindal and SRF because publicly ranged sales data was not submitted by respondents.

Preliminary Results of Review

We preliminarily determine the total estimated net countervailable subsidy rates for the period January 1, 2016, through December 31, 2016 to be:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Jindal Poly Films Limited of India	10.71
SRF Limited	7.47
Ester Industries Limited	9.09
Garware Polyester Ltd	9.09
Polyplex Corporation Ltd	9.09
Vacmet India Limited	9.09

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13] Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs.[14] Rebuttal briefs must be limited to issues raised in the case briefs.[15] Parties who submit case or rebuttal briefs are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[16]

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system.[17] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[18] Parties should confirm by telephone the date, time, and location of the hearing. Issues addressed at the hearing will be limited to those raised in the briefs.[19] All briefs and hearing requests must be filed electronically and received successfully in their entirety through ACCESS by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after publication of these preliminary results.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: August 3, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Partial Rescission of Administrative Review
4. Scope of the Order
5. Subsidies Valuation Information
6. Analysis of Programs
7. Recommendation

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[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l).

[15] *See* 19 CFR 351.309(d)(2).

[16] *See* 19 CFR 351.309(c)(2) and (d)(2).

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310.

[19] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–856]

Certain Corrosion-Resistant Steel Products From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Paul Stolz, Shanah Lee, or Emily Halle, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4474, (202) 482–6386, and (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty (AD) order on certain corrosion-resistant steel products (CORE) from Taiwan.[1] The period of review (POR) is June 2, 2016, through June 30, 2017. We initially selected two companies, Sheng Yu Steel Co., Ltd. (SYSCO), and the previously collapsed Prosperity Tieh Enterprise Co., Ltd. (Prosperity), Yieh Phui Enterprise Co., Ltd. (YP), and Synn Industrial Co., Ltd. (Synn) entity (collectively, YP/Synn/Prosperity entity), for individual examination.[2] For a complete

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 82 FR 42974 (September 13, 2017) (*Initiation Notice*).

[2] In the less-than-fair-value (LTFV) investigation of the AD order, we collapsed YP with its affiliate Synn and treated YP/Synn as a single entity in that proceeding. *See Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part,* 81 FR 35313 (June 2, 2016) and accompanying Issues and Decision Memorandum (IDM) (*Taiwan CORE LTFV Final*); unchanged in *Certain Corrosion-Resistant Steel Products from India, Italy, the*

Continued

description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3] A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice.

Partial Rescission of Administrative Review

We initiated the instant review on eight companies (including companies collapsed and collectively treated as a single entity in the LTFV investigation).[4] Pursuant to 19 CFR 351.213(d)(1), we will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because all relevant parties timely withdrew their requests for review of certain companies listed in the *Initiation Notice,* we are rescinding the administrative review with respect to the following three companies: Great Grandeul Steel Co., Ltd., Meng Sin Material Co., Ltd., and Xxentria Technology Materials Co., Ltd. Accordingly, the remaining companies subject to the instant review are Prosperity, YP/Synn,[5] SYSCO, and Chung Hung Steel Corporation.

Scope of the Order [6]

The product covered by the order is flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The subject merchandise is currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000. The products subject to the orders may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1) and (2) of Tariff Act of 1930, as amended (the Act). Export and constructed export price were calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

We preliminarily determine the following weighted-average dumping margins exist for the POR:

Exporter/producer	Weighted-average dumping margin (percent)
Chung Hung Steel Corporation	[7] 2.52
Prosperity Tieh Enterprise Co., Ltd	3.04
Yieh Phui Enterprise Co., Ltd. and Synn Industrial Co., Ltd	1.31
Sheng Yu Steel Co. Ltd	4.89

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.

If the weighted-average dumping margin for the mandatory respondents (*i.e.,* SYSCO, Prosperity, and YP/Synn) is not zero or *de minimis* (*i.e.,* less than 0.5 percent), we will calculate importer-specific *ad valorem* AD assessment rates based on the ratio of the total amount of dumping calculated for the importers examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[8] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.5 percent). Where

People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders, 82 FR 48390 (July 25, 2016) (*Order*). No party challenged the underlying collapsing finding with respect to YP and Synn in the instant review and, as such, we preliminarily determine to collapse YP with its affiliate Synn and thus continue to collapse YP and Synn as a single entity for the purposes of this proceeding. For a further discussion of the affiliation and collapsing determinations, *see* memorandum, ''Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Affiliation and Collapsing Memorandum for Yieh Phui Enterprise Co., Ltd. and Synn Industrial Co., Ltd.,'' dated concurrently with this memorandum (Affiliation-Collapsing Memo). Also, in the LTFV investigation, we collapsed Prosperity with Synn, and thereby collapsed Prosperity, Synn, and YP into a single entity, called the YP/Synn/Prosperity entity. *See Taiwan CORE LTFV Final.* This determination was challenged by respondent parties in the investigation and is subject to pending litigation in that proceeding. As discussed in greater detail in the Affiliation-Collapsing Memo, we find that the facts on the instant record do not support a finding that Prosperity, YP, and Synn be treated as a single entity for the purposes of this administrative review. However, we preliminarily determine to continue to collapse YP and Synn into the YP/Synn entity. Therefore, though only two respondents were selected for individual examination at the outset of the instant review, as a result of the preliminary affiliation/collapsing determination, Commerce is effectively reviewing three respondents, YP/Synn, SYSCO, and Prosperity for individual examination.

[3] *See* memorandum, ''Decision Memorandum for the Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Products from Taiwan, 2016–2017,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Initiation Notice.*

[5] As described above, YP and Synn are treated as a single entity for purposes of these preliminary results. *See* Affiliation-Collapsing Memo.

[6] For the full text of the scope of the order, *see* the Preliminary Decision Memorandum.

[7] This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[8] In these preliminary results, Commerce applied the assessment rate calculation method adopted in Antidumping Proceedings: *See Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review where applicable.

For the companies which were not selected for individual review (*i.e.,* Chung Hung), we will assign an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for mandatory review (*i.e.,* SYSCO, Prosperity, and YP/Synn), excluding any which are *de minimis* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate of 10.34 percent if there is no rate for the intermediate company(ies) involved in the transaction.[10] We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of CORE from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication provided by section 751(a)(2) of the Act: (1) The cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review except if the ultimate rates are *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 10.34 percent, the all-others rate established in the antidumping investigation.[11] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[12] Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[13] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with the argument: (1) A statement of the issue, (2) a summary of the argument, and (3) a table of authorities.[14] All briefs must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of publication of this notice.[15] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[16] Parties should confirm by telephone the date, time, and location of the hearing.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, within 120 days after issuance of these preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of review is are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: August 3, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

[FR Doc. 2018–17172 Filed 8–9–18; 8:45 am]

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[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Order.*

[11] *Id.*

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(d).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.310(c).

[16] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2015–2016

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

SUMMARY: The Department of Commerce (Commerce) is amending its final results of the administrative review of the antidumping duty (AD) order on welded line pipe from the Republic of Korea to correct a ministerial error in the calculation of the weighted-average dumping margin of SeAH Steel Corporation (SeAH). Correction of the error results in revised margins for SeAH and the companies not selected for individual examination. Finally, in correcting this error, we also discovered an error in the assessment rates calculated for Hyundai Steel Company (Hyundai Steel), which did not affect Hyundai Steel's final dumping margin. The amended final dumping margins are listed below in the section entitled, ''Amended Final Results.''

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4952, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2018, Commerce published the *Final Results* of the 2015–2016 administrative review in the **Federal Register**.[1] Subsequently, SeAH Steel Corporation (SeAH), one of two companies selected for individual examination, alleged that Commerce made a ministerial error related to the application of weighted-average further manufacturing costs to the appropriate U.S. sales.[2] On July 23, 2018, Maverick Tube Corporation (Maverick) submitted comments in response to SeAH's ministerial error allegation.[3]

Scope of the Order

The merchandise subject to the order is welded line pipe.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Ministerial Error

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines ''ministerial errors'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.''[5] SeAH alleges that we made a ministerial error in our calculation of its margin by incorrectly assigning the control number (CONNUM)-specific weighted-average further manufacturing costs to all of SeAH's U.S. sales of that CONNUM, rather than only those sales of that CONNUM that underwent further processing in the United States.[6] After analyzing the comments of interested parties, we find that we made a ministerial error in the *Final Results,* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f), with respect to SeAH's further manufacturing costs for its U.S. sales.[7] Correction of this error in SeAH's final margin program results in a revised weighted-average dumping margin for the company. Furthermore, we are revising the review-specific average rate applicable to the 22 companies not selected for individual examination in this administrative review. For a detailed discussion and analysis of the ministerial error, *see* the Ministerial Error Memorandum.

Finally, in correcting this error, we also discovered an error in the assessment rates calculated for Hyundai Steel. This error did not affect the final dumping margin calculated for Hyundai Steel.[8]

Amended Final Results of the Review

As a result of correcting the ministerial error decribed above, we determine that the weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Hyundai Steel Company/Hyundai HYSCO[9]	18.77[10]
SeAH Steel Corporation[11]	14.39

Review-Specific Average Rate Applicable to the Following Companies:[12]

Exporter/producer	Weighted-average dumping margin (percent)
AJU BESTEEL CO., Ltd	16.58
Daewoo International Corporation	16.58
Dong Yang Steel Pipe	16.58
Dongbu Incheon Steel Co	16.58
Dongbu Steel Co., Ltd	16.58

[1] *See Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015–2016,* 83 FR 33919 (July 18, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[2] *See* SeAH's Letter, ''Administrative Review of the Antidumping Order on Welded Line Pipe from Korea—Comments on Ministerial Error in Final Determination,'' dated July 18, 2018 (SeAH Ministerial Error Allegation).

[3] *See* Maverick's letter, ''Welded Line Pipe from the Republic of Korea: Maverick's Reply to SeAH's Ministerial Error Comments,'' dated July 23, 2018.

[4] For a complete description of the scope of the order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2015–2016 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' dated January 2, 2018.

[5] *See also* 19 CFR 351.224(f).

[6] *See* SeAH Ministerial Error Allegation.

[7] *See* Memorandum, ''Welded Line Pipe from Korea: 2015–2016 Administrative Review of the Antidumping Duty Order—Ministerial Error Allegation,'' dated concurrently with this notice (Ministerial Error Memorandum).

[8] *See* ''Calculations for Hyundai Steel Company for the Amended Final Results,'' dated concurrently with this notice.

[9] As discussed in *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value,* 80 FR 61366 (October 13, 2015), and accompanying IDM at 1, Hyundai HYSCO merged with Hyundai Steel subsequent to the period of investigation and Hyundai HYSCO no longer exists. Accordingly, our examination of Hyundai Steel includes entries made by Hyundai HYSCO prior to the date of the merger.

[10] This is the rate we calculated for Hyundai Steel in the *Final Results.*

[11] We incorrectly referred to SeAH as ''SeAH Steel Company'' in our *Final Results.* However, SeAH's correct full name is SeAH Steel Corporation.

[12] This rate is based on the simple average margin for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Ministerial Error Memorandum, and Memorandum, ''Calculations for SeAH Steel Corporation for the Amended Final Results,'' dated concurrently with the Ministerial Error Memorandum.

Exporter/producer	Weighted-average dumping margin (percent)
Dongkuk Steel Mill	16.58
EEW Korea Co, Ltd	16.58
HISTEEL Co., Ltd	16.58
Husteel Co., Ltd	16.58
Keonwood Metals Co., Ltd	16.58
Kolon Global Corp	16.58
Korea Cast Iron Pipe Ind. Co., Ltd	16.58
Miju Steel MFG Co., Ltd	16.58
MSTEEL Co., Ltd	16.58
NEXTEEL Co., Ltd	16.58
Poongsan Valinox (Valtimet Division)	16.58
POSCO	16.58
Sam Kang M&T Co., Ltd	16.58
Sin Sung Metal Co., Ltd	16.58
Soon-Hong Trading Company	16.58
Steel Flower Co., Ltd	16.58
TGS Pipe	16.58

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review.

Pursuant to 19 CFR 351.212(b)(1), where Hyundai Steel and SeAH reported the entered value of their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where Hyundai Steel did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [13] of the cash deposit rates calculated for Hyundai Steel and SeAH. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the amended final results of this review and for future deposits of estimated duties, where applicable.[14]

We intend to issue liquidation instructions to CBP for Hyundai Steel, SeAH, and the companies subject to the review-specific average rate 15 days after publication of these amended final results of this administrative review.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after July 18, 2018, the date of publication date of the *Final Results,* as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[15] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

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

These amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: August 6, 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. 2018–17164 Filed 8–9–18; 8:45 am]

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[13] This rate was calculated as discussed in footnote 11, above.

[14] *See* section 751(a)(2)(C) of the Act.

[15] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863]

Certain Corrosion-Resistant Steel Products From India: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain corrosion-resistant steel products (CORE) from India are being, or are likely to be sold, at less than normal value during the period of review (POR), January 4, 2016, through June 30, 2017. We invite interested parties to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg or Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652 or (202) 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on CORE from India in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).[1] The review covers one producer/exporter of the subject merchandise, JSW Steel Ltd. and JSW Steel Coated Products Limited (collectively, JSW). During the investigation, Commerce found JSW to be a single entity and, because there were no changes to the facts that supported that determination, we continue to find that these companies are a part of a single entity for this administrative review.[2] Interested parties are invited to comment on these preliminary results.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[3] On March 12, 2018, Commerce postponed the preliminary results of this review until August 3, 2018.[4]

Scope of the Order

The products covered by this order are CORE from India. For a full description of the scope, see the Preliminary Decision Memorandum dated concurrently with and hereby adopted by this notice.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

We preliminarily determine that, for the period of January 4, 2016, through June 30, 2017, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
JSW Steel Ltd./JSW Coated Products Limited	15.33

Disclosure and Public Comment

We intend to disclose the calculations performed to parties within five days after public announcement of the preliminary results. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If JSW's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* antidumping duty assessment rate based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If JSW's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by JSW for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for JSW will be the rate established in the final results

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[1] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*).

[2] *Id.* at 48393.

[3] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''*Deadlines Affected by the Shutdown of the Federal Government*'' (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

[4] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 12, 2018.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Steel Products from India; 2016–2017,'' dated concurrently with this notice (Preliminary Decision Memorandum).

of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.00 percent, the all-others rate established in the investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of the antidumping duties reimbursement.

The preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and sections 19 CFR 351.213(h)(1) and 351.221(b)(4).

Dated: August 3, 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17160 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that Ghigi 1870 S.p.A. (previously known as Ghigi lndustria Agroalimentare Srl) (Ghigi) and Pasta Zara S.p.A. (Pasta Zara) (collectively Ghigi/Zara) made sales of subject merchandise at less than normal value during the period of review (POR) and that Industria Alimentare Colavita S.p.A. (Indalco) did not. We invite interested parties to comment on these preliminary results.

DATES: Effective Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1168 or (202) 482–1167, respectively.

Background

Commerce is conducting an administrative review of the antidumping duty order on certain pasta (pasta) from Italy. The period of review (POR) is July 1, 2016, through June 30, 2017.

Scope of the Order

The merchandise subject to the *Order*[1] is certain pasta from Italy and is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[2]

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price or export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary results, *see* Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B–8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

Preliminary Results of the Review

As a result of this review, we calculated a weighted-average dumping margin of 5.97 percent for Ghigi/Zara and a *de minimis* margin for Indalco for the period July 1, 2016, through June 30, 2017. Therefore, in accordance with section 735(c)(5)(A) of the Act, we assigned the weighted-average dumping margin of 5.97 percent calculated for Ghigi/Zara to the seven non-selected companies in these preliminary results, as referenced below.

[6] *See Order.*

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta from Italy,* 61 FR 38547 (July 24, 1996) (*AD Order*).

[2] *See* the ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Pasta from Italy; 2016–2017,'' dated concurrently and hereby adopted by this notice (Preliminary Decision Memorandum).

Producer and/or exporter	Weighted-average dumping margin (percent)
Ghigi 1870 S.p.A. and Pasta Zara S.p.A. (Zara) (collectively Ghigi/Zara) [3]	5.97
Industria Alimentare Colavita S.p.A. (Indalco)	0.00
Agritalia S.r.L. (Agritalia)	5.97
Alessio, Panarese Soceieta Agricola (Alessio)	5.97
Antico Pastificio Morelli 1860 S.r.l. (Antico)	5.97
Colussi SpA (Colussi)	5.97
Liguori Pastificio dal 1820 S.p.A. (Liguori)	5.97
Pastificio Menucci SpA (Menucci)	5.97
Tesa SrL (Tesa)	5.97

Disclosure

We intend to disclosethe calculations performed to parties in this proceeding within five days after public announcement of the preliminary results.[4]

Public Comment

Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance. All documents must be filed electronically using ACCESS, which is available to registered users at *http://acess.trade.gov.* An electronically filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[7] Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.

We intend to issue the final results of this administrative review, including the results of our analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rate

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If the weighted-average dumping margin for Ghigi/Zara or Indalco is above *de minimis* (*i.e.,* more than 0.5 percent) in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of sales in accordance with 19 CFR 351.212(b)(1).[8] If the weighted-average dumping margin for Ghigi/Zara or Indalco is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of their entries in accordance with the *Final Modification for Reviews.*[9]

For entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 15.45 percent, the all-others rate established in the antidumping investigation as modified by the section 129 determination.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review

[3] *See* Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2015–2016, 82 FR 57428, December 5, 2017, and the accompanying Issues and Decision Memorandum at comment 3.

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(d).

[6] *See* 19 CFR 351.309(c)(2) and (d)(2) and 19 CFR 351.303 (for general filing requirements).

[7] *See* 19 CFR 351.310(c).

[8] In these preliminary results, we applied the assessment rate calculation method adopted 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) (*Final Modification for Reviews*).

[9] *See Final Modification for Reviews,* 77 FR at 8102.

[10] *See Implementation of the Findings of the WTO Panel in US—Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders,* 72 FR 25261 (May 4, 2007).

period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1).

Dated: August 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.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17047 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Taiwan. The period of review (POR) is July 1, 2016, through June 30, 2017. We preliminarily determine that Nan Ya Plastics Corporation (Nan Ya) did not make sales below normal value (NV) and that Shinkong Materials Technology Corporation (SMTC) had no shipments during the POR. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 10, 2018.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith at (202) 482–5255, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is PET Film. The PET Film subject to the order is currently classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States.[1]

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information and information provided by SMTC and its affiliate, Shinkong Synthetic Fibers Corp. (SSFC), we preliminarily determine that SMTC had no shipments of the subject merchandise during the POR.

Methodology

Commerce is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit in Room B8024 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin for the period July 1, 2016, through June 30, 2017.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Nan Ya Plastics Corporation	0.00

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the preliminary results in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[2] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[3]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, must submit a written request to the Acting Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and

[1] A full description of the scope of the order is contained in the memorandum, ''Decision Memorandum for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan; 2016–2017'' (Preliminary Decision Memorandum), which is hereby adopted by this notice.

[2] *See* 19 CFR 351.309(d).

[3] *See* 19 CFR 351.303 (for general filing requirements).

telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. If a respondent's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate importer-specific *ad valorem* assessment rates on the basis of the ratio of the total amount of dumping calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce clarified its ''automatic assessment'' regulation on May 6, 2003.[4] This clarification applies to entries of subject merchandise during the POR produced by a respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of PET Film from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company under review will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters is 2.40 percent.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: August 3, 2018.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2018–17179 Filed 8–9–18; 8:45 am]

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[4] For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[5] *See PET Film from Taiwan Amended Final Determination.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable August 10, 2018.

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.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://access.trade.gov* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

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 place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 30 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments five days after the deadline for the initial comments.

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 has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* 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 this 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 (*e.g.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this 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 the Quantity and Value (Q&V) 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 this proceeding where Commerce considered collapsing that entity, complete Q&V 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 has requested 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.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to Commerce no later than 30 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status *unless* they respond to all parts of the questionnaire as mandatory respondents.

[2] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[3] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2019.

	Period to be reviewed
Antidumping Duty Proceedings	
BELGIUM: Carbon and Alloy Steel Cut-To-Length Plate,[4] A–423–812	11/14/16–4/30/18
Hengelhoef Concrete Joints NV	
GERMANY: Carbon and Alloy Steel Cut-To-Length Plate,[5] A–428–844	11/14/16–4/30/18
Ilsenburger Grobblech GmbH	
Rudolf Rafflenbeul Stahlwarenfabrik GmbH & Co.	
Salzgitter Flachstahl GmbH	
VDM Metals GmbH[6]	
VDM Metals International GmbH[7]	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate,[8] A–580–887	11/14/16–4/30/18
Hyundai Steel Company	
SPAIN: Finished Carbon Steel Flanges, A–469–815	2/8/17–5/31/18
Ateaciones De Metales Sinterizados S.A.	
Central Y Almacenes	
Grupo Cunado	
Transglory S.A.	
Tubacero, S.L.	
ULMA Forja, S.Coop	
SPAIN: Chlorinated Isocyanurates, A–469–814	6/1/17–5/31/18
Ercros, S.A. of Spain	
THE PEOPLE'S REPUBLIC OF CHINA: Aluminum Extrusions,[9] A–570–967	5/1/17–4/30/18
Asia Alum Group	
Atlas Integrated Manufacturing Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Chlorinated Isocyanurates, A–570–898	6/1/17–5/31/18
Heze Huayi Chemical Co., Ltd.	
Juancheng Kangtai Chemical Co. Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Staple Fiber, A–570–905	6/1/17–5/31/18
Yangzhou Tinfulong New Technology Fiber Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Silicon Metal, A–570–806	6/1/17–5/31/18
Yunnan Fu yang Trade Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings, A–570–601	6/1/17–5/31/18
Changshan Peer Bearing Co., Ltd.	
CNH Industrial Italia SpA	
GGB Bearing Technology (Suzhou) Co., Ltd.	
GSP Automotive Group Wenzhou Co., Ltd.	
Hangzhou Hanji Auto Parts Co., Ltd.	
Hangzhou Radical Energy-Saving Technology Co., Ltd.	
Hangzhou Xiaoshan Dingli Machinery Co., Ltd.	
Ningbo Xinglun Bearings Import & Export Co., Ltd.	
Shandong Aokai Bearing Co., Ltd.	
Shanghai General Bearing Co., Ltd.	
Taizhou Zson Bearing Technology Co., Ltd.	
Zhejiang Jingle Bearing Technology Co., Ltd.	
Zhejiang Machinery Import & Export Corp.	
Zhejiang Zhaofeng Mechanical and Electronic Co., Ltd.	
Countervailing Duty Proceedings	
REPUBLIC OF KOREA: Carbon and Alloy Steel Cut-To-Length Plate,[10] C–580–888	4/4/17–12/31/17
THE PEOPLE'S REPUBLIC OF CHINA: High Pressure Steel Cylinders, C–570–978	1/1/17–12/31/17
Beijing Tianhai Industry Co., Ltd.	
Langfang Tianhai High Pressure Container Co., Ltd.	
Tianjin Tianhai High Pressure Container Co., Ltd.	

Suspension Agreements

None.

[4] The name of the company listed above was misspelled in the initiation notice that published on July 12, 2018 (83 FR 32270). The correct spelling of the company name is listed in this notice.

[5] The companies listed above were misspelled in the initiation notice that published on July 12, 2018 (83 FR 32270). The correct spelling of these companies names are listed in this notice.

[6] The company listed above was inadvertently omitted from the initiation notice that published on July 12, 2018 (83 FR 32270).

[7] The company listed above was inadvertently omitted from the initiation notice that published on July 12, 2018 (83 FR 32270).

[8] The name of the company listed above was misspelled in the initiation notice that published on July 12, 2018 (83 FR 32270). The correct spelling of the company name is listed in this notice.

[9] Commerce inadvertently listed two companies as one in the initiation notice that published on July 12, 2018 (83 FR 32270). The companies listed above are individual companies.

[10] In the initiation notice that published on July 12, 2018 (83 FR 32270), the period of review for the referenced case was incorrect. The period listed above is the correct period of review for this case.

Duty Absorption Reviews

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30

days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Gap Period Liquidation

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 POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the final rule, available at *http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt,* prior to submitting factual information in this segment.

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[11] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives. All segments of any antidumping duty or countervailing duty proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule.*[12] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable revised certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by the Secretary. *See* 19 CFR 351.302. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) Case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning U.S. Customs and Border Protection data; and (5) quantity and value questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013. Please review the final rule, available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are, in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 6, 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. 2018–17162 Filed 8–9–18; 8:45 am]

BILLING CODE 3510–DS–P

[11] *See* section 782(b) of the Act.

[12] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–817]

Ripe Olives From Spain: Notice of Correction to Antidumping Duty Order

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

DATES: Applicable August 1, 2018.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen or Peter Zukowski, AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2018, the Department of Commerce (Commerce) published the *Antidumping Duty Order* on ripe olives from Spain.[1] In the *Antidumping Duty Order,* Commerce made typographical errors with respect to the estimated weighted-average dumping margin and cash deposit rate for Aceitunas

[1] *See Ripe Olives from Spain: Antidumping Duty Order,* 83 FR 37465 (August 1, 2018) (*Antidumping Duty Order*).

Guadalquivir S.L. (AG). Specifically, Commerce listed AG's estimated weighted-average dumping margin as 17.45 percent and AG's cash deposit rate as 17.46 percent.

Correction

Commerce has corrected AG's weighted-average antidumping duty margin percentage to 17.46 percent and AG's cash deposit rate to 17.45 percent. The weighted-average antidumping duty margin percentages and cash deposit rates remain unchanged from the *Antidumping Duty Order* for all other companies. The weighted-average antidumping duty margin percentages and cash deposit rates are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (percent) [2]
Aceitunas Guadalquivir S.L	17.46	17.45
Agro Sevilla Aceitunas S.COOP Andalusia	25.50	25.39
Angel Camacho Alimentacion S.L	16.88	16.83
All-Others	20.04	19.98

[2] The cash deposit rate is equal to the calculated estimated weighted-average dumping margin adjusted for the appropriate subsidy offset(s).

This correction to the *Antidumping Duty Order* is published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: August 7, 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. 2018–17202 Filed 8–9–18; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG170

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Northwest Atlantic Ocean

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to USGS to incidentally harass, by Level B harassment only, marine mammals during geophysical survey activities associated with a the USGS's Mid-Atlantic Resource Imaging Experiment (MATRIX) survey project in the Northwest Atlantic Ocean.

DATES: This Authorization is effective from August 1, 2018 to July 31, 2019.

FOR FURTHER INFORMATION CONTACT: Jonathan Molineaux, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

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).

Summary of Request

On March 20, 2018, NMFS received a request from USGS for an IHA to take marine mammals incidental to a marine geophysical survey in the northwest Atlantic Ocean. On April 11, 2018, we deemed USGS's application for authorization to be adequate and complete. USGS requests to take small numbers of 29 species of marine mammals by Level B harassment only during the survey. Neither USGS nor NMFS expects serious injury or mortality to result from this activity; and, therefore, an IHA is appropriate.

Description of Activity

The USGS will conduct a seismic survey aboard the *R/V Hugh R. Sharp,* a University National Oceanographic Laboratory (UNOLS) Federal fleet vessel that is owned and operated by the University of Delaware, during a cruise up to 22 days long on the northern U.S. Atlantic margin in August 2018. The seismic survey will take place in water depths ranging from ~100 meters (m) to 3,500 m, entirely within the U.S.

Exclusive Economic Zone (EEZ), and acquire ~6 dip lines (roughly perpendicular to the orientation of the shelf-break) and ~3 strike lines (roughly parallel to the shelf-break) between about 35 nautical miles (nmi) south of Hudson Canyon on the north and Cape Hatteras on the south. In addition, multichannel seismic (MCS) data will be acquired along some linking/transit/interseismic lines between the main survey lines. Total data acquisition could be up to ~2,400 kilometers (km) of trackline.

The purpose of the MATRIX survey is to collect data to constrain the lateral and vertical distribution of gas hydrates and shallow natural gas in marine sediments relative to seafloor gas seeps, slope failures, and geological and erosional features.

The seismic survey's airgun operations are scheduled to occur for up to 19 days during a cruise that may be as long as 22 days, departing port on August 8, 2018. Some minor deviation from these dates is possible, depending on logistics and weather.

The survey will involve only one source vessel, the *R/V Hugh R. Sharp*. The source vessel will deploy two to four low-energy Generator-Injector (GI) airguns (each with a discharge volume of 105 cubic inches (in^3)) as an energy source. The GI guns could sometimes be fired in a mode that gives them a discharge volume of 210 in^3 each, but only at water depths greater than 1000 m (See description of Optimal Survey below for more details).

The Optimal Survey (GG mode) (See Table 1) for the Proposed Action would acquire the portion of the solid lines in Figure 1 of the IHA application at water depths greater than 1000 m using the GI-guns in ''GG'' mode. In this mode, the four GI guns would produce a total of 840 in^3 of air and sonobuoys would be deployed to passively record data at long distances. When shooting to sonobuoys while in GG mode, the GI guns will be operated with both chambers releasing air simultaneously (*i.e.,* ''generator-generator'' or ''GG'' mode). The rest of the survey, including the portion shallower than 1000 m water depth on the uppermost slope and the interseismic linking lines (dashed lines in Figure 1), would be acquired with four GI guns operated in normal mode (also called GI mode), producing a total of 420 in^3 of air.

The Base Survey (GI mode) (See Table 1) assumes that all of the solid lines in Figure 1, as well as all of the interseismic connecting lines, would be acquired using four GI guns operating in normal mode (GI mode), producing a total air volume of 420 in^3. Only a maximum of half of the interseismic linking lines (dashed lines in Figure 1) would be acquired. These lines are longer and geometrically more complex at the deepwater side than near the shelf-break.

TABLE 1—GENERAL CHARACTERISTICS OF EXEMPLARY SURVEY SCENARIOS FOR THE PROPOSED ACTION

	GI mode (4×105 in^3)		GG mode (4×210 in^3)	
	Depth and line type	Track line distance (km)	Depth and line type	Track line distance
Optimal Survey ..	100–1,000 m water depth on exemplary lines *and* 50% of interseismic, linking lines.	~750	Greater than 1,000 m on exemplary lines ...	~1,600
Base Survey	Exemplary lines plus 50% of interseismic, linking lines.	2,350	.....	.....

During the cruise, the USGS would continuously use an echosounder (EK60/EK80) with 38 kHz transducer at water depths less than ~1,800 m to locate water column anomalies associated with seafloor seeps emitting gas bubbles. The 38 kHz transducer would be mounted in the *R/V Sharp's* retractable keel and would typically ping 0.5 to 2 Hz with pings of 0.256 to 1.024 millisecond (m/s) duration. The returned signals would be detected on an EK60 or EK80 (broadband) transceiver. Based on past USGS experience with this instrument, it is unlikely to acquire useful data at water depths greater than 1,800 m, although it could be used in passive mode at these depths to record broadband ambient signals in the water column.

A more detailed description of USGS's MATRIX survey is provided in the **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

NMFS published a notice of proposed IHA in the **Federal Register** on May 31, 2018 (83 FR 25268). During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). NMFS has posted the comments online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities*. The following is a summary of the public comments and NMFS' responses.

Comment 1: After review of the **Federal Register** notice of the proposed IHA (83 FR 25268; May 31, 2018) and IHA application for the USGS MATRIX survey, the Commission inferred that the modeling used by USGS (Lamont-Doherty Earth Observatory (LDEO)'s Nucleus Model) to predict Level A and Level B harassment zones applied radial distances (*i.e.,* slant ranges) and radii indiscriminately. The Commission states that radial distances were used for metrics based on SEL_{cum} and SPL root-mean-square (SPL_{rms}), and radii were used for metrics based on SPL_{peak}, which would yield smaller zones. As a result, the Commission recommends that NMFS require USGS to specify why LDEO's Nucleus Model is using radial distances for sound exposure level (SEL_{cum}) and sound pressure level (SPL_{rms}) metrics and radii for peak sound pressure (SPL_{peak}) metrics.

Response: NMFS appreciates the Commission's request for USGS to explain the specific methodology LDEO's Nucleus Model uses to determine harassment zones. After consulting with LDEO, USGS has clarified that two different methods for estimating distance are not being used. In order to calculate harassment zones, LDEO uses the maximum radial distance at depth which it vertically projects from that radial distance back to the surface. This provides a horizontal radius from the source.

Comment 2: The Commission recommends NMFS provide

justification for why it believes that LDEO's use of the Nucleus source model, which does not provide data above 2.5 kHz, is appropriate for determining the extents of the Level A harassment zones for mid-frequency and high-frequency cetaceans.

Response: Few broadband calibration studies are available to support the modeling of airgun spectra above 3 kHz (*e.g.,* Tolstoy et al. 2004; Breitzke et al. 2008; Tolstoy et al. 2009). Measurements available indicate that most of the sound produced by airguns is below 1 kHz (*i.e.,* spectral levels drop off continuously above 1 kHz).

Despite JASCO's AASM model predicting acoustic signatures of seismic airgun arrays up to 25 kHz, often their transmission loss calculations do not directly use these data to account for frequencies above 5 kHz because it is computationally intensive (Zeddies et al. 2015). While NMFS agrees that the spectral levels above 3 kHz should not necessarily be assumed zero, better data are needed to evaluate if and how airguns at these frequencies are significantly contributing to noise-induced hearing loss for these two marine mammal hearing groups.

For both MF and HF cetaceans, the TTS onset impulsive thresholds NMFS currently relies upon are derived directly from individual exposed to seismic sources (Finneran et al. 2002; Lucke et al. 2009). A more recent TTS study on harbor porpoises exposed to multiple airgun shots further supports the current TTS onset thresholds used to evaluate impulsive sources (Kastelein et al. 2017).

The available TTS onset data do not indicate that airguns are contributing significantly to noise-induced hearing loss at higher frequencies in these two hearing groups. Specifically, Lucke et al. (2009) measured harbor porpoise hearing at 4, 32, and 100 kHz after exposure to a single airgun shot, with TTS onset only occurring at 4 kHz. Similarly, Kastelein et al. (2017) measured a ~4.4 dB threshold shift only at 4 kHz, with hearing tested up to 8 kHz, for a harbor porpoise exposed to multiple airgun shots. Finally, Finneran et al. (2015) exposed bottlenose dolphins to multiple airgun shots and measured hearing thresholds up to 64 kHz, without measurable TTS onset observed. All these studies had measurements demonstrating spectral levels above 3 kHz for their airgun sources. For these reasons, NMFS believes that LDEO's use of the Nucleus source model is appropriate. NMFS appreciates the Commission's interest in this matter and will continue to evaluate the available information regarding spectral levels of airgun signals above 3 kHz.

Comment 3. The Commission recommends that NMFS require USGS, in collaboration with LDEO, to re-estimate the proposed Level A and B harassment zones and associated takes of marine mammals using (1) both operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics at a minimum) parameters, (2) a comprehensive source model (*e.g.,* Gundalf Optimizer or AASM) and (3) an appropriate sound propagation model. Specifically, the Commission reiterates its belief that LDEO should be using the ray-tracing sound propagation model BELLHOP rather than the MATLAB code currently in use.

Response: USGS's application (USGS, 2018) and the **Federal Register** notice of the proposed IHA (83 FR 25268; May 31, 2018) describe the applicant's approach to modeling Level A and Level B harassment zones. The model LDEO currently uses does not allow for the consideration of site-specific environmental parameters as recommended by the Commission.

In summary, LDEO acquired field measurements for several array configurations at shallow, intermediate, and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, LDEO developed a sound propagation modeling approach that predicts received sound levels as a function of distance from a particular airgun array configuration in deep water. For this survey, LDEO modeled Level A and Level B harassment zones based on the empirically-derived measurements from the Gulf of Mexico calibration survey (Appendix H of NSF–USGS 2011). LDEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 m (Figure 2 and 3 in Appendix H of NSF–USGS 2011).

In 2015, LDEO explored the question of whether the Gulf of Mexico calibration data described above adequately informs the model to predict harassment isopleths in other areas by conducting a retrospective sound power analysis of one of the lines acquired during LDEO's seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented a comparison of the predicted radii (*i.e.,* modeled exclusion zones) with radii based on in situ measurements (*i.e.,* the upper bound [95th percentile] of the cross-line prediction) in a previous notice of an IHA issued for LDEO (see 80 FR 27635, May 14, 2015, Table 1). Briefly, the analysis presented in Crone (2015), specific to the survey site offshore New Jersey, confirmed that in-situ, site-specific measurements and estimates of 160 decibel (dB) and 180 dB isopleths collected by the hydrophone streamer of the *R/V Marcus Langseth* in shallow water were smaller than the modeled (*i.e.,* predicted) zones for two seismic surveys conducted offshore New Jersey in shallow water in 2014 and 2015. In that particular case, Crone's (2015) results showed that LDEO's modeled 180 dB and 160 dB zones were approximately 28 percent and 33 percent larger respectively, than the in-situ, site-specific measurements, thus confirming that LDEO's model was conservative in that case.

The following is a summary of two additional analyses of in-situ data that support LDEO's use of the modeled Level A and Level B harassment zones in this particular case. In 2010, LDEO assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements acquired in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted harassment radii curve for deep water (*i.e.,* greater than 1,000 m; 3,280.8 ft) (Diebold *et al.,* 2010). In 2012, LDEO used a similar process to model distances to isopleths corresponding to Level A and Level B harassment thresholds for a shallow-water seismic survey in the northeast Pacific Ocean off Washington State. LDEO conducted the shallow-water survey using a 6,600 in^3 airgun configuration aboard the *R/V Marcus Langseth* and recorded the received sound levels on both the shelf and slope using the *Langseth's* 8 km hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and confirmed that in-situ, site specific measurements and estimates of the 160 dB and 180 dB isopleths collected by the *Langseth's* hydrophone streamer in shallow water were two to three times smaller than LDEO's modeling approach had predicted. While the results confirmed the role of bathymetry in sound propagation, Crone *et al.* (2014) were also able to confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform LDEO's modeling approach for the planned surveys in the northwest Atlantic

Ocean) overestimated the size of the exclusion and buffer zones for the shallow-water 2012 survey off Washington State and were thus precautionary, in that particular case.

NMFS continues to work with LDEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. However, LDEO's current modeling approach (supported by the three studies discussed previously) represents the best available information for NMFS to reach determinations for this IHA. As described earlier, the comparisons of LDEO's model results and the field data collected at multiple locations (*i.e.,* the Gulf of Mexico, offshore Washington State, and offshore New Jersey) illustrate a degree of conservativeness built into LDEO's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors. Based upon the best available information (*i.e.,* the referenced studies, two of which are peer-reviewed, discussed in this response), NMFS finds that the Level A and Level B harassment zone calculations are reasonable and appropriate for use in this particular IHA.

LDEO has conveyed to NMFS that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research funds and other resources. Obtaining research funds is typically accomplished through a competitive process, including those submitted to U.S. Federal agencies. The use of models for calculating Level A and Level B harassment zones and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Further, NMFS does not provide specific guidance on model parameters nor prescribe a specific model for applicants as part of the MMPA incidental take authorization process at this time, although we do review methods to ensure that they are adequate for reasonable prediction of take. There is a level of variability not only with parameters in the models, but also the uncertainty associated with data used in models, and therefore, the quality of the model results submitted by applicants. NMFS considers this variability when evaluating applications and the take estimates and mitigation measures that the model informs. NMFS takes into consideration the model used, and its results, in determining the potential impacts to marine mammals; however, it is just one component of the analysis during the MMPA authorization process as NMFS also takes into consideration other factors associated with the activity (*e.g.,* geographic location, duration of activities, context, sound source intensity, etc.).

Comment 4: The Commission recommends that NMFS require USGS to archive, analyze, and compare the in-situ data collected by the sonobuoys and hydrophone streamer to LDEO's modeling results for the extents of the Level A and B harassment zones based on the various airgun configurations and water depths to be surveyed and provide the data and results to NMFS.

Response: NMFS will suggest that the USGS use its collected data to both analyze and compare with LDEO's modeling results and share with NMFS. However, NMFS does not deem it necessary to require USGS to use the in-situ data it collects from the sonobuoys and hydrophone streamer it deploys during its cruise. As stated in the response to *Comment 2,* NMFS continues to work with LDEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. Nevertheless, LDEO's Nucleus model has shown to be conservative when compared to in-situ, site specific measurements and estimates (Crone 2015). Therefore, NMFS asserts that the use of the Nucleus source model in its current state is appropriate.

Comment 5: The Commission recommends that NMFS ensure that USGS calculated the numbers of takes appropriately based on the line-kilometers to be surveyed in each of the 11 tracklines and the number of days it would take to survey each location, the associated ensonified areas, and site-specific densities—species-specific takes from each of the 11 locations should be summed to yield the total numbers of takes for each species.

Response: The number of days are factored into the take estimates. To calculate take, USGS used 10 km x 10 km density grid blocks taken from Roberts et al. (2016) which were intersected with two different buffer zones. One buffer is equivalent to the largest Level A harassment zone and the other is equal to both the largest Level A harassment zone and Level B harassment zone (for the Optimal Survey) combined. As a result, the modeling method derived a take total for each 10 km x 10 km block the R/V *Sharp* will survey. Take totals for each block were each added (rounded at the end) to come up with the take estimates for each species. Due to the short duration (a few hours at most) that the R/V *Sharp* will conduct seismic operations in each 10 km x 10 km survey block, the number of days (1 day per block) is factored into the take estimates.

Comment 6: The Commission recommends that NMFS require USGS to provide in all future applications all relevant information regarding line-kilometers to be surveyed and days necessary to survey each location based on a presumed survey speed, associated ensonified areas, site-specific densities, and any other assumptions (including the assumed 25-percent contingency).

Response: NMFS will continue to request as much information from applicants as necessary to determine if their take methodology is scientifically accurate. After NMFS's request, USGS provided NMFS and the Commission with more data to analyze the method used to estimate take during the survey. In reviewing these data with the density estimates provided in Roberts et al. (2016), NMFS determined that the methodology used for take calculation in the IHA application is appropriate. In all, USGS provided NMFS with enough information to effectively assess the generated take estimates. For future surveys, USGS will work to provide a technical guidance document that will better detail its take methodology using Geographic Information Systems (GIS) software.

Comment 7: The Commission recommends that NMFS share its rounding criteria.

Response: On June 27, 2018, NMFS provided the Commission with internal guidance on rounding and the consideration of additional factors in take estimation.

Comment 8: The Commission recommends that NMFS condition the authorization to limit USGS's use of the echosounder during transits to and from the survey area except during calibration. In addition, the Commission recommends NMFS advise USGS that it needs to obtain additional authorization to take marine mammals while using an echosounder to collect gas hydrate data during transits to and from the survey area.

Response: As stated in the IHA application, marine mammals would have to be either very close and remain near the sound source for many repeated pings to receive overall exposures sufficient to cause TTS onset (Lucke et al. 2009; Finneran and Schlundt 2010) from the fisheries echosounder. The echosounder used by USGS during the MATRIX survey will only transmit conically downward in a maximum 10 degree cone. Based on modeling by the U.S. Geological Survey, the area ensonified at greater than 160 dB re: 1 μPa (rms) is 0.0407 square kilometers (0.0119 square nautical

miles), corresponding to a maximum of approximately 72 meters (236.2 feet) athwartship and approximately 650 meters (2,132.6 feet) below the research vessel (See Figure 18 of USGS 2018). This, combined with the vessel strike avoidance measures stipulated in section 4(f) of the IHA for the USGS MATRIX survey allows NMFS to concur that the minimal use of a scientific echosounder during transits is not reasonably likely to result in the incidental taking of marine mammals pursuant to the MMPA.

Description of Marine Mammals in the Area of Specified Activities

A detailed description of the species likely to be affected by USGS's geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/topic/population-assessments/marine-mammals*) for generalized species accounts. All species that could potentially occur in the planned survey area are included in Table 2. However, density estimates in Roberts *et al.* (2016) present very low density estimates within the proposed action area during the month of August for north Atlantic right whale, harbor porpoise, minke whale, Bryde's whale, blue whale, and white-beaked dolphin (See Table 6 of IHA Application). This, in combination with the short length of the cruise and low level airguns provide reasonable evidence that take authorization is not necessary, nor should they be authorized for these species. Species with expected take are discussed below.

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [5]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) Family Balaenidae							
North Atlantic right whale	*Eubalaena glacialis*	Western North Atlantic (WNA).	E/D; Y	458 (n/a; 455; n/a)	334 (0.25)	1.4	36
Family Balaenopteridae (rorquals)							
Humpback whale	*Megaptera novaeangliae novaeangliae.*	Gulf of Maine	-; N	335 (.42; 239; 2012)	1,637 (0.07)	3.7	8.5
Minke whale	*Balaenoptera acutorostrata acutorostrata.*	Canadian East Coast	-; N	2,591 (0.81; 1,425; 2011)	2,112 (0.05)	14	9
Bryde's whale	*B. edeni brydei*	None defined [4]	-; n/a	n/a	7 (0.58)	n/a	n/a
Sei whale	*B. borealis borealis*	Nova Scotia	E/D; Y	357 (0.52; 236; 2011)	98 (0.25)	0.5	0.8
Fin whale	*B. physalus physalus*	WNA	E/D; Y	1,618 (0.33; 1,234; 2011)	4,633 (0.08)	2.5	2.65
Blue whale	*B. musculus musculus*	WNA	E/D; Y	Unknown (n/a; 440; n/a)	11 (0.41)	0.9	Unk
Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Physeteridae							
Sperm whale	*Physeter macrocephalus*	North Atlantic	E/D; Y	2,288 (0.28; 1,815; 2011)	5,353 (0.12)	3.6	0.8
Family Kogiidae							
Pygmy sperm whale	*Kogia breviceps*	WNA	-; N	3,785 (0.47; 2,598; 2011)	678 (0.23)	21	3.5
Dwarf sperm whale	*K. sima*	WNA	-; N				
Family Ziphiidae (beaked whales)							
Cuvier's beaked whale	*Ziphius cavirostris*	WNA	-; N	6,532 (0.32; 5,021; 2011)	14,491(0.17)	50	0.4
Gervais beaked whale	*Mesoplodon europaeus*	WNA	-; N	7,092 (0.54; 4,632; 2011)		46	0.2
Blainville's beaked whale	*M. densirostris*	WNA	-; N				
Sowerby's beaked whale	*M. bidens*	WNA	-; N				
True's beaked whale	*M. mirus*	WNA	-; N				
Northern bottlenose whale	*Hyperoodon ampullatus*	WNA	-; N	Unknown	90 (0.63)	Undet.	0
Family Delphinidae							
Rough-toothed dolphin	*Steno bredanensis*	WNA	-; N	271 (1.0; 134; 2011)	532 (0.36)	1.3	0
Common bottlenose dolphin.	*Tursiops truncatus truncatus.*	WNA Offshore	-; N	77,532 (0.40; 56,053; 2011).	97,476 (0.06)	561	39.4
Clymene dolphin	*Stenella clymene*	WNA	-; N	Unknown	12,515 (0.56)	Undet.	0
Atlantic spotted dolphin	*S. frontalis*	WNA	-; N	44,715 (0.43; 31,610; 2011).	55,436 (0.32)	316	0
Pantropical spotted dolphin	*S. attenuata attenuata*	WNA	-; N	3,333 (0.91; 1,733; 2011)	4,436 (0.33)	17	0
Spinner dolphin	*S. longirostris longirostris*	WNA	-; N	Unknown	262 (0.93)	Undet.	0
Striped dolphin	*S. coeruleoalba*	WNA	-; N	54,807 (0.3; 42,804; 2011).	75,657 (0.21)	428	0
Short-beaked common dolphin.	*Delphinus delphis delphis*	WNA	-; N	70,184 (0.28; 55,690; 2011).	86,098 (0.12)	557	437
Fraser's dolphin	*Lagenodelphis hosei*	WNA	-; N	Unknown	492 (0.76)	Undet.	0
Atlantic white-sided dolphin	*Lagenorhynchus acutus*	WNA	-; N	48,819 (0.61; 30,403; 2011).	37,180 (0.07)	304	57

TABLE 2—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [5]	PBR	Annual M/SI [3]
Risso's dolphin	*Grampus griseus*	WNA	-; N	18,250 (0.46; 12,619; 2011).	7,732 (0.09)	126	43.2
Melon-headed whale	*Peponocephala electra*	WNA	-; N	Unknown	1,175 (0.50)	Undet.	0
Pygmy killer whale	*Feresa attenuata*	WNA	-; N	Unknown	N/A	Undet.	0
False killer whale	*Pseudorca crassidens*	WNA	-; Y	442 (1.06; 212; 2011)	95 (0.84)	2.1	Unk.
Killer whale	*Orcinus orca*	WNA	-; N	Unknown	11	Undet.	0
Short-finned pilot whale	*Globicephala macrorhynchus.*	WNA	-; Y	21,515 (0.37; 15,913; 2011).	18,977 (0.11)	159	192
Long-finned pilot whale	*G. melas melas*	WNA	-; Y	5,636 (0.63; 3,464; 2011)		35	38
White-beaked dolphin	*Lagenorhynchus albirostris.*	WNA	-; N	2,003 (0.94; 1,023; 2007)	39 (0.42)	10	0
Family Phocoenidae (porpoises)							
Harbor porpoise	*Phocoena phocoena phocoena.*	Gulf of Maine/Bay of Fundy.	-; N	79,833 (0.32; 61,415; 2011).	45,089 (0.12)	706	307

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Bryde's whales are occasionally reported off the southeastern U.S. and southern West Indies. NMFS defines and manages a stock of Bryde's whales believed to be resident in the northern Gulf of Mexico, but does not define a separate stock in the Atlantic Ocean.

[5] Predicted mean abundance derived from Roberts *et al.* (2016).

Note—Italicized species in the ''Common Name ''column are not authorized for take.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effect of stressors associated with the specified activities (*e.g.,* seismic airguns) has the potential to result in behavioral harassment of marine mammals in the vicinity of the action areas. The **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018) included a discussion of the effects of such disturbance on marine mammals, therefore that information is not repeated here.

NMFS described potential impacts to marine mammal habitat in detail in our **Federal Register** notice of proposed authorization (83 FR 25268; May 31, 2018). In summary, due to the short duration of the activities and the relatively small area of the habitat that the survey covers, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which will inform both NMFS's consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes will be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to airguns. Based on the nature of the activity, the cryptic behavior and low density for *Kogia* spp. (the only high-frequency cetacean authorized for take) within the action areas, and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown and a minimum vessel distance of 100 m from large whales—discussed in detail below in the Mitigation section), Level A harassment is neither anticipated nor authorized. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Described in the most basic way, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals will be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to

estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 decibels (dB) re 1 micro pascal (μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) sources. USGS's activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Technical Guidance, 2016) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). As described above, USGS's activity includes the use of intermittent and impulsive seismic sources. These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds

The survey will entail the use of a 4-airgun array with a total maximum discharge of 840 cubic inches (in^3) for operations that occur at water depths greater than 1,000 m and 420 in^3 for operations that occur at water depths of 1,000 m or less with at a tow depth of 3 m. The distances to the predicted isopleths corresponding to the threshold for Level B harassment (160 dB re 1 μPa) were calculated for both array configurations based on results of modeling performed by LDEO using the Nucleus Model. Received sound levels were predicted by LDEO's model (Diebold *et al.,* 2010) as a function of distance from the airgun array. The LDEO modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer unbounded by a seafloor). In addition, propagation measurements of pulses from a 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010). The estimated distances to Level B harassment isopleths for the two configurations of the *R/V Hugh R. Sharp* airgun array are shown in Table 4.

TABLE 4—MODELED RADIAL DISTANCES [m (km^2)] FROM R/V HUGH R. SHARP'S AIRGUN ARRAY TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLDS

Source and volume	Tow depth (m)	Water depth (m)	Predicted RMS Radii (m)
			160 dB
Base Configuration (Configuration 1): Four 105 in^3 GI-guns.	3	>1,000	1,091 m (3.7 km^2) [1]
		100–1,000	1,637 m (8.42 km^2) [2]
GG Configuration(Configuration 2): Four 210 in^3 GI-guns.	3	>1,000	1,244 m (4.86 km^2) [1]
		100–1,000	1,866 m (10.94 km^2) [2]

[1] Distance is based on L–DEO model results.
[2] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

For modeling of radial distances to predicted isopleths corresponding to harassment thresholds in deep water (>1,000 m), LDEO used the deep-water radii for various SELs obtained from LDEO model results down to a

maximum water depth of 2,000 m (see Figures 4 and 5 in the IHA application). LDEO's modeling methodology is described in greater detail in the IHA application (USGS, 2018) and we refer to the reader to that document rather than repeating it here.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 3), were calculated based on modeling performed by LDEO using the Nucleus software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (such as airguns) contained in the Technical Guidance (NMFS, 2016) were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded *(i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *R/V Hugh R. Sharp* airgun array were derived from calculating the modified farfield signature (Table 5). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels than the source level derived from the farfield signature. Because the farfield signature does not take into account the array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. Though the array effect is not expected to be as pronounced in the case of a 4-airgun array as it will be with a larger airgun array, the modified farfield method is considered more appropriate than use of the theoretical farfield signature.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *R/V Hugh R. Sharp's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation, a source velocity of 2.06 m/second and a shot interval of 12.15 seconds, potential radial distances to auditory injury zones were calculated for Peak SPL_{flat} and SEL_{cum} thresholds, for both array configurations. Source level Inputs to the User Spreadsheet are shown in Table 5 (inputs to the user spreadsheet also included the source velocity and shot interval listed above). Outputs from the User Spreadsheet in the form of estimated distances to Level A harassment isopleths are shown in Table 6. The larger distance of the dual criteria (SEL_{cum} or Peak SPL_{flat}) is used for estimating takes by Level A harassment. The weighting functions used are shown in Appendix C of the IHA application.

TABLE 5—MODELED SOURCE LEVELS ** (dB) FOR THE R/V HUGH R. SHARP'S AIRGUN ARRAY

Functional hearing group	Configuration 1 * 4 × 105 cu^3 SEL_{cum}	Configuration 1 * 4 × 105 cu^3 Peak SPL_{flat}	Configuration 2 * 4 × 210 cu^3 SEL_{cum}	Configuration 2 * 4 × 210 cu^3 Peak SPL_{flat}	Configuration 3 * 2 × 105 cu^3 SEL_{cum}	Configuration 3 * 2 × 105 cu^3 Peak SPL_{flat}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h:}$ 183 dB)	214	239	215	240	208	235
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	214	N/A	215	N/A	208	234
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	214	239	215	240	208	235

* All configurations have the following airgun specifications: 3 m tow depth; 2 m separation in the fore-aft direction; 8.6 m separation in the port (starboard direction).
**Source Levels were rounded to nearest whole number. See Appendix C of IHA Application for exact value.

TABLE 6—MODELED RADIAL DISTANCES [m(m2)] FROM R/V HUGH R. SHARP'S AIRGUN ARRAY TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Functional hearing group	Configuration 1 4 × 105 cu^3 SEL_{cum}	Configuration 1 4 × 105 cu^3 3 m tow depth, Peak SPL_{flat}	Configuration 2 4 × 210 cu^3 SEL_{cum}	Configuration 2 4 × 210 cu^3 Peak SPL_{flat}	Configuration 3 2 × 105 cu^3 SEL_{cum}	Configuration 3 2 × 105 cu^3 Peak SPL_{flat}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB).	31 m (3,019 m^2)	10.03 m (316 m^2).	39.5 m (4,902 m^2).	11.56 m (420 m^2).	10.6 m (353 m^2)	6.52 m (134 m^2)
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB).	0	0	0	0	0	1.58 m (8 m^2)

TABLE 6—MODELED RADIAL DISTANCES [m(m2)] FROM R/V HUGH R. SHARP'S AIRGUN ARRAY TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS—Continued

Functional hearing group	Configuration 1 4×105 cu^3 SEL_{cum}	Configuration 1 4×105 cu^3 3 m tow depth, Peak SPL_{flat}	Configuration 2 4×210 cu^3 SEL_{cum}	Configuration 2 4×210 cu^3 Peak SPL_{flat}	Configuration 3 2×105 cu^3 SEL_{cum}	Configuration 3 2×105 cu^3 Peak SPL_{flat}
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB).	0	70.43 m (15743.22 m^2).	0.1(.03 m^2)	80.50 m (20,358 m^2).	0	42.32 m (5,627 m^2)

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as this seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. The best available scientific information was considered in conducting marine mammal exposure estimates (the basis for estimating take). For all cetacean species, densities calculated by Roberts *et al.* (2016) were used. These represent the most comprehensive and recent density data available for cetacean species in the survey area. Roberts *et al.* (2016) retained 21,946 cetacean sightings for analysis, omitted 4,786 sightings, and modeled 25 individual species and 3 multi-species guilds. In order to develop density models for species, Roberts *et al.* (2016) used an approach known as density surface modeling, as seen in DoN (2007) and Roberts *et al.* (2016). This couples traditional distance sampling with multivariate regression modeling to produce density maps predicted from fine-scale environmental covariates (*e.g.,* Becker *et al.,* 2014).

In addition to the density information provided by Roberts *et al.* (2016), best available data on average group sizes taken from sightings in the western North Atlantic were also used. This is discussed more in the section below.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. To estimate marine mammal exposures, the USGS used published, quantitative density models by Roberts *et al.* (2016) for the Survey Area, which is entirely within the U.S. EEZ. These models are provided at 10 km x 10 km resolution in ArcGIS compatible IMG grids on the Duke University cetacean density website (*http://seamap.env.duke.edu/models/Duke-EC-GOM-2015*). When available, the cetacean density models for Month 8 (August) were used. Otherwise, the generic annual density model was employed. Only a single density model is provided for the *Kogia* genus (dwarf and sperm pygmy whales), beaked whale guild (Blainville's, Cuvier's, Gervais', Sowerby's, and True's beaked whales), and for pilot whales (Globicephala spp.).

To determine takes, the USGS combined the Duke density grids with the zones corresponding to the Level A and Level B harassment thresholds (See Tables 4 and 6) arrayed on either side of each exemplary seismic line and linking/interseismic line. The takes by Level B and Level A harassment for each species in each 10 km x 10 km block of the IMG density grids were calculated based on the fractional area of each block intersected by the Level A and Level B harassment zones for LF, MF, and HF cetaceans. Summing takes along all of the lines yields the total take for each species for the action for the Base (Configuration 1) and Optimal (Configuration 2) surveys. The method also yields take for each survey line individually, allowing examination of those exemplary lines that will yield the largest or smallest take. No Level A harassment takes were calculated while using this method.

As indicated earlier, estimated numbers of individuals potentially exposed to sound above the Level B harassment threshold are based on the 160-dB re 1μPa (rms) criterion for all cetaceans. It is assumed that marine mammals exposed to airgun sounds that strong could change their behavior sufficiently to be considered taken by harassment. Table 7 shows the estimates of the number of cetaceans that potentially could be exposed to ≥160 dB re 1 μPa (rms) during the action for the Base Survey and the Optimal Survey. The takes in Table 7 represents 25 percent more than the number of takes calculated using the ArcGIS-based quantitative method devised by the USGS. This was used to account for potential additional seismic operations that may occur after repeat coverage of any areas where initial data quality is sub-standard.

Also, as shown in Table 7, rough toothed dolphin, sei whale, and humpback whale calculated takes were increased to account for the average size of one group for each species. Takes for rare species of marine mammals in the action area were also increased to the average size of one group. Rare species that could be encountered and taken during the surveys are not presented in Table 7, but are presented in Table 8. These species were omitted from Table 7 due to low calculated incidents of potential exposures (*i.e.,* less than the average group size). As a result, NMFS relied on average group size data to authorize the take of a single group of these species as a precautionary measure in case the survey encounters them. This is discussed further below Table 7.

The calculated takes in Table 7 and 8 also assume that the surveys will be completed. However, it is unlikely that the entire survey pattern (exemplary lines plus 50 percent of the interseismic, linking lines) will be completed given the limitations on ship time, likely logistical challenges (compressor and GI gun repairs), time spent on transits and refueling, and the historical problems with weather during August in the western North Atlantic. The USGS's calculated timelines indicate that 25 days, including contingency, could be required to complete the full survey pattern. However, only 22 days or fewer will be scheduled for this USGS survey. The lines that are actually acquired will be dependent on weather, strength of the Gulf Stream (affects ability to tow the streamer in the appropriate geometry), and other considerations.

TABLE 7—CALCULATED INCIDENTS OF POTENTIAL EXPOSURE FOR LEVEL B AND LEVEL A HARASSMENT

Species	Optimal survey		Max Level B take for optimal or base surveys +25%	Take (all Level B) [6]	Take as % of pop.[1]
	Level A	Level B			
Low Frequency Cetaceans					
Humpback whale	0	0	0	[5] 3	<0.1
Sei whale	*0*	*1*	1	[7] 3	2.04
Fin whale	*0*	*4*	5	5	0.1
Mid-Frequency Cetaceans					
Sperm whale	*0*	*128*	*161*	161	2.9
Cuvier's beaked whale	0	[2] 103	[2] 128	[2] 128	<0.1
True's beaked whale	0				
Gervais beaked whale	0				
Sowerby's beaked whale	0				
Blainville's beaked whale	0				
Rough-toothed dolphin	0	5	6	[3] 10	1.9
Common bottlenose dolphin	0	606	757	757	0.8
Pantropical spotted dolphin	0	40	50	50	1.1
Atlantic spotted dolphin	0	1,278	1,598	1,598	2.9
Striped dolphin	0	1,167	1,459	1,459	1.9
Short-beaked common dolphin	0	1,296	1,620	1,620	1.9
Risso's dolphin	0	189	237	237	3
Long-finned pilot whale	0	[4] 231	0	[4] 288	1.5
Short-finned pilot whale	0	0	0		
Clymene's dolphin	0	97	0	122	1
High-Frequency Cetaceans					
Pygmy/dwarf sperm whale	0	7	0	9	0.2

[1] Based on mean abundance estimates from Roberts *et al.* (2016).
[2] Values for density, take number, and percentage of population for authorization are for all beaked whales combined.
[3] Based on one average group size for rough toothed dolphin (Jefferson 2015).
[4] Values for density, take number, and percentage of population for authorization are for short-finned and long-finned pilot whales combined.
[5] Based on one average group size for humpback whales (CETAP 1982). Summer seasonal sightings compiled from the OBIS database (See Figure 6 of IHA Application) show that humpback whales have been seen in the northern part of the action area during August.
[6] Values are the same take numbers shown in Table 8 below. Table 8 includes take of rare species discussed below.
[7] Based on one average group size for sei whale in the western Atlantic (CETAP 1982).

Certain species potentially present in the survey areas are expected to be encountered only extremely rarely, if at all. Although Roberts *et al.* (2016) provide density models for these species (with the exception of the pygmy killer whale), due to the small numbers of sightings that underlie these models' predictions we believe it appropriate to account for the small likelihood that these species will be encountered by assuming that one group of each of these species might be encountered once by a given survey. With the exception of the northern bottlenose whale, none of these species should be considered cryptic (*i.e.,* difficult to observe when present) versus rare (*i.e.,* not likely to be present). Average group size was determined by considering known sightings in the western North Atlantic (CETAP, 1982; Hansen *et al,* 1994; NMFS, 2010a, 2011, 2012, 2013a, 2014, 2015a; Waring *et al.,* 2007, 2015). It is important to note that our authorization of take equating to harassment of one group of each of these species is not equivalent to expected exposure. We do not expect that these rarely occurring (in the survey area) species will be exposed at all. Nonetheless, we are providing USGS with authorization to take these species, consistent with the terms of this IHA, in the unlikely event they are encountered. We provide a brief description for each of these species below.

Northern Bottlenose Whale—Northern bottlenose whales are considered extremely rare in U.S. Atlantic waters, with only five NMFS sightings. The southern extent of distribution is generally considered to be approximately Nova Scotia (though Mitchell and Kozicki (1975) reported stranding records as far south as Rhode Island), and there have been no sightings within the survey areas. Whitehead and Wimmer (2005) estimated the size of the population on the Scotian Shelf at 163 whales (95 percent CI 119–214). Whitehead and Hooker (2012) report that northern bottlenose whales are found north of approximately 37.5° N and prefer deep waters along the continental slope. Roberts *et al.* (2016) produced a stratified density model on the basis of four sightings in the vicinity of Georges Bank (Roberts *et al.,* 2015b). The five sightings in U.S. waters yield a mean group size of 2.2 whales, while MacLeod and D'Amico report a mean group size of 3.6. Here, we authorize take of one group with a maximum group size of four whales.

Killer Whale—Killer whales are also considered rare in U.S. Atlantic waters (Katona *et al.,* 1988; Forney and Wade, 2006), constituting 0.1 percent of marine mammal sightings in the 1978–81 Cetacean and Turtle Assessment Program surveys (CETAP, 1982). Roberts *et al.* (2016) produced a stratified density model on the basis of four killer whale sightings (Roberts *et al.,* 2015g), though Lawson and Stevens (2014) provide a minimum abundance estimate of 67 photo-identified individual killer whales. Available information suggests that survey encounters with killer whales will be unlikely but could occur anywhere within the survey area and at any time of year (*e.g.,* Lawson and Stevens, 2014). Silber *et al.* (1994) reported observations of two and 15 killer whales in the Gulf of California (mean group size 8.5), while May-Collado *et al.* (2005) described mean group size of 3.6 whales off the Pacific coast of Costa Rica. Based on 12 CETAP sightings and one group observed during NOAA surveys (CETAP, 1982; NMFS, 2014), the average group size in the Atlantic is 6.8 whales. Therefore, we

authorize take of one group with a maximum group size of seven whales.

False Killer Whale—Although records of false killer whales from the U.S. Atlantic are uncommon, a combination of sighting, stranding, and bycatch records indicates that this species does occur in the western North Atlantic (Waring *et al.,* 2015). Baird (2009) suggests that false killer whales may be naturally uncommon throughout their range. Roberts *et al.* (2016) produced a stratified density model on the basis of two false killer whale sightings (Roberts *et al.,* 2015m), and NMFS produced the first abundance estimate for false killer whales on the basis of one sighting during 2011 shipboard surveys (Waring *et al.,* 2015). Similar to the killer whale, we believe survey encounters will be unlikely but could occur anywhere within the survey area and at any time of year. Mullin *et al.* (2004) reported a mean false killer whale group size of 27.5 from the Gulf of Mexico, and May-Collado *et al.* (2005) described mean group size of 36.2 whales off the Pacific coast of Costa Rica. The few sightings from CETAP (1982) and from NOAA shipboard surveys give an average group size of 10.3 whales. As a precaution, we authorize take of one group with a maximum group size of 28 whales, as reported from the Gulf of Mexico.

Pygmy Killer Whale—The pygmy killer whale is distributed worldwide in tropical to sub-tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Jefferson *et al.,* 1994; Waring *et al.,* 2007). Pygmy killer whales are rarely observed by NOAA surveys outside the Gulf of Mexico—one group was observed off of Cape Hatteras in 1992—and the rarity of such sightings may be due to a naturally low number of groups compared to other cetacean species (Waring *et al.,* 2007). NMFS has never produced an abundance estimate for this species and Roberts *et al.* (2016) were not able to produce a density model for the species. The 1992 sighting was of six whales; therefore, we authorize take of one group with a maximum group size of six whales.

Melon-headed Whale—Similar to the pygmy killer whale, the melon-headed whale is distributed worldwide in tropical to sub-tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Jefferson *et al.,* 1994; Waring *et al.,* 2007). Melon-headed whales are rarely observed by NOAA surveys outside the Gulf of Mexico—groups were observed off of Cape Hatteras in 1999 and 2002—and the rarity of such sightings may be due to a naturally low number of groups compared to other cetacean species (Waring *et al.,* 2007). NMFS has never produced an abundance estimate for this species and Roberts *et al.* (2016) produced a stratified density model on the basis of four sightings (Roberts *et al.,* 2015d). The two sightings reported by Waring *et al.* (2007) yield an average group size of 50 whales; therefore, we authorize take of a single group of a maximum of 50 whales.

Spinner Dolphin—Distribution of spinner dolphins in the Atlantic is poorly known, but they are thought to occur in deep water along most of the U.S. coast south to the West Indies and Venezuela (Waring *et al.,* 2014). There have been a handful of sightings in deeper waters off the northeast United States and one sighting during a 2011 NOAA shipboard survey off North Carolina, as well as stranding records from North Carolina south to Florida and Puerto Rico (Waring *et al.,* 2014). Roberts *et al.* (2016) provide a stratified density model on the basis of two sightings (Roberts *et al.,* 2015i). Regarding group size, Mullin *et al.* (2004) report a mean of 91.3 in the Gulf of Mexico; May-Collado (2005) describe a mean of 100.6 off the Pacific coast of Costa Rica; and CETAP (1982) sightings in the Atlantic yield a mean group size of 42.5 dolphins. As a precaution, we authorize taking a single group with a maximum size of 91 dolphins (derived from mean group size reported in Mullin *et al.* 2004).

Fraser's Dolphin—As was stated for both the pygmy killer whale and melon-headed whale, the Fraser's dolphin is distributed worldwide in tropical waters, and is assumed to be part of the cetacean fauna of the tropical western North Atlantic (Perrin *et al.,* 1994; Waring *et al.,* 2007). The paucity of sightings of this species may be due to naturally low abundance compared to other cetacean species (Waring *et al.,* 2007). Despite possibly being more common in the Gulf of Mexico than in other parts of its range (Dolar 2009), there were only five reported sightings during NOAA surveys from 1992–2009. In the Atlantic, NOAA surveys have yielded only two sightings (Roberts *et al.,* 2015f). May-Collado *et al.* (2005) reported a single observation of 158 Fraser's dolphins off the Pacific coast of Costa Rica, and Waring *et al.* (2007) describe a single observation of 250 Fraser's dolphins in the Atlantic, off Cape Hatteras. Therefore, we authorize take of a single group with a maximum group size of 204 dolphins (derived from average of May-Collado *et al.* 2005 and Waring *et al.* 2007 sightings data).

Atlantic White-sided Dolphin—White-sided dolphins are found in temperate and sub-polar continental shelf waters of the North Atlantic, primarily in the Gulf of Maine and north into Canadian waters (Waring *et al.,* 2016). Palka *et al.* (1997) suggest the existence of stocks in the Gulf of Maine, Gulf of St. Lawrence, and Labrador Sea. Stranding records from Virginia and North Carolina suggest a southerly winter range extent of approximately 35° N (Waring *et al.,* 2016); therefore, it is possible that the surveys could encounter white-sided dolphins. Roberts *et al.* (2016) elected to split their study area at the north wall of the Gulf Stream, separating the cold northern waters, representing probable habitat, from warm southern waters, where white-sided dolphins are likely not present (Roberts *et al.,* 2015k). Over 600 observations of Atlantic white-sided dolphins during CETAP (1982) and during NMFS surveys provide a mean group size estimate of 47.7 dolphins, while Weinrich *et al.* (2001) reported a mean group size of 52 dolphins. Due to this data, we authorize take of a single group with a maximum group size of 48 dolphins.

TABLE 8—NUMBERS OF INCIDENTAL TAKE AUTHORIZED

Species	Level B take**	Level A take
Humpback whale	3	0
Sei whale	3	0
Fin whale	5	0
Sperm whale	161	0
Kogia spp	9	0
Beaked whales	128	0
Northern bottlenose whale*	*4	0
Rough-toothed dolphin	10	0
Common bottlenose dolphin	757	0

TABLE 8—NUMBERS OF INCIDENTAL TAKE AUTHORIZED—Continued

Species	Level B take**	Level A take
Clymene dolphin	122	0
Atlantic spotted dolphin	1,598	0
Pantropical spotted dolphin	50	0
Spinner dolphin*	*91	0
Striped dolphin	1,459	0
Short-beaked common dolphin	1,620	0
Fraser's dolphin*	*204	0
Atlantic white-sided dolphin*	*48	0
Risso's dolphin	237	0
Melon-headed whale*	*50	0
Pygmy killer whale*	*6	0
False killer whale*	*28	0
Killer whale*	*7	0
Pilot whales	288	0

*Level B harassment take for rare species represent take of a single group.
**Take numbers for non-rare species are the same as those reported in Table 7.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

USGS has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, USGS will implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Establishment of a marine mammal exclusion zone (EZ);

(3) Shutdown procedures;

(4) Ramp-up procedures; and

(5) Vessel strike avoidance measures.

In addition, USGS will establish a marine mammal buffer zone.

Protected Species Observer (PSO) observations will take place during all daytime airgun operations and nighttime start ups (if applicable) of the airguns. If airguns are operating throughout the night, observations will begin 30 minutes prior to sunrise. If airguns are operating after sunset, observations will continue until 30 minutes following sunset. Following a shutdown for any reason, observations will occur for at least 30 minutes prior to the planned start of airgun operations. Observations will also occur for 30 minutes after airgun operations cease for any reason. Observations will also be made during daytime periods when the *R/V Hugh R. Sharp* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations will be suspended when marine mammals are observed within, or about to enter, the designated Exclusion Zone (EZ) (as described below).

During seismic operations, three visual PSOs will be based aboard the *R/V Hugh R. Sharp.* PSOs will be appointed by USGS with NMFS approval. During the majority of seismic operations (excluding ramp-up), one PSOs will monitor for marine mammals around the seismic vessel. PSO(s) will be on duty in shifts of duration no longer than four hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *R/V Hugh R. Sharp* is a suitable platform from which PSOs will watch for marine mammals. Standard equipment for marine mammal observers will be 7×50 reticle binoculars, optical range finders, and Big Eye binoculars. At night, night-vision equipment will be available. The observers will be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes will be

provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as a PSO during a seismic survey. One ''experienced'' visual PSO will be designated as the lead for the entire protected species observation team. The lead will serve as primary point of contact for the USGS scientist-in-charge or his/her designee. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO will demonstrate good standing and consistently good performance of PSO duties.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs will establish a minimum EZ with a 100 m radius from the airgun array. The 100 m EZ will be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source will be shut down (see Shutdown Procedures below).

The 100 m radial distance of the standard EZ is precautionary in the sense that it will be expected to contain sound exceeding injury criteria (Level A harassment thresholds) for all marine mammal hearing groups (Table 6) while also providing a consistent, reasonably observable zone within which PSOs will typically be able to conduct effective observational effort.

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor an additional 100 m buffer zone beginning from the outside extent of the 100 m EZ. During use of the acoustic source, occurrence of marine mammals within the 100 m buffer zone will be communicated to the USGS scientist-in-charge or his/her designee to prepare for potential shutdown of the acoustic source. The 100 m buffer zone is discussed further under *Ramp-Up Procedures* below.

Shutdown Procedures

If a marine mammal is detected outside the EZ but is likely to enter the EZ, the airguns will be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airguns will be shut down immediately.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the 100 m EZ. The animal will be considered to have cleared the 100 m EZ if the following conditions have been met:

- It is visually observed to have departed the 100 m EZ;
- it has not been seen within the 100 m EZ for 15 min in the case of small odontocetes; or
- it has not been seen within the 100 m EZ for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy and dwarf sperm, beaked whales, and large delphinids.

This shutdown requirement will be in place for all marine mammals, with the exception of small delphinoids under certain circumstances. This exception to the shutdown requirement will apply solely to specific genera of small dolphins—*Tursiops, Steno, Stenella, Lagenorhynchus* and *Delphinus*—Instead of shutdown, the acoustic source must be powered down to the smallest single element of the array if a dolphin of the indicated genera appears within or enters the 100-m exclusion zone. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above), shutdown must be implemented. Power-down conditions shall be maintained until the animal(s) are no longer observed within the exclusion zone, following which full-power operations may be resumed without ramp-up. PSOs may elect to waive the power-down requirement if the animal(s) appear to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

We include this small delphinoid exception because shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and will typically be the only marine mammals likely to intentionally approach the vessel. As described below, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift). Please see ''Potential Effects of the Specified Activity on Marine Mammals'' in the **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018) for further discussion of sound metrics and thresholds and marine mammal hearing.

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure will require the *R/V Hugh R. Sharp* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinoids will not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other

than to the auditory impacts. In addition, the required shutdown measure may prevent more severe behavioral reactions for any large delphnoids in close proximity to the source vessel.

Shutdown of the acoustic source will also be required upon observation beyond the 100 m EZ of any of the following:

- A large whale (*i.e.,* sperm whale or any baleen whale) with a calf;
- An aggregation of large whales of any species (*i.e.,* sperm whale or any baleen whale) that does not appear to be traveling (*e.g.,* feeding, socializing, etc.); or
- A marine mammal species not authorized (*i.e.,* a North Atlantic right whale) for take that is approaching or entering the Level B harassment zone.
- An authorized marine mammal species that has reached its total allotted Level B harassment take that is approaching or entering the Level B harassment zone.

These will be the only four potential situations that will require shutdown of the array for marine mammals observed beyond the 100 m EZ.

Ramp-Up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up will be required after the array is shut down for any reason. Ramp up to the full array will take 20 minutes, starting with operation of a single airgun and with one additional airgun added every 5 minutes.

At least two PSOs will be required to monitor during ramp-up. During ramp up, the PSOs will monitor the 100 m EZ, and if marine mammals were observed within or approaching the 100 m EZ, a shutdown will be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the 100 m EZ, ramp-up will not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ will be as described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*i.e.,* if the array were shut down during transit from one line to another). This 30 minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the 100 m EZ or 100 m buffer zone (*i.e.,* total 200 m distance) during this pre-clearance period, ramp-up will not be initiated until all marine mammals cleared the 100 m EZ or 100 m buffer zone. Criteria for clearing the EZ will be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or 100 m buffer zone. Ramp-up will be planned to occur during periods of good visibility when possible. However, ramp-up will be allowed at night and during poor visibility if the 100 m EZ and 100 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The USGS scientist-in-charge or his/her designee will be required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time will not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the USGS scientist-in-charge or his/her designee must receive confirmation from the PSO to proceed. The USGS scientist-in-charge or his/her designee must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the USGS scientist-in-charge or his/her designee will be required to communicate the near-term operational plan to the lead PSO with justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These requirements do not apply in any case where compliance will create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The measures include the following: The USGS scientist-in-charge or his/her designee, the vessel operator (The University of Delaware) and crew will maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel will monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone will be either third-party observers or crew members, but crew members responsible for these duties will be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures will be followed during surveys and while in transit.

The vessel will maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales) except for North Atlantic right whales. The vessel will maintain a minimum separation distance of 500 m from North Atlantic right whales. If a large whale is located within 100 m of the vessel or a North Atlantic right whale is located within 500 m of the vessel, the vessel will reduce speed and shift the engine to neutral, and will not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel will not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m or 500 m for North Atlantic right whale. The vessel will maintain a minimum separation distance of 50 m from all other marine mammals (with the exception of delphinids of the genera *Tursiops, Steno, Stenella, Lagenorhynchus* and *Delphinus* that approach the vessel, as described above). If an animal is encountered during transit, the vessel will attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds will be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans (what constitues ''large'' will vary depending on species) are observed within 500 m of the vessel. Mariners may use professional judgment as to when such circumstances warranting additional caution are present.

Actions To Minimize Additional Harm to Live-Stranded (or Milling) Marine Mammals

In the event of a live stranding (or near-shore atypical milling) event within 50 km of the survey operations, where the NMFS stranding network is engaged in herding or other interventions to return animals to the water, the Director of OPR, NMFS (or designee) will advise the IHA-holder of the need to implement shutdown procedures for all active acoustic sources operating within 50 km of the stranding. Shutdown procedures for live stranding or milling marine mammals include the following:

• If at any time, the marine mammal(s) die or are euthanized, or if herding/intervention efforts are stopped, the Director of OPR, NMFS (or designee) will advise the IHA-holder that the shutdown is no longer needed.

• Otherwise, shutdown procedures will remain in effect until the Director of OPR, NMFS (or designee) determines and advises the IHA-holder that all live animals involved have left the area (either of their own volition or following an intervention).

• If further observations of the marine mammals indicate the potential for re-stranding, additional coordination with the IHA-holder will be required to determine what measures are necessary to minimize that likelihood (*e.g.,* extending the shutdown or moving operations farther away) and to implement those measures as appropriate.

Shutdown procedures are not related to the investigation of the cause of the stranding and their implementation is not intended to imply that the specified activity is the cause of the stranding. Rather, shutdown procedures are intended to protect marine mammals exhibiting indicators of distress by minimizing their exposure to possible additional stressors, regardless of the factors that contributed to the stranding.

Based on our evaluation of the applicant's measures, NMFS determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS will contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

USGS submitted a marine mammal monitoring and reporting plan in their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here.

USGS's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations will take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs will be based aboard the *R/V Hugh R. Sharp.* PSOs will be appointed by USGS with NMFS approval. During the majority of seismic operations (excluding ramp-up), one PSO will monitor for marine mammals around the seismic vessel. PSOs will be on duty in shifts of duration no longer than four hours. Other crew will also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs will scan the area around the vessel systematically with reticle binoculars, Big Eye binoculars, and with the naked eye. At night, PSOs will be equipped with night-vision equipment.

PSOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially taken by harassment. They will also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations will provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting Injured or Dead Marine Mammals

Discovery of Injured or Dead Marine Mammal—In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR), NMFS and to regional stranding coordinators as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Vessel Strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, the IHA-holder shall report the incident to OPR, NMFS and to regional stranding coordinators as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Additional Information Requests—If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted (example circumstances noted below), and an investigation into the stranding is being pursued, NMFS will submit a written request to the IHA-holder indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information.

- Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
- If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

Examples of circumstances that could trigger the additional information request include, but are not limited to, the following:

- Atypical nearshore milling events of live cetaceans;
- Mass strandings of cetaceans (two or more individuals, not including cow/calf pairs);
- Beaked whale strandings;
- Necropsies with findings of pathologies that are unusual for the species or area; or
- Stranded animals with findings consistent with blast trauma.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Reporting

A report will be submitted to NMFS within 90 days after the end of the survey. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring and will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those on the trackline but not detected.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

NMFS does not anticipate that serious injury or mortality will occur as a result of USGS's seismic survey, even in the absence of mitigation. Thus, the authorization does not authorize any mortality.

Potential impacts to marine mammal habitat were discussed previously in the **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018). Marine mammal habitat may be impacted by elevated sound levels, but these impacts will be temporary. Feeding behavior is not likely to be significantly impacted, as marine mammals appear to be less likely to exhibit behavioral reactions or avoidance responses while engaged in feeding activities (Richardson *et al.,* 1995). Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals

that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the project area during the time of the survey (LaBrecque *et al.,* 2015).

The acoustic ''footprint'' of the survey will be very small relative to the ranges of all marine mammals that will potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. The seismic array will be active 24 hours per day throughout the duration of the survey. However, the very brief overall duration of the survey (22 days with 19 days of airgun operations) will further limit potential impacts that may occur as a result of the activity.

The mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array.

Of the marine mammal species that are likely to occur in the project area during the survey timeframe, the following species are listed as endangered under the ESA; fin, sei, and sperm whales. There are currently insufficient data to determine population trends for these species (Hayes *et al.,* 2017); however, we are authorizing very small numbers of takes for these species (Table 6), relative to their population sizes (again, when compared to mean abundance estimates, for purposes of comparison only). Therefore, we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during USGS's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we authorize take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA, except for pilot whales and false killer whales.

NMFS concludes that exposures to marine mammal species due to USGS's seismic survey will result in only short-term (temporary and short in duration) effects to individuals exposed. Marine mammals may temporarily avoid the immediate area but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No injury (Level A take), serious injury or mortality is anticipated or authorized;
- The anticipated impacts of the activity on marine mammals will primarily be temporary behavioral changes due to avoidance of the area around the survey vessel. The relatively short duration of the survey (22 days with 19 days of airgun operations) will further limit the potential impacts of any temporary behavioral changes that will occur;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the survey to avoid exposure to sounds from the activity;
- The project area does not contain areas of significance for feeding, mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the survey will be temporary and spatially limited; and
- The mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Please see Tables 6 and 7 and the related text for information relating to the basis for our small numbers analyses. Table 7 provides the numbers of predicted exposures above specified received levels, while Table 7 provides the numbers of take authorized. For the northern bottlenose whale, Fraser's dolphin, melon-headed whale, false killer whale, pygmy killer whale, killer whale, spinner dolphin, and white-sided dolphin, we authorize take resulting from a single exposure of one group of each species or stock, as appropriate (using average group size), for each applicant. We believe that a single incident of take of one group of any of these species represents take of small numbers for that species. Due to the scarcity, broad spatial distributions, and habitat preferences of these species relative to the areas where the surveys will occur, NMFS concludes that the authorized take of a single group of these species likely represent small numbers relative to the affected species' overall population sizes. Therefore, based on the analyses contained herein of the specified activity, we find that small numbers of marine mammals will be taken for each of these eight affected species or stocks for the specified activity. We do not discuss these eight species further in this small numbers analysis.

As shown in Table 6, we used mean abundance estimates from Roberts (2016) to calculate the percentage of population that is estimated to be taken during the activities for non-rare species. The activity is expected to impact a very small percentage of all marine mammal populations. As presented in Table 6, take of all 21 marine mammal species authorized for take is less than three percent of the abundance estimate.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with NMFS' ESA Interagency Cooperation Division, whenever we authorize take for endangered or threatened species.

NMFS's ESA Interagency Cooperation Division issued a Biological Opinion on August 6, 2018 to NMFS Office of Protected Resources which concluded that the USGS's MATRIX survey is not likely to jeopardize the continued existence of the sei whale, fin whale, sperm whale, and north Atlantic right whale or adversely modify critical habitat.

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 (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. Accordingly, NMFS prepared an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the IHA to USGS. We reviewed all comments submitted in response to the **Federal Register** notice for the proposed IHA (83 FR 25268; May 31, 2018) prior to concluding our NEPA process and deciding whether or not to issue a Finding of No Significant Impact (FONSI). NMFS concluded that issuance of an IHA to USGS will not significantly affect the quality of the human environment and prepared and issued a FONSI in accordance with NEPA and NAO 216–6A. NMFS's EA and FONSI for this activity are available on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Authorization

As a result of these determinations, we have issued an IHA to USGS for conducting the described seismic survey activities from August 1, 2018 through July 31, 2019 provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 7, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG291

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving Activities for the Restoration of Pier 62, Seattle Waterfront, Elliott Bay

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

ACTION: Incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Seattle Department of Transportation (DOT) to incidentally harass, by Level A and B harassment, marine mammals during pile driving and removal activities associated with the restoration of Pier 62, Seattle Waterfront, Elliott Bay in Seattle, Washington (Season 2).

DATES: This Authorization is applicable from August 1, 2018 through February 28, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *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 above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, or 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

In compliance with NOAA policy, the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), NMFS determined 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.

Summary of Request

On January 27, 2018, NMFS received a request from the Seattle DOT for a second IHA to take marine mammals incidental to pile driving and removal activities for the restoration of Pier 62, Seattle Waterfront, Elliott Bay in Seattle, Washington. A revised request was submitted on May 18, 2018, which was deemed adequate and complete. Seattle DOT's request is for take of 12 species of marine mammals, by Level B harassment and Level A harassment (three species only). Neither Seattle DOT nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to Seattle DOT for related work for Season 1 of this activity (82 FR 47176; October 11, 2017). Seattle DOT complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Description of Marine Mammals in the Area of Specified Activities and Estimated Take sections.

This IHA will cover the second season of work for the Seattle DOT Pier 62 project and provides take authorization for these subsequent facets of the project. The second season of the larger project is expected to primarily involve the remaining pile driving for Pier 62 and Pier 63. If the Seattle DOT encounters delays due to poor weather conditions, difficult pile driving, or other unanticipated challenges, an additional in-water work season may be necessary. If so, a separate IHA may be prepared for the third season of work.

Description of Specified Activities

The planned project will replace Pier 62 and make limited modifications to Pier 63 on the Seattle waterfront of Elliott Bay, Seattle, Washington. The existing piers are constructed of creosote-treated timber piles and treated timber decking, which are failing. The planned project would demolish and remove the existing timber piles and decking of Pier 62, and replace them with concrete deck planks, concrete pile caps, and steel piling. The majority of the timber pile removal required by the project occurred during the 2017–2018 in-water work season (Season 1).

A total of 831 piles were removed from Pier 62 and Pier 63 during Season 1 (see Table 1 below). Timber pile removal work in Season 2 (2018–2019 in-water work window) may occur for an estimated 10 days (49 remaining timber piles), if the contractor encounters deteriorated piles that pose a safety hazard or are within the area where grated decking or habitat improvements are to be installed. Pile installation will occur via vibratory and impact hammers. Seattle DOT estimates 10 days will be needed to remove the old timber piles, 53 days for vibratory installation of steel piles, and 64 days for impact installation of steel piles for a total of 127 in-water construction days for both Pier 62 and Pier 63 (see Table 1 below). Seattle DOT expects most days for vibratory and impact installation of steel piles will overlap, for a total of fewer than 127 days. The 14-inch (in) timber piles will be removed with a vibratory hammer or pulled with a clamshell bucket. The 30-in steel piles will be installed with a vibratory hammer to the extent possible. The maximum extent of pile removal and installation activities are described in Table 1. An impact hammer will be used for proofing steel piles or when encountering obstructions or difficult ground conditions. In addition, a pile template will be installed to ensure the piles are placed properly. It is anticipated that the contractor will complete the pile installation during the 2018–2019 in-water work window. In-water work may occur within a modified or shortened work window (September through February) to reduce or minimize effect on juvenile salmonids.

TABLE 1—PILE INSTALLATION AND REMOVAL PLAN

Activity	Pile type	Number of piles	Completed during Season 1	Actual duration Season 1 (days)	Remaining work Season 2	Anticipated duration Season 2	Hours per day	Hammer type	Single source sound levels (dB_{RMS})	Additive source sound levels (dB_{RMS})
Remove	Creosote-treated timber, 14-inch [1].	880	831 piles removed	19	49 timber piles	10 days	8	Vibratory	[2] 161 dB	
	Steel template pile, 24-inch	2			2	Daily [3]		Vibratory	[4] 177 dB	
Install	Steel pile, 30-inch	189	2 steel sheet piles installed.	1	189 steel piles	53 days	8	Vibratory	[6] 177 dB	[7] 180 dB
						64 days [8]	8	Impact	[9] 189 dB	[10] 189 dB
	Steel template pile, 24-inch	2			2	Daily [3]		Vibratory	[4] 177 dB	

Notes:
[1] Assumed to be 14-inch diameter.
[2] Hydroacoustic monitoring during Pier 62 Season 1 showed unweighted RMS ranging from 140 dB to 169 dB; the 75th percentile of these values is 161 dB_{RMS} and was used to calculate thresholds.
[3] The two template piles will be installed and removed daily. The time associated with this activity is included in the overall 8-hour pile driving day associated with installation of the 30-inch steel piles.
[4] Assumed to be no greater than vibratory installation of the 30-inch steel pile.
[6] Source sound from Port Townsend Test Pile Project (WSDOT 2010).
[7] For simultaneous operation of two vibratory hammers installing steel pipe piles, the 180 dB_{RMS} value is based on identical single-source levels, adding three dB based on WSDOT rules for decibel addition (2018).
[8] Approximately 20 percent of the pile driving effort is anticipated to require an impact hammer, which results in approximately 11 cumulative days of impact hammer activity. However, the impact hammer activity is sporadic, often occurring for short periods each day. A total of 64 days represents the number of days in which pile installation with an impact hammer could occur, with the anticipation that each day's impact hammer activity would be short.
[9] Source level from Colman Dock Test Pile Project (WSDOT 2016).
[10] For simultaneous operation of one impact hammer and one vibratory hammer installing 30-inch piles, the original dB_{RMS} estimates differ by more than 10 dB, so the higher value, 189 dB_{RMS}, is used based on WSDOT rules for decibel addition (2018).
RMS—root mean square: The square root of the energy divided by the impulse duration. This level is the mean square pressure level of the pulse. It has been used by NMFS to describe disturbance-related effects (*i.e.,* harassment) to marine mammals from underwater impulse-type noises.
WSDOT—Washington State Department of Transportation.

The contractor may elect to operate multiple pile crews for the Seattle DOT Pier 62 Project. As a result, more than one vibratory or impact hammer may be active at the same time. For the Pier 62 Project, there is a low likelihood that multiple impact hammers would operate in a manner that piles would be struck simultaneously; however, as a conservative approach we used a multiple-source decibel (dB) rule when determining the Level A and Level B harassment zones for this project. Table 2 provides guidance on adding dBs to account for multiple sources (WSDOT 2015a):

TABLE 2—MULTIPLE SOURCE DECIBEL ADDITION

When two decibel values differ by:	Add the following to the higher decibel value:
0–1 dB	3 dB
2–3 dB	2 dB
4–9 dB	1 dB

A detailed description of Seattle DOT's planned Pier 62 (Season 2) project is provided in the **Federal Register** notice for the proposed IHA (83 FR 30120; June 27, 2018). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA was published in the **Federal Register** on June 27, 2018 (83 FR 30120). That notice described, in detail, Seattle DOT's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). Specific comments and responses from the Commission's comment letter are provided below. The Commission recommended that NMFS issue the IHA, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Comment 1: The Commission commented on errors regarding the Level B harassment calculations.

NMFS Response: NMFS acknowledges these errors and has corrected them in this notice and in the final IHA.

Comment 2: The Commission asserts that NMFS underestimated take estimates for harbor seals by Level A harassment and take estimates for long-beaked common dolphin, bottlenose dolphin, and Northern elephant seal by Level B harassment.

NMFS Response: NMFS does not believe the take estimates were incorrect in the proposed IHA for these species. However, NMFS increased the take estimates as suggested, which provides more conservative coverage for some species.

Comment 3: The Commission commented that NMFS should use the Smultea *et al.,* 2017 report rather than the Jefferson *et al.,* 2016 density estimates for harbor porpoise. The Commission also commented on an error for the density estimate for minke whales.

NMFS response: NMFS agrees and updated the density estimate for harbor porpoise by Smultea *et al.,* 2017 and accordingly the estimated takes by Level A and Level B harassment of harbor porpoise decreased. NMFS also corrected the density estimate for minke whales.

Comment 4: The Commission requested clarification regarding certain issues associated with NMFS' notice that one-year renewals could be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA. The Commission also noted that NMFS had recently begun utilizing abbreviated notices, referencing relevant documents, to solicit public input and suggested that NMFS use these notices and solicit review in lieu of the currently proposed renewal process.

NMFS Response: The process of issuing a renewal IHA does not bypass the public notice and comment requirements of the MMPA. The notice of the proposed IHA expressly notifies the public that under certain, limited conditions an applicant could seek a renewal IHA for an additional year. The notice describes the conditions under which such a renewal request could be considered and expressly seeks public comment in the event such a renewal is sought. Additional reference to this solicitation of public comment has recently been added at the beginning of the FR notices that consider renewals, requesting input specifically on the possible renewal itself. NMFS appreciates the streamlining achieved by the use of abbreviated FR notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the renewal requirements. However, we believe our proposed method for issuing renewals meets statutory requirements and maximizes efficiency.

Importantly, such renewals would be limited to circumstances where: The activities are identical or nearly identical to those analyzed in the proposed IHA; monitoring does not indicate impacts that were not previously analyzed and authorized; and, the mitigation and monitoring requirements remain the same, all of which allow the public to comment on the appropriateness and effects of a renewal at the same time the public provides comments on the initial IHA. NMFS has, however, modified the language for future proposed IHAs to clarify that all IHAs, including renewal IHAs, are valid for no more than one year and that the agency would consider only one renewal for a project at this time. In addition, notice of issuance or denial of a renewal IHA would be published in the **Federal Register**, as they are for all IHAs. The option for issuing renewal IHAs has been in NMFS's incidental take regulations since 1996. *See* 50 CFR 216.107(e). We will provide any additional information to the Commission and consider posting a description of the renewal process on our website before any renewal is issued utilizing this process.

Description of Marine Mammals in the Area of Specified Activities

The marine mammal species under NMFS's jurisdiction that have the potential to occur in the construction area include Pacific harbor seal (*Phoca vitulina*), northern elephant seal (*Mirounga angustirostris*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), long-beaked common dolphin (*Delphinus capensis*), common bottlenose dolphin (*Tursiops truncatus*), both southern resident and transient killer whales (*Orcinus orca*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata*) (Table 3). Of these, the southern resident killer whale (SRKW) and humpback whale are protected under the Endangered Species Act (ESA). Pertinent information for each of these species is presented in this document to provide the necessary background to understand their demographics and distribution in the area.

TABLE 3—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN REGION OF ACTIVITY

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales) Family Eschrichtiidae						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-; N	20,990 (0.05; 20,125; 2011)	624	132
Family Balaenidae						
Humpback whale	*Megaptera novaeangliae novaeangliae.*	California/Oregon/Washington.	E; D	1,918 (0.03; 1,876; 2017)	11.0	≥9.2
Minke whale	*Balaenoptera acutorostrata scammoni.*	California/Oregon/Washington.	-; N	636 (0.72, 369, 2014)	3.5	≥1.3
Superfamily Odontoceti (toothed whales, dolphins, and porpoises) Family Delphinidae						
Killer whale	*Orcinus orca*	Eastern North Pacific Offshore.	-; N	240 (0.49, 162, 2014)	1.6	0
Killer whale	*Orcinus orca*	Eastern North Pacific Southern Resident.	E; D	83 (na, 83, 2016)	0.14	0
Long-beaked common dolphin.	*Dephinus capensis*	California	-; N	101,305 (0.49; 68,432, 2014)	657	≥35.4
Bottlenose dolphin	*Tursiops truncatus*	California/Oregon/Washington Offshore.	-; N	1,924 (0.54; 1,255, 2014)	11	≥1.6
Family Phocoenidae (porpoises)						
Harbor Porpoise	*Phocoena phocoena*	Washington Inland Waters	-; N	11,233 (0.37; 8,308; 2015)	66	≥7.2
Dall's Porpoise	*Phocoenoides dalli*	California/Oregon/Washington.	-; N	25,750 (0.45, 17,954, 2014)	172	0.3
Order Carnivora—Superfamily Pinnipedia Family Otariidae (eared seals and sea lions)						
California sea lion	*Zalophus californianus*	U.S.	-; N	296,750 (na, 153,337, 2011)	9,200	389
Steller sea lion	*Eumetopias jubatus*	Eastern DPS	-; N	41,638 (-; 41,638; 2015)	2,498	108
Family Phocidae (earless seals)						
Harbor seal	*Phoca vitulina*	Washington Northern Inland Waters stock.	-; N	11,036 (0.15, -, 1,999)	Undet.	9.8
Northern elephant seal	*Mirounga angustirostris*	California breeding	-; N	179,000 (na; 81,368, 2010)	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual mortality/serious injury (M/SI) often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases

A detailed description of the species likely to be affected by the Seattle DOT Pier 62 (Season 2) project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (83 FR 30120; June 27, 2018); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS websites for generalized species accounts for whales (*https://www.fisheries.noaa.gov/whales*), dolphins and porpoises (*https://www.fisheries.noaa.gov/dolphins-porpoises*), and pinnipeds (*https://www.fisheries.noaa.gov/seals-sea-lions*).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the planned activities for the Seattle DOT Pier 62 (Season 2) project have the potential to result in Level B behavioral harassment of marine mammals in the vicinity of the action area. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species, due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for mid-frequency species and most pinnipeds. The mitigation and monitoring measures (*i.e.,* exclusion zones, use of a bubble curtain, etc. as discussed in detail below in ''Mitigation'' section), are expected to minimize the severity of such taking to the extent practicable.

The project would not result in permanent impacts to habitats used directly by marine mammals, such as haulout sites, but may have potential short-term impacts to food sources such as marine invertebrates and fish species. Construction will also have temporary effects on salmonids and other fish species in the project area due to disturbance, turbidity, noise, and the potential resuspension of contaminants during the Pier 62 project. The **Federal Register** notice for the proposed IHA (83 FR 30120 June 27, 2018) included a detailed discussion of the effects of

anthropogenic noise on marine mammals and their habitat, and therefore, that information is not repeated here; please refer to that **Federal Register** notice for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which informed both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination. Based on public comment, since the Proposed Notice, a few minor changes have been made to this section, including modifications to the density and take estimates for species. These changes are reflected in the tables and narrative below.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of 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).

Authorized takes would primarily be by Level B harassment, as exposure to pile driving and removal activities has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species due to larger predicted auditory injury zones. Auditory injury is unlikely to occur for mid-frequency species and most pinnipeds. The planned mitigation and monitoring measures (*i.e.,* shutdown zones, use of a bubble curtain, etc. as discussed in detail below in ''Mitigation'' section), are expected to minimize the severity of such taking to the extent practicable. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) and the number of days of activities. Below, we describe these components in more detail and present the take estimates.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur permanent threshold shift (PTS) of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.* 2007, Ellison *et al.* 2011). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 µPa root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) sources and above 160 dB re 1 µPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving sources). Seattle DOT's planned activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 µPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (NMFS, 2016a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Seattle DOT's planned activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources.

These thresholds were developed by compiling and synthesizing the best available science and soliciting input multiple times from both the public and peer reviewers to inform the final product, and are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2016 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/resource/document/underwater-acoustic-thresholds-onset-permanent-and-temporary-threshold-shiftshttp://www.nmfs.noaa.gov/pr/acoustics/guidelines.htm.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	$L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	$L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	$L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	$L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	$L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa2s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that fed into identifying the area ensonified above the acoustic thresholds.

Background noise is the sound level that would exist without the planned activity (pile driving and removal, in this case), while ambient sound levels are those without human activity (NOAA 2009). The marine waterway of Elliott Bay is very active, and human factors that may contribute to background noise levels include ship traffic. Natural actions that contribute to ambient noise include waves, wind, rainfall, current fluctuations, chemical composition, and biological sound sources (*e.g.,* marine mammals, fish, and shrimp; Carr *et al.* 2006). Background noise levels were compared to the relevant threshold levels designed to protect marine mammals to determine the Level B Harassment Zones for noise sources. Based on hydroacoustic monitoring conducted during Season 1 of the Pier 62 Project to determine background noise in the vicinity of the project, the background level of 124 dB rms was used to calculate the attenuation for vibratory pile driving and removal in Season 2 (Greenbusch Group 2018). Although NMFS's harassment threshold is typically 120 dB for continuous noise, recent site-specific measurements collected by The Greenbusch Group (2018) as required by the Season 1 IHA indicate that ambient sound levels are typically higher than this sound level and ranged from 117 dB to 145 dB. Therefore, we used the 124 dB rms (also the same noise level as Season 1), as the relevant threshold for Season 2 of the Seattle DOT Pier 62 project, assuming that any noise generated by the project below 124 dB would be subsumed by the existing background noise and have little likelihood of causing additional behavioral disturbance.

The source level of vibratory removal of 14-in timber piles is based on hydroacoustic monitoring measurements conducted at the Pier 62 project site during Season 1 vibratory removal (Greenbusch Group 2018). The recorded source level ranged from 140 to 169 dB rms re 1 micropascal (µPa) at 10 meters (m) from the pile, with the 75th percentile at 161 dB rms. This level, 161 dB rms, was chosen as the source value for vibratory timber removal in Season 2 because it is a conservative estimate of potential noise generation; 75 percent of the timber pile removal noise generated in Season 1 was on average lower than 161 dB rms. The sound source levels for installation of the 30-in steel piles and 24-in template piles are based on surrogate data compiled by the Washington State Department of Transportation (WSDOT). This value was also used for other pile driving projects (*e.g.,* WSDOT Seattle Multimodal Construction Project—Colman Dock (82 FR 31579; July 7, 2017)) in the same area as the Seattle Pier 62 project. In February of 2016, WSDOT conducted a test pile project at Colman Dock. The measured results from Colman Dock were used for that project and also here to provide source levels for the prediction of isopleths ensonified over thresholds for the Seattle Pier 62 project. The results showed that the sound pressure level (SPL) root-mean-square (rms) for impact pile driving of a 36-in steel pile is 189 dB re 1 µPa at 14 m from the pile (WSDOT 2016b). This value is also used for impact driving of the 30-in steel piles, which is a precautionary approach. Source level of vibratory pile driving of 36-in steel piles is based on test pile driving at Port Townsend in 2010 (Laughlin 2011). Recordings of vibratory pile driving were made at a distance of 10 m from the pile. The results show that the SPL rms for vibratory pile driving of 36-in steel pile was 177 dB re 1 µPa (WSDOT 2016a). The source sound level of 177 dB is used for vibratory steel installation of 30-in piles and 24-in template piles. The template pile activity occurs in conjunction with vibratory installation of 30-in steel piles. As such, the template pile activity is conservatively included as part of 30-in vibratory steel installation for the purposes of estimating take and monitoring the project activities. Sound generated by template pile activity (removal and installation of 24-in steel piles) is expected to be quieter than sound generated during vibratory steel installation of 30-in piles, because the piles are smaller and do not need to be driven as deep as structural, permanent 30-in steel piles.

The method of incidental take requested is Level B acoustical harassment of marine mammals within the 160 dB rms disturbance threshold (impact pile driving); the 120 dB rms disturbance threshold (vibratory pile driving); and the 120 dB rms disturbance threshold for vibratory removal of piles. Therefore, three different Level B Harassment/Monitoring Zones were established and must be in place during pile driving installation or removal (Table 5).

For the Level B Harassment/Monitoring Zones, sound waves propagate in all directions when they travel through water until they dissipate to background levels or encounter barriers that absorb or reflect their energy, such as a landmass. Therefore, the area of the Level B Harassment/Monitoring Zones was determined using land as the boundary on the north, east and south sides of the project. On the west, land was also used to establish the zone for vibratory driving. From Alki on the south and Magnolia on the north, a straight line of transmission was established out to Bainbridge Island. For impact driving (and vibratory removal), sound dissipates much quicker and the impact zone stays within Elliott Bay. Pile-related construction noise would extend throughout the nearshore and open water environments to just west of Alki Point and a limited distance into the East Waterway of the Lower Duwamish River, a highly industrialized waterway. Because landmasses block in-water construction noise, a ''noise shadow'' created by Alki Point is expected to be present immediately west of this feature (refer to Seattle DOT's application for maps depicting the Level B Harassment/Monitoring Zones).

TABLE 5—LEVEL B ZONE HARASSMENT/MONITORING ZONES DESCRIPTIONS AND DURATION OF ACTIVITY

Sound source	Activity	Construction method	Level B threshold (m)	Level B harassment zones (km^2) [2]	Days of activity
1	Removal of 14-in Timber Piles	Vibratory [1]	2,929	10.5	10
2	Installation of 30-in Steel Piles and Temporary 24-in Template Steel Piles.	Vibratory [1]	54,117	91	53
3	Installation of 30-in Steel Piles	Impact	1,201	2.3	64

Notes:
[1] The Level B thresholds for vibratory installation and removal were calculated to 124 dB rms as the actual ambient noise level rather than 120 dB.
[2] The Level B Harassment Zones are not based on the distances given but represent actual ensonified area given the surrounding land configuration of Elliott Bay.

When NMFS Technical Guidance (NMFS 2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which will result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as vibratory and impact pile driving, NMFS's User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths/Level A Harassment Zones are reported below.

The PTS isopleths were identified for each hearing group for impact and vibratory installation and removal methods that must be used in the Pier 62 Project. The PTS isopleth distances were calculated using the NMFS acoustic threshold calculator (NMFS 2016), with inputs based on measured and surrogate noise measurements taken during the Elillott Bay Seawall Project and from WSDOT, and estimating conservative working durations (Table 6 and Table 7).

TABLE 6—NMFS TECHNICAL ACOUSTIC GUIDANCE USER SPREADSHEET INPUT TO PREDICT PTS ISOPLETHS/LEVEL A HARASSMENT

[User Spreadsheet Input]

Spreadsheet tab used	Sound source 1	Sound source 2	Sound source 3
	(A) Vibratory pile driving (removal)	(A) Vibratory pile driving (installation)	(E.1) Impact pile driving (installation)
Source Level (rms SPL)	[a] 161 dB	[b] 180 dB	.....
Source Level (Single Strike/shot SEL)	.....	.....	[c] 176 dB
Weighting Factor Adjustment (kHz)	2.5	2.5	2
(a) Number of strikes in 1 h	.....	.....	20
(a) Activity Duration (h) within 24-h period	8	8	4
Propagation (xLogR)	15	15	15
Distance of source level measurement (meters) +	10	10	14

[a] Greenbusch Group 2018. Pier 62 Project—Draft Acoustic Monitoring Season 1 (2017/2018) Report. Prepared for City of Seattle Department of Transportation. April 9, 2018.
[b] Source level for 30-in steel piles was from test pile driving at Port Townsend Ferry Terminal in 2010. SPL_{rms} for vibratory pile driving was 177 dB re 1 µPa and 3 dB was added for use of two hammers.
[c] Source information is from the Underwater Sound Level Report: Colman Dock Test Pile Project 2016.

TABLE 7—NMFS TECHNICAL ACOUSTIC GUIDANCE USER SPREADSHEET OUTPUT FOR PREDICTED PTS ISOPLETHS AND LEVEL A HARASSMENT DAILY ENSONIFIED AREAS

[User Spreadsheet Output]

Sound source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
	PTS Isopleth (meters)				
1—Vibratory (pile removal)	27.3	2.4	40.4	16.6	1.2
2—Vibratory (installation)	504.8	44.7	746.4	306.8	21.5
3—Impact (installation)	88.6	3.2	105.6	47.4	3.5

TABLE 7—NMFS TECHNICAL ACOUSTIC GUIDANCE USER SPREADSHEET OUTPUT FOR PREDICTED PTS ISOPLETHS AND LEVEL A HARASSMENT DAILY ENSONIFIED AREAS—Continued

[User Spreadsheet Output]

Sound source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
	Level A Harassment Daily ensonified area (km²) [a]				
Vibratory (pile removal)	0.00	0.0	0.00	0.00	0.0
Vibratory (installation)	0.400	0.00	0.875	0.148	0.00
Impact (installation)	0.01	0.0	0.018	0.00	0.0

Note:
[a] Daily ensonified areas were divided by two to only account for the ensonified area within the water and not over land.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that informed the take calculation and we describe how the marine mammal occurrence information is brought together to produce a quantitative take estimate. In some cases (*e.g.,* harbor seals and California sea lions) we used local monitoring to calculate estimated take; however, we also present take estimates (where available) using the species density data from the 2015 Pacific Navy Marine Species Density Database (U.S. Navy 2015), as a comparison for estimated take of marine mammals. For harbor porpoise, we estimated take using the density estimates provided in Smultea *et al.,* 2017, as this is the best available density information for this species.

Where species density is available, take estimates are based on average marine mammal density in the project area multiplied by the area size of ensonified zones within which received noise levels exceed certain thresholds (*i.e.,* Level A and Level B harassment) from specific activities, then multiplied by the total number of days such activities would occur.

Unless otherwise described, incidental take is estimated by the following equation:

Incidental take estimate = species density * zone of influence * days of pile-related activity

However, adjustments were made for nearly every marine mammal species, whenever their local abundance is known through monitoring during Season 1 activities and other monitoring efforts. In those cases, the local abundance data was used for take calculations for the authorized take instead of general animal density (see below).

Harbor Seal

The take estimate for harbor seals for Pier 62 is based on local seal abundance information using the maximum number of seals (13) sighted in one day during the 2016 Seattle Test Pile project multiplied by the total of 127 pile driving and removal days for the Seattle DOT Pier 62 Project Season 2 for 1,651 seals. Fifty-three of the 127 days of activity would involve installation by vibratory pile driving, which has a much larger Level A Harassment Zone (306.8 m) than the Level A Harassment Zones for vibratory removal (16.6 m) and impact pile driving (47.4 m). Harbor seals may be difficult to observe at greater distances, therefore, during vibratory pile driving, it may not be known how long a seal is present in the Level A Harassment Zone. We conservatively estimate that 53 instances of take by Level A harassment may occur during these 53 days. Fifty-three instances of potential take by Level A harassment was calculated as follows: 1 harbor seal per day × 53 days of vibratory pile driving within the 307 m Level A Harassment Zone. The instances of take by Level B harassment (1,651 seals) was adjusted to exclude those already counted for instances of take by Level A harassment, so the authorized instances of take by Level B harassment is 1,598 harbor seals.

As a comparison, using U.S. Navy species density estimates (U.S. Navy 2015) for the inland waters of Puget Sound, potential take of harbor seal is shown in Table 8. Based on these calculations, instances of take by Level A harassment is estimated at 10 harbor seals from vibratory pile driving and instances of take by Level B harassment is estimated at 6,177 harbor seals from all sound sources. However, observational data from previous projects on the Seattle waterfront have documented only a fraction of what is calculated using the Navy density estimates for Puget Sound. For example, between zero and seven seals were observed daily for the EBSP and 56 harbor seals were observed over 10 days in the area with the maximum number of 13 harbor seals sighted during the 2016 Seattle Test Pile project (WSF 2016). During marine mammal monitoring for Season 1 of the Seattle DOT Pier 62 Project, 10 harbor seals were observed within the Level B Harassment/Monitoring Zone during vibratory activity. Project activities in Season 1, primarily timber vibratory removal, had a smaller Level B Harassment/Monitoring Zone than vibratory steel installation (the primary activity for Seasons 2), so it is expected that harbor seal observations and takes in Season 2 will be greater and will more closely resemble observational data from other monitoring efforts such as EBSP and Seattle Test Pile Project.

TABLE 8—HARBOR SEAL ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km²)	Level B harassment ZOI (km²)	Days of activity	Estimated take Level A harassment	Estimated take Level B harassment
1	1.219	0.00	10.5	10	0	128
2	1.219	0.148	91	53	10	*5,879
3	1.219	0.00	2.3	64	0	180

Note:
km^2—square kilometers.
* Number of Level B harassment takes was adjusted to exclude those already counted for Level A harassment takes. Adjusted 5,869.

Northern Elephant Seal

For the Northern elephant seal, the Whale Museum (as cited in WSDOT 2016a) reported one sighting in the relevant area between 2008 and 2014. In addition, based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of northern elephant seal is expected to be zero. Therefore, to be conservative. NMFS is authorizing two instances of take by Level B harassment of northern elephant seals.

California Sea Lion

The take estimate of California sea lions for Pier 62 is based on Season 1 marine mammal monitoring for the Seattle DOT Pier 62 Project and four seasons of local sea lion abundance information from the EBSP. Marine mammal visual monitoring during the EBSP indicates that a maximum of 15 sea lions were observed in a day during 4 years of project monitoring (Anchor QEA 2014, 2015, 2016, 2017). Based on a total of 127 pile driving and removal days for the Seattle Pier 62 project Season 2, it is estimated that up to 1,905 California sea lions (15 sea lions multiplied by 127 days) could be exposed to noise levels associated with ''take.'' Since the calculated Level A Harassment Zones of otariids are all very small (Table 7), we do not consider it likely that any sea lions would be taken by Level A harassment. Therefore, all California sea lion takes estimated here are expected to be takes by Level B harassment and NMFS is authorizing instances of take by Level B harassment of 1,905 California sea lions.

As a comparison, using the U.S. Navy species density estimates (U.S. Navy 2015) for the inland waters of Washington, including Eastern Bays and Puget Sound, potential take of California sea lion is shown in Table 9. The estimated instances of take by Level B harassment is 643 California sea lions. However, the Seattle DOT believes that this estimate is unrealistically low, based on local marine mammal monitoring.

TABLE 9—CALIFORNIA SEA LION ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.1266	0.0	10.5	10	0	13
2	0.1266	0.00	91	53	0	611
3	0.1266	0.0	2.3	64	0	19

Note:
km^2—square kilometers.

Steller Sea Lion

No local monitoring data of Steller sea lions is available. Therefore, the estimated take for Steller sea lions is based on U.S. Navy species density estimates (U.S. Navy 2015), and is shown in Table 10. Since the calculated Level A Harassment Zones of otariids are all very small (Table 7), we do not consider it likely that any Steller sea lions would be taken by Level A harassment. NMFS is authorizing instances of take by Level B harassment of 187 Steller sea lions.

TABLE 10—STELLER SEA LION ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.0368	0.0	10.5	10	0	4
2	0.0368	0.00	91	53	0	178
3	0.0368	0.0	2.3	64	0	5

Note:
km^2—square kilometers.

Southern Resident Killer Whale

The take estimate of SRKW for Pier 62 is based on local data and information from the Center for Whale Research (CWR). J-pod is the pod most likely to appear in the lower Puget Sound near Seattle with a group size of approximately 23 SRKW in 2017, 24 in 2016, and 29 in 2015. (CWR 2017). Therefore, NMFS is authorizing instances of take by Level B harassment of 23 SRKW based on a single occurrence of one pod (*i.e.,* J Pod—23 individuals) that would be most likely to be seen near Seattle. Since the Level A Harassment Zones of mid-frequency cetaceans are small (Table 7), we do not consider it likely that any SRKW would be taken by Level A harassment.

The Seattle DOT must coordinate with the Orca Network and the CWR in an attempt to avoid all take of SRKW, but it may be possible that a group may enter the Level B Harassment/Monitoring Zones before Seattle DOT could shut down due to the larger size of the Level B Harassment/Monitoring Zones particularly during vibratory pile driving (installation).

As a comparison, using the U.S. Navy species density estimates (U.S. Navy 2015) the density for the SRKW is variable across seasons and across the range. The inland water density estimates vary from 0.000000 to 0.000090/km^2 in summer, 0.001461 to 0.004760/km^2 in fall, and 0.004761–0.020240/km^2 in winter. Therefore, estimated takes as shown in Table 11 are based on the highest density estimated during the winter season

(0.020240/km²) for the SRKW population. With the variable winter density, the estimate can range from 24 to 103 SRKW, with the upper take estimate greater than the estimated population size.

TABLE 11—SOUTHERN RESIDENT KILLER WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km²)	Level B harassment ZOI (km²)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.020240	0.0	10.5	10	0	2
2	0.020240	0.00	91	53	0	98
3	0.020240	0.0	2.3	64	0	3

Note:
km²—square kilometers.

Transient Killer Whale

The take estimate of transient killer whales for Pier 62 is based on local data. Seven transients were reported in the project area (Orca Network Archive Report 2016a). Therefore, NMFS is authorizing instances of take by Level B harassment of 42 transient killer whales, which would cover up to 2 groups of up to 7 transient whales entering into the project area and remaining there for three days. Since the Level A Harassment Zones of mid-frequency cetaceans are small (Table 7), we do not consider it likely that any transient killer whales would be taken by Level A harassment.

As a comparison, based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of transient killer whale is shown in Table 12. As with the SRKW, the density estimate of transient killer whales is variable between seasons and regions. Density estimates range from 0.000575 to 0.001582/km² in summer, from 0.001583 to 0.002373/km² in fall, and from 0.000575 to 0.001582/km² in winter. Work could occur throughout summer, fall and winter, so the highest estimate, fall density, was used to conservatively estimate take. For instances of take by Level B harassment, this results in a take estimate of twelve transient killer whales. However, the Seattle DOT believes that this estimate is low based on local data of seven transients that were reported in the area (Orca Network Archive Report 2016a).

TABLE 12—TRANSIENT KILLER WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km²)	Level B harassment ZOI (km²)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.002373	0.0	10.5	10	0	0
2	0.002373	0.00	91	53	0	12
3	0.002373	0.0	2.3	64	0	0

Note:
km²—square kilometers.

Long-Beaked Common Dolphin

The take estimate of long-beaked common dolphin for Pier 62 is based on local monitoring data. The earliest documented sighting of long-beaked common dolphins in Puget Sound was July 2003. In June 2011, two long-beaked common dolphins were sighted in South Puget Sound. Sightings continued in 2012, and in 2016–17. Four to twelve sightings were reported regularly, with confirmed sightings of up to 30 individuals. Four to six dolphins have remained in Puget Sound since June 2016 and four animals with distinct markings have been seen multiple times and in every season of the year as of October 2017 (CRC 2017b). In 2016, the Orca Network (2016c) reported a pod of up to 20 long-beaked common dolphins. Therefore, NMFS is authorizing instances of take by Level B harassment of 7 long-beaked common dolphins per month for a total of 49 dolphins. Since the Level A Harassment Zones of mid-frequency cetaceans are all very small (Table 7), we do not consider it likely that the long-beaked common dolphin would be taken by Level A harassment. Based on U.S. Navy species density estimates (U.S. Navy 2015), potential instances of take of long-beaked common dolphin is expected to be zero; therefore, we believe it more appropriate to use local monitoring data.

Bottlenose Dolphin

The take estimate of bottlenose dolphin for Pier 62 is based on local monitoring data. In 2017 the Orca Network (2017) reported sightings of a bottlenose dolphin in Puget Sound and in Elliott Bay, and WSDOT observed two bottlenose dolphins in one week during monitoring for the Colman Dock Multimodal Project (WSDOT 2017). In addition, a group of seven dolphins were observed in 2017 and were positively identified as part of the CA coastal stock (Cascadia Research Collective, 2017). Bottlenose dolphins typically travel in groups of 2 to 15 in coastal waters (NOAA 2017). Therefore, NMFS is authorizing instances of takes by Level B harassment of 7 bottlenose dolphins per month for a total of 49 dolphins. Since the Level A Harassment Zones of mid-frequency cetaceans are all very small (Table 7), we do not consider it likely that the common bottlenose dolphin would be taken by Level A harassment. Based on U.S. Navy species density estimates (U.S. Navy 2015), instances of potential take by Level B harassment of bottlenose dolphin is expected to be zero; therefore, we believe it more appropriate to use local monitoring data.

Harbor Porpoise

Species density estimates from Smultea *et al.* (2017), is the best density data available for the potential take of harbor porpoise and is shown in Table 13. Instances of take by Level A

harassment is estimated at 25 harbor porpoises and instances of take by Level B harassment is estimated at 2,716 harbor porpoises. Therefore, NMFS is authorizing instances of take by Level A harassment of 25 harbor porpoises and instances of take by Level B harassment of 2,716 harbor porpoises.

TABLE 13—HARBOR PORPOISE ESTIMATED TAKE BASED ON SMULTEA et al., 2017

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.54	0.00	10.5	10	0	57
2	0.54	0.875	91	53	25	*2,604
3	0.54	0.018	2.3	64	0	80

Note:
km^2—square kilometers.
*Number of Level B harassment takes was adjusted to exclude those already counted for Level A harassment takes. Take is instances not individuals. Adjusted 2,579.

Dall's Porpoise

No local monitoring data of Dall's porpoise is available. Therefore, the estimated instances of take for Dall's porpoise is based on U.S. Navy species density estimates (U.S. Navy 2015), as shown in Table 14. Based on these calculations, NMFS is authorizing instances of take by Level A harassment of two Dall's porpoise and instances of take by Level B harassment of 196 Dall's porpoise.

TABLE 14—DALL'S PORPOISE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.039	0.00	10.5	10	0	4
2	0.039	0.875	91	53	2	*188
3	0.039	0.018	2.3	64	0	6

Note:
km^2—square kilometers.
*Number of Level B harassment takes was adjusted to exclude those already counted for Level A harassment takes. Adjusted 186.

Humpback Whale

Based on U.S. Navy species density estimates (U.S. Navy 2015), potential take of humpback whale is shown in Table 15. Although the standard take calculations would result in an estimated take of less than one humpback whale, to be conservative, NMFS is authorizing instances of take by Level B harassment of five humpback whales based on take during previous work in Elliott Bay where two humpback whales were observed, including one take, during the 175 days of work during the previous four years (Anchor QEA 2014, 2015, 2016, and 2017). Since the Level A Harassment Zones of low-frequency cetaceans are smaller during vibratory removal (27.3 m) or impact installation (88.6 m) compared to the Level A Harassment Zone for vibratory installation (504.8 m) (Table 7), we do not consider it likely that any humpbacks would be taken by Level A harassment during removal or impact installation. We also do not believe any humpbacks would be taken during vibratory installation due to the ability to see humpbacks easily during monitoring and additional coordination with the Orca Network and the CWR which would enable the work to be shut down before a humpback would be taken by Level A harassment.

TABLE 15—HUMPBACK WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.00001	0.00	10.5	10	0	0
2	0.00001	0.400	91	53	0	0
3	0.00001	0.01	2.3	64	0	0

Note:
km^2—square kilometers.

Gray Whale

No local monitoring data of gray whales is available. Therefore, the instances of estimated take for gray whales is based on U.S. Navy species density estimates (U.S. Navy 2015), as shown in Table 16. Therefore, NMFS is authorizing instances of take by Level B harassment of four gray whales. Since the Level A Harassment Zones of low-frequency cetaceans are smaller during vibratory removal (27.3 m) or impact installation (88.6 m) compared to the Level A Harassment Zone for vibratory installation (504.8 m) (Table 7), we do

not consider it likely that any gray whales would be taken by Level A harassment during removal or impact installation. We also do not believe any gray whales would be taken by Level A harassment during vibratory installation due to the ability to see gray whales easily during monitoring and additional coordination with the Orca Network and the CWR, which would enable the work to be shut down before a gray whale would be taken by Level A harassment.

TABLE 16—GRAY WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Sound source	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.00051	0.00	10.5	10	0	0
2	0.00051	0.400	91	53	0	3
3	0.00051	0.01	2.3	64	0	1

Note:
km^2—square kilometers.

Minke Whale

Between 2008 and 2014, the Whale Museum (as cited in WSDOT 2016a) reported one sighting of a minke whale in the relevant area. As a comparison, based on U.S. Navy species density estimates (U.S. Navy 2015), the instance of potential take of minke whales is expected to be ten (Table 17). To be conservative NMFS is authorizing the take of 10 minkes by Level B harassment. Based on the low probability that a minke whale would be observed during the project and then also enter into a Level A zone, we do not consider it likely that any minke whales would be taken by Level A harassment.

TABLE 17—MINKE WHALE ESTIMATED TAKE BASED ON NMSDD PRESENTED FOR COMPARISON

Level B zone	Species density	Level A harassment ZOI (km^2)	Level B harassment ZOI (km^2)	Days of activity	Estimated Level A harassment take	Estimated Level B harassment take
1	0.002	0.00	10.5	10	0	0
2	0.002	0.400	91	53	0	10
3	0.002	0.01	2.3	64	0	0

Note:
km^2—square kilometers.

The summary of the authorized take by Level A and Level B Harassment is described below in Table 18.

TABLE 18—SUMMARY OF AUTHORIZED INCIDENTAL TAKE BY LEVEL A AND LEVEL B HARASSMENT

Species	Stock size	Authorized Level A harassment take	Authorized Level B harassment take	Authorized total take	% of Population
Pacific harbor seal (*Phoca vitulina*)	11,036	53	1,598[a]	1,651	14.96.
Northern elephant seal (*Mirounga angustirostris*)	179,000	0	2[b]	2	Less than 1.
California sea lion (*Zalophus californianus*)	296,750	0	1,905[c]	1,905	Less than 1.
Steller sea lion (*Eumetopias jubatus*)	41,638	0	187	187	Less than 1.
Southern resident killer whale DPS (*Orcinus orca*)	83	0	23 (single occurrence of one pod)[d].	23 (single occurrence of one pod).	27.71.
Transient killer whale (*Orcinus orca*)	240	0	42[e]	42	17.5.
Long-beaked common dolphin (*Dephinus capensis)*	101,305	0	49[f]	49	Less than 1.
Bottlenose dolphin (*Tursiops truncatus*)	1,924	0	49[g]	49	Less than 1.
Harbor porpoise (*Phocoena phocoena*)	11,233	25	2,716	2,741	24.4.
Dall's porpoise (*Phocoenoides dalli*)	25,750	2	196	198	Less than 1.
Humpback whale (*Megaptera novaengliae*)	1,918	0	5[h]	5	Less than 1.
Gray whale (*Eschrichtius robustus*)	20,990	0	4	4	Less than 1.
Minke whale (*Balaenoptera acutorostrata*)	636	0	10	10	Less than 1.

Note:
[a] The take estimate is based on a maximum of 13 seals observed on a given day during the 2016 Seattle Test Pile project. The number of Level B harassment takes was adjusted to exclude those already counted for Level A harassment takes.
[b] The take estimate is based on The Whale Museum (as cited in WSDOT 2016a) reporting one sighting of a northern elephant seal in the area between 2008 and 2014, but conservatively NMFS estimated two takes.
[c] The take estimate is based on a maximum of 15 California sea lions observed on a given day during 4 monitoring seasons of the EBSP project.
[d] The take estimate is based on a single occurrence of one pod of SRKW (*i.e.,* J-pod of 23 SRKW) that would be most likely to be seen near Seattle.
[e] The take estimate is based on local data which is greater than the estimates produced using the Navy density estimates.
[f] The take estimate is based on the local data from several sources including Cascadia Research Collective and the Orca Network for long-beaked common dolphins.
[g] The take estimate is based on local data. A group of seven dolphins were observed in Puget Sound in 2017 and were positively identified as part of the CA coastal stock (Cascadia Research Collective, 2017).
[h] The take estimate is based on take during previous work in Elliott Bay, where two humpback whales were observed and is greater than what was calculated using 2015 Navy density estimates.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned) and the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Several measures for mitigating effects on marine mammals and their habitat from the pile installation and removal activities at Pier 62 are described below.

Timing Restrictions

All work must be conducted during daylight hours.

Pre-Construction Briefing

Seattle DOT must conduct briefings for construction supervisors and crews, the monitoring team, and Seattle DOT staff prior to the start of all pile driving and removal activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

Bubble Curtain

A bubble curtain must be used during pile driving activities with an impact hammer to reduce sound levels. Seattle DOT has stated as part of their specified activity that they have agreed to employ a bubble curtain during impact pile driving of steel piles and must implement the following bubble curtain performance standards:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

(ii) The lowest bubble curtain ring must be deployed on or as close to the mudline for the full circumference of the ring as possible, without causing turbidity.

(iii) Seattle DOT must require that construction contractors train personnel in the proper balancing of air flow to the bubblers, and must require that construction contractors submit an inspection/performance report for approval by Seattle DOT within 72 hours following the performance test. Corrections to the attenuation device to meet the performance standards must occur prior to impact driving.

Shutdown Zones

Shutdown Zones must be implemented to protect marine mammals from Level A harassment (Table 19 below). The PTS isopleths described in Table 7 were used as a starting point for calculating the shutdown zones; however, Seattle DOT must implement a minimum shutdown zone of a 10 m radius around each pile for all construction methods for all marine mammals. Therefore, in some cases the shutdown zone must be slightly larger than was calculated for the PTS isopleths as described in Table 7 (*i.e.,* for mid-frequency cetaceans and otariid pinnipeds). Outside of any Level A harassment take authorized, if a marine mammal is observed at or within the Shutdown Zone, work must shut down (stop work) until the individual has been observed outside of the zone, or has not been observed for at least 15 minutes for all marine mammals. A determination that the Shutdown Zone is clear must be made during a period of good visibility (*i.e.,* the entire Shutdown Zone and surrounding waters must be visible to the naked eye). If a marine mammal approaches or enters the Shutdown Zone during activities or pre-activity monitoring, all pile driving and removal activities at that location must be halted or delayed, respectively. If pile driving or removal is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal. Pile driving and removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

TABLE 19—SHUTDOWN ZONES FOR VARIOUS PILE DRIVING AND REMOVAL ACTIVITIES FOR MARINE MAMMAL HEARING GROUPS

Sound source type	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
			Shutdown Zones (meters)		
1—Vibratory (pile removal)	28	10	41	17	10
2—Vibratory (installation)	505	45	747	307	22
3—Impact (installation)	89	10	106	48	10

Additional Shutdown Measures

For in-water heavy machinery activities other than pile driving, if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions.

Seattle DOT must implement shutdown measures if the cumulative total number of individuals observed within the Level B Harassment/

Monitoring Zones (below in Table 20) for any particular species reaches the number authorized under the IHA and if such marine mammals are sighted within the vicinity of the project area and are approaching the Level B Harassment/Monitoring Zone during in-water construction activities.

Level B Harassment/Monitoring Zones

Seattle DOT must monitor the Level B Harassment/Monitoring Zones as described in Table 20.

TABLE 20—LEVEL B HARASSMENT/MONITORING ZONES FOR VARIOUS PILE DRIVING AND REMOVAL ACTIVITIES

Activity	Construction method	Level B threshold (m)	Level B ZOI (km^2)
Removal of 14-in Timber Piles	Vibratory	2,929	10.5
Installation of 30-in Steel Piles	Vibratory	54,117	91
Installation of 30-in Steel Piles	Impact	1,201	2.3

Soft-Start for Impact Pile Driving

Each day at the beginning of impact pile driving or any time there has been cessation or downtime of 30 minutes or more without impact pile driving, Seattle DOT must use the soft-start technique by providing an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 30-second waiting period, then two subsequent three-strike sets. Soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

Additional Coordination

The project team must monitor and coordinate with local marine mammal networks on a daily basis (*i.e.,* Orca Network and/or the CWR) for sightings data and acoustic detection data to gather information on the location of whales prior to pile removal or pile driving activities. The project team must also coordinate with Washington State Ferries to discuss marine mammal sightings on days when pile driving and removal activities are occurring on their nearby projects. Marine mammal monitoring must be conducted to collect information on the presence of marine mammals within the Level B Harassment/Monitoring Zones for this project. In addition, reports must be made available to interested parties upon request. With this level of coordination in the region of activity, Seattle DOT must get real-time information on the presence or absence of whales before starting any pile driving or removal activities.

During Season 1, Seattle DOT carried out additional voluntary mitigation measures during pile driving and removal activities to minimize impacts from noise on the Seattle Aquarium's captive marine mammals as well as for air and water quality concerns. These measures were successfully coordinated and implemented, and Seattle DOT will implement the same measures during Season 2 work, as follows:

1. If aquarium animals are determined by the Aquarium veterinarian to be distressed, Seattle DOT will coordinate with Aquarium staff to determine appropriate next steps, which may include suspending pile driving work for 30 minutes, provided that suspension does not pose a safety issue for the Pier 62 project construction crews.
2. Seattle DOT will make reasonable efforts to take at least one regularly scheduled 20-minute break in pile driving each day.
3. Seattle DOT will regularly communicate with the Aquarium staff when pile driving is occurring.
4. Seattle DOT will further coordinate with the Aquarium to determine appropriate methods to avoid and minimize impacts to water quality.
5. Seattle DOT does not anticipate the project resulting in impacts associated with airborne dust. If, during construction, odors associated with the project are an issue, Seattle DOT will coordinate with its contractor to determine appropriate mitigation measures.

Based on our evaluation of the applicant's mitigation measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Marine mammal monitoring must be conducted at all times during in-water pile driving and pile removal activities

in strategic locations around the area of potential effects as described below:

- During pile removal or installation with a vibratory hammer, three to four monitors would be used, positioned such that each monitor has a distinct view-shed and the monitors collectively have overlapping view-sheds (refer to Appendix A, Figures 1–3 of the Seattle DOT's application).
- During pile driving activities with an impact hammer, one monitor must be based at or near the construction site, and in addition, two to three additional monitors would be used, positioned such that each monitor has a distinct view-shed and the monitors collectively have overlapping view-sheds (refer to Appendix A, Figures 1–3 of the Seattle DOT's application).
- In the case(s) where visibility becomes limited, additional land-based monitors and/or boat-based monitors may be deployed.
- Monitors must record take when marine mammals enter the relevant Level B Harassment/Monitoring Zones based on type of construction activity.

If a marine mammal approaches or enters the Shutdown Zone during activities or pre-activity monitoring, all pile driving or removal activities at that location must be halted or delayed, respectively. If pile driving or removal is halted or delayed due to the presence of a marine mammal, the activity may not resume or commence until either the animal has voluntarily left and been visually confirmed beyond the Shutdown Zone or 15 minutes have passed without re-detection of the animal. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

Protected Species Observers

Seattle DOT must employ NMFS-approved protected species observers (PSOs) to conduct marine mammal monitoring for its Pier 62 Project. The PSOs must observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work. NMFS-approved PSOs must meet the following requirements:

1. Independent PSOs (*i.e.,* not construction personnel) are required.

2. At least one PSO must have prior experience working as a marine mammal observer during construction activities.

3. Other PSOs may substitute education (degree in biological science or related field) or training for experience.

4. Where a team of three or more PSOs are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as a marine mammal observer during construction.

5. NMFS must require submission and approval of observer CVs.

Seattle DOT must ensure that observers have the following additional qualifications:

1. Ability to conduct field observations and collect data according to assigned protocols.

2. Experience or training in the field identification of marine mammals, including the identification of behaviors.

3. Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations.

4. Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior.

5. Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

PSOs must monitor marine mammals around the construction site using high-quality binoculars (*e.g.,* Zeiss, 10 x 42 power) and/or spotting scopes. Due to the different sizes of the Level B Harassment/Monitoring Zones from different pile sizes, several different Level B Harassment/Monitoring Zones and different monitoring protocols corresponding to a specific pile size must be established. If marine mammals are observed, the following information must be documented:

1. Date and time that monitored activity begins or ends for each day conducted (monitoring period);

2. Construction activities occurring during each observation period, including how many and what type of piles driven;

3. Deviation from initial proposal in pile numbers, pile types, average driving times, etc.

4. Weather parameters in each monitoring period (*e.g.,* wind speed, percent cover, visibility);

5. Water conditions in each monitoring period (*e.g.,* sea state, tide state);

6. For each marine mammal sighting:

a. Species, numbers, and, if possible, sex and age class of marine mammals;

b. Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving or removal activity;

c. Location and distance from pile driving or removal activities to marine mammals and distance from the marine mammals to the observation point; and

d. Estimated amount of time that the animals remained in the Level B Harassment Zone.

7. Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);

8. Other human activity in the area within each monitoring period

9. A summary of the following:

a. Total number of individuals of each species detected within the Level B Harassment/Monitoring Zone, and estimated as taken if correction factor appropriate.

b. Total number of individuals of each species detected within the Shutdown Zone and the average amount of time that they remained in that zone.

c. Daily average number of individuals of each species (differentiated by month as appropriate) detected within the Level B Harassment/Monitoring Zone, and estimated as taken, if appropriate.

Acoustic Monitoring

In addition, acoustic monitoring must occur on up to six days per in-water work season to evaluate, in real time, sound production from construction activities and must capture all hammering scenarios that may occur under the planned project.

The results and conclusions of the acoustic monitoring must be summarized and presented to NMFS with recommendations on any modifications to this plan or Shutdown Zones.

Reporting Measures

Marine Mammal Monitoring Report

Seattle DOT must submit a draft marine mammal monitoring report within 90 days after completion of the in-water construction work, the expiration of the IHA, or 60 days prior to the requested date of issuance of any subsequent IHA, whichever is earliest. The report would include data from marine mammal sightings as described: Date, time, location, species, group size, and behavior, any observed reactions to construction, distance to operating pile hammer, and construction activities

occurring at time of sighting and environmental data for the period (*i.e.,* wind speed and direction, sea state, tidal state, cloud cover, and visibility). The marine mammal monitoring report must also include total takes, takes by day, and stop-work orders for each species. NMFS must have an opportunity to provide comments on the report, and if NMFS has comments, Seattle DOT must address the comments and submit a final report to NMFS within 30 days. If no comments are received from NMFS within 30 days, the draft report must be considered final. Any comments received during that time must be addressed in full prior to finalization of the report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury, or mortality, Seattle DOT would immediately cease the specified activities and immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hrs preceding the incident;
- Water depth;
- Environmental conditions (*e.g.,* wind speed and direction, sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hrs preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Seattle DOT to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Seattle DOT may not resume their activities until notified by NMFS via letter, email, or telephone.

Reporting of Injured or Dead Marine Mammals

In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), Seattle DOT must immediately report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS' West Coast Stranding Coordinator. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with Seattle DOT to determine whether modifications in the activities are appropriate.

In the event that Seattle DOT discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Seattle DOT must report the incident to the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS Stranding Hotline and/or by email to the NMFS' West Coast Stranding Coordinator within 24 hrs of the discovery. Seattle DOT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Acoustic Monitoring Report

Seattle DOT must submit an Acoustic Monitoring Report within 90 days after completion of the in-water construction work or the expiration of the IHA, whichever comes earlier. The report must provide details on the monitored piles, method of installation, monitoring equipment, and sound levels documented during both the sound source measurements and the background monitoring. NMFS must have an opportunity to provide comments on the report or changes in monitoring for a third season (if needed), and if NMFS has comments, Seattle DOT must address the comments and submit a final report to NMFS within 30 days. If no comments are received from NMFS within 30 days, the draft report must be considered final. Any comments received during that time must be addressed in full prior to finalization of the report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

No serious injury or mortality is anticipated or authorized for the Pier 62 Project (Season 2). Takes that are anticipated and authorized are expected to be limited to short-term Level A and Level B (behavioral) harassment. Marine mammals present in the vicinity of the action area and taken by Level A and Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. However, many marine mammals showed no observable changes during Season 1 of the Pier 62 project and similar project activities for the EBSP.

A fair number of instances of takes are expected to be repeat takes of the same animals. This is particularly true for harbor porpoise, because they generally use sub-regions of Puget Sound, and the abundance of the Seattle sub-region from the Puget Sound Study was estimated to be 147 animals, which is much lower than the calculated take. Very few harbor porpoises have been observed during past projects in Elliott Bay (ranging from one to five harbor porpoises).

There are two endangered species that may occur in the project area,

humpback whales and SRKW. However, few humpbacks are expected to occur in the project area and few have been observed during previous projects in Elliott Bay. SRKW have occurred in small numbers in the project area. Seattle DOT must shut down in the Level B Harassment/Monitoring Zones should they meet or exceed the take of one occurrence of one pod (J-pod, 23 whales).

There is ESA-designated critical habitat in the vicinity of Seattle DOT's Pier 62 Project for SRKW. However, this IHA is authorizing the harassment of marine mammals, not the production of sound, which is what would result in adverse effects to critical habitat for SRKW.

There is one documented harbor seal haulout area near Bainbridge Island, approximately 6 miles (9.66 km) from Pier 62. The haulout, which is estimated at less than 100 animals, consists of intertidal rocks and reef areas around Blakely Rocks and is at the outer edge of potential effects at the outer extent near Bainbridge Island (Jefferies *et al.* 2000). The recent level of use of this haulout is unknown. Harbor seals also make use of docks, buoys, and beaches in the project area, as noted in marine mammal monitoring reports for Season 1 of the Pier 62 Project and for the EBSP (Anchor QEA 2014, 2015, 2016, and 2017). Similarly, the nearest Steller sea lion haulout to the project area is located approximately 6 miles away (9.66 km) and is also on the outer edge of potential effects. This haulout is composed of net pens offshore of the south end of Bainbridge Island. There are four documented California sea lion haulout areas near Bainbridge Island as well, approximately six miles from Pier 62, and two documented haulout areas between Bainbridge Island and Magnolia (Jefferies *et al.* 2000). The haulouts consist of buoys and floats, and some are within the area of potential effects, but at the outer extent, and some are just outside the area of potential effects (Jefferies *et al.* 2000). California sea lions were also frequently observed during marine mammal monitoring for Season 1 of the Pier 62 project (average of eight sea lions) at the Alki monitoring site and were frequently observed resting on two buoys in the southwest area of Elliott Bay. California sea lions were also frequently observed during the EBSP (average seven per day in 2014 and 2015, and three per day in 2016 and 2017; Anchor QEA 2014, 2015, 2016, and 2017), resting on two navigational buoys within the project area (near Alki Point) and swimming along the shoreline near the project.

The project also is not expected to have significant adverse effects on affected marine mammal habitat, as analyzed in the ''Potential Effects of Specified Activities on Marine Mammals and their Habitat'' section. Project activities would not permanently modify existing marine mammal habitat. The activities may kill some fish and cause other fish to leave the area temporarily, thus impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. Therefore, given the consideration of potential impacts to marine mammal prey species and their physical environment, Seattle DOT's Pier 62 Project would not adversely affect marine mammal habitat.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- Takes that are anticipated and authorized are expected to be limited to short-term Level B harassment (behavioral) and a small number of takes of Level A harassment for three species.
- The project also is not expected to have significant adverse effects on affected marine mammals' habitat.
- There are no known important feeding or pupping areas. There are haulouts for California sea lions, harbor seals and Steller sea lions. However, they are at the most outer edge of the potential effects and approximately 6.6 miles from Pier 62. There are no other known important areas for marine mammals.
- For nine of the twelve species, take is less than one percent of the stock abundance. Instances of take for the other three species (harbor seals, killer whales, and harbor porpoise) range from about 15–28 percent of the stock abundance. One occurrence of J-pod of SRKW would account for 28 percent of the stock abundance. However, when the fact that a fair number of these instances are expected to be repeat takes of the same animals is considered, particularly for harbor porpoise, the number of individual marine mammals taken is significantly lower.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Take of nine of the twelve species is less than one percent of the stock abundance. Instances of take for the SRKW and transient killer whales, harbor seals, and harbor porpoise ranges from about 15–28 percent of the stock abundance, all of which NMFS has determined comprise small numbers of these stocks. Additionally, when the fact that a fair number of these instances are expected to be repeat takes of the same animals is considered, the number of individual marine mammals taken is significantly lower. Specifically, Smultea *et al.* 2017 conducted harbor porpoise surveys in eight regions of Puget Sound, and estimated an abundance of 168 harbor porpoise in the Seattle area (100 in Bainbridge (just west of Seattle) and 265 in Southern Puget Sound). While individuals do move between regions, we would not realistically expect that 2,500+ harbor porpoise individuals would be exposed around the pile driving and removal activities for the Seattle DOT's Pier 62 Project. Considering these factors, as well as the general small size of the project area as compared to the range of the species affected, the numbers of marine mammals estimated to be taken are small proportions of the total populations of the affected species or stocks. Further, for SRKW, 27.71 percent of the stock is authorized to be taken by Level B harassment, but we also believe that a single, brief incident of take of one group of any species represents take of small numbers for that species. Based on the analysis contained herein of the planned activity

(including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the ESA of 1973 (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, in this case with the West Coast Regional Office (WCRO), whenever we propose to authorize take for endangered or threatened species.

The Permit and Conservation Division consulted under section 7 of the ESA with the WCRO for the issuance of this IHA. The WCRO concluded that the take of marine mammals authorized here is not likely to jeopardize the continued existence of SRKW and humpback whales and will not result in the destruction or adverse modification of designated critical habitat.

Authorization

NMFS has issued an IHA to the Seattle DOT for the harassment of small numbers of marine mammals incidental to pile driving and removal activities for the Pier 62 Project (Season 2) within Elliott Bay, Seattle, Washington from August 1, 2018 to February 28, 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 7, 2018.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2018–17185 Filed 8–9–18; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Advisory Committee on Arlington National Cemetery will take place.

DATES: The Committee will meet on Friday, September 7, 2018 from 10:30 a.m. to 2:00 p.m.

ADDRESSES: The Committee will meet in the Welcome Center Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating, Alternate Designated Federal Officer for the Committee, 1–877–907–8585 (Voice), (703) 607–8551 (Facsimile), *timothy.p.keating.civ@mail.mil* (Email). Mailing address is Arlington National Cemetery, Arlington, VA 22211. Website: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter.* 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) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the Committee's advice and recommendations.

Agenda: The Committee will receive a report by the Remember and Explore Subcommittee regarding a proposal to erect a commemorative monument within ANC and may deliberate a recommendation to the sponsor. Additionally, the Committee will receive a report from the Honor Subcommittee regarding fact-finding to develop possible courses of action regarding the future of ANC to present in a roundtable forum with representatives of Veteran and Military Service Organizations. The subcommittee will also report any proposed recommendations as a result of that roundtable discussion. The Committee will study and deliberate any recommendations and may formally report recommendations to the sponsor for keeping ANC open well in to the future.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Timothy Keating, the Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Committee, in response to the stated agenda of the open meeting or in regard to the Committee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the Committee. The Designated Federal Officer will review all timely submitted written comments or statements with the Committee Chairperson, and ensure the comments are provided to all members of the Committee before the meeting. Written comments or statements received after this date may not be provided to the Committee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at

the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the Committee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the addresses listed in the **FOR FURTHER INFORMATION CONTACT** section. The Designated Federal Officer will log each request, in the order received, and in consultation with the Committee Chair determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of meeting may be available for public comments. Members of the public who have requested to make a comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the Designated Federal Officer.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–17158 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee on Arlington National Cemetery; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense is publishing this notice to announce that the following Federal Advisory Committee meeting of the Advisory Committee on Arlington National Cemetery, Honor Subcommittee and Remember and Explore Subcommittee will take place.

DATES: The Honor subcommittee will meet on Wednesday September 5, 2018 from 9:00 a.m. to 12:00 p.m. The Remember and Explore subcommittee will meet on Thursday September 6, 2018 from 8:30 a.m. to 10:30 a.m.

ADDRESSES: The Honor Subcommittee will meet in the Conference Room of the Spates Community Conference Center, Joint Base Myer—Henderson Hall, 214 McNair Road, Fort Myer, VA 22211. The Remember and Explore Subcommittee will meet in the Welcome Center Conference Room, Arlington National Cemetery, Arlington, VA 22211.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Keating, Alternate Designated Federal Officer for the Committee, 1–877–907–8585 (Voice), (703) 607–8551 (Facsimile), *timothy.p.keating.civ@mail.mil* (Email). Mailing address is Arlington National Cemetery, Arlington, VA 22211. Website: *http://www.arlingtoncemetery.mil/About/Advisory-Committee-on-Arlington-National-Cemetery/Charter.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: These subcommittee meetings are being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The Advisory Committee on Arlington National Cemetery is an independent federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery (ANC), including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations.

The primary purpose of the Honor subcommittee is to accomplish an independent assessment of methods to address the long-term future of the Army national cemeteries, including how best to extend the active burials and what ANC should focus on once all available space is used.

The primary purpose of the Remember & Explore Subcommittee is to recommend methods to maintain the Tomb of the Unknown Soldier Monument, including the cracks in the large marble sarcophagus, the adjacent marble slabs, and the potential replacement marble stone for the sarcophagus already gifted to the Army; accomplish an independent assessment of requests to place commemorative monuments; and identify means to capture and convey ANC's history, including Section 60 gravesite mementos, and improve the quality of visitors' experiences now and for generations to come.

Agenda: The Honor subcommittee will review the results of a national dialogue and public survey conducted pursuant to Public Law 114–158. The subcommittee will subsequently conduct a roundtable discussion with visiting guests and study courses of action to extend the life of ANC well in to the future which will be reported to the Full Advisory Committee for deliberation in developing recommendations to the Secretary of the Army.

The Remember and Explore subcommittee will receive an update regarding ongoing maintenance efforts for the Memorial Amphitheater and review current requests for placement of commemorative monuments within ANC.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, these meetings are open to the public. Seating is on a first-come basis. Spates Community Center Conference Room, Joint Base Myer—Henderson Hall is readily accessible to and usable by persons with disabilities. The ANC Welcome Center Conference room is readily accessible to and usable by persons with disabilities. For additional information about public access procedures, contact Mr. Timothy Keating, the Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Mr. Timothy Keating, the subcommittee's Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the respective subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the subcommittee is not obligated to allow the public to speak or otherwise address the subcommittee during the meeting. However, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–17159 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–0B]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: DSCA at *dsca.ncr.lmo.mbx.info@mail.mil* or (703) 697–9709.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–0B.

Dated: August 7, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 2 6 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 18-0B. This report relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 13-40 of 27 June 2013.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 18–0B

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C)), (AECA)

(i) *Purchaser:* Government of France

(ii) *Sec. 36(b)(1), AECA Transmittal No.:* 13–40

Date: 27 June 2013

Military Department: U.S. Air Force

(iii) *Description:* On 27 June 2013, Congress was notified by Congressional certification transmittal number 13–40 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of 16 MQ–9 Reaper Remotely Piloted Aircraft, 8 Mobile Ground Control Stations (GCS), 48 Honeywell TPE331–10T Turboprop Engines (16 installed and 32 Spares), 24 Satellite Earth Terminal Substations, 40 Ku Band Link-Airborne Communication Systems, 40 General Atomics Lynx (exportable) Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) Systems, 40 AN/DAS–1 Multi-Spectral Targeting System (MTS)–B, 40 Ground Data Terminals, 40 ARC–210 Radio Systems, 40 Embedded Global Positioning System/Inertial Navigation Systems, and 48 AN/APX–119 and KIV–

119 Identify Friend or Foe (IFF) Systems. Also provided are spare and repair parts, communication, test, and support equipment, publications and technical documentation, airworthiness and maintenance support, site surveys and bed down planning, personnel training and training equipment, operational flight test, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost was $1.5 billion. Major Defense Equipment (MDE) constituted $765 million of this total.

This transmittal reports the retrofit of MQ–9s to become weapons capable, and the inclusion of 100 GBU–49 Enhanced Paveway dual mode GPS and laser guided bomb kits comprised of MXU–650 Air Foil Group (AFG) and MAU–210 Enhanced Computer Control Group (ECCG); 200 FMU–152 fuzes; 650 AGM–114R Hellfire missiles, with active warheads; 45 AGM–114R Hellfire training missiles, without active warheads; and 6 Hellfire Captive Air Training Missiles.

The retrofit and inclusion of MDE not enumerated in the original notification will result in an increase in the cost of MDE by $210 million. The total case value will increase to $1.71 billion.

(iv) *Significance:* This notification is being provided as the retrofit of the MQ–9 systems to become weapons capable, and the inclusion of MDE items not originally notified represents an increase in capability. Enhancement of France's MQ–9 will provide strike capability to augment the current intelligence, surveillance, and reconnaissance (ISR) capability.

(v) *Justification:* Enhancement of France's MQ–9 to provide strike capability will contribute to the foreign and national security policies of the United States by enhancing the ISR and strike capability of a NATO ally. This creates a multi-role capability to provide rapid response to neutralize threats without having to employ secondary aircraft from French, U.S., or coalition partners, in support of national, NATO, and UN-mandated operations. This further contributes to commonality between ISR, weapons, and munitions capabilities which will greatly increase the interoperability between the U.S., French militaries and other peacekeeping forces.

(vi) *Sensitivity of Technology:* France currently owns and operates an unarmed version of the MQ–9 Unmanned Aerial Vehicle (UAV) system. No new Critical Program Information or Technology is involved in the weaponization process. In addition to weaponization kits and pylons, software and hardware upgrades, survey and test, and training and training equipment, sensitive or classified elements of the upgrade will include:

a. The AGM–114R Hellfire is a rail-launched guided missile. The guidance system employs a Semi-Active Laser (SAL) seeker and an analogue autopilot. The SAL missiles home on the laser energy reflected off a target that has been illuminated by a laser designator. The laser designator can be on either the launch platform or another platform. The Hellfire uses a pulse-coded laser illumination so that the missile will only lock on to its chosen target, and has a multi-purpose selectable warhead. The weapon system hardware, as an ''all Up Round'' is UNCLASSIFIED. The highest level of classified information to be disclosed regarding the AGM–114R Hellfire missile is SECRET, based upon the software.

b. The Captive Air Training Missiles (CATM) consists of a functional guidance section coupled to an inert missile bus and is used for flight training but cannot be launched. The missile has an operational SAL seeker that can search for and lock-on to laser-designated targets. It functions like a tactical missile (without launch capability) during captive carry on the aircraft, making it suitable for training aircrew in simulated Hellfire missile target acquisition and lock.

c. GBU–49 Enhanced Paveway II (EP II) is a maneuverable, free-fall Laser Guided Bomb (LGB) that guides to the target using a GPS-aided INS and dual mode laser seeker. The GBU–49 consists of an Electronic Computer Control Group (ECCG) with laser detector sensor and a warhead specific Air Foil Group (AFG) that attaches to the nose and tail of a GP bomb body respectively. The GBU–49 uses a 5001b (Mk–82 or BLU–111) GP bomb body fitted with the MXU–650 AFG and MAU–210 ECCG to guide to its laser designated target. The hardware is UNCLASSIFIED; technical data and documents are classified up to SECRET.

d. FMU–152 is the Joint Programmable Bomb Fuze; a multi-function hard/soft target fuze that is used on for multiple different Mk-series bombs. The fuze can be programmed on the wing or in flight and is used with the JDAM, Paveway, and Enhanced Paveway bombs. The hardware is UNCLASSIFIED; technical data and documents are UNCLASSIFED.

(vii) *Date Report Delivered to Congress:* July 26, 2018

[FR Doc. 2018–17154 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces; Notice of Federal Advisory Committee Meeting

AGENCY: General Counsel of the Department of Defense, Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces will take place.

DATES: Open to the public Thursday August 23, 2018 from 2:00 p.m. to 4:00 p.m.

ADDRESSES: One Liberty Center, 875 N Randolph Street, Suite 1432, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dwight Sullivan, 703–695–1055 (Voice), 703–693–3903 (Facsimile), *dwight.h.sullivan.civ@mail.mil* (Email). Mailing address is DACIPAD, One Liberty Center, 875 N Randolph Street, Suite 150, Arlington, Virginia 22203. Website: *http://dacipad.whs.mil/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on August 8, 2018 of the Defense Business Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: In section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92),

Congress tasked the DAC–IPAD to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces. This will be the ninth public meeting held by the DAC–IPAD. The purpose of the meeting is for the Committee to conduct deliberations and make assessments and recommendations to the Secretary of Defense regarding the military justice data collection standards and criteria required by Article 140a, UCMJ.

Agenda: 2:00 p.m.–2:10 p.m. Public Meeting Begins—Welcome and Remarks of the Chair; 2:10 p.m.–3:45 p.m. Deliberations on Article 140a, UCMJ; 3:45 p.m.–4:00 p.m. Public Comment; 4:00 p.m. Public Meeting Adjourned. Meeting Accessibility: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. Visitors are required to sign in at the One Liberty Center security desk and must leave government-issued photo identification on file and wear a visitor badge while in the building. Department of Defense Common Access Card (CAC) holders who do not have authorized access to One Liberty Center must provide an alternate form of government-issued photo identification to leave on file with security while in the building. All visitors must pass through a metal detection security screening. Individuals requiring special accommodations to access the public meeting should contact the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* at least five (5) business days prior to the meeting so that appropriate arrangements can be made. In the event the Office of Personnel Management closes the government due to inclement weather or for any other reason, please consult the website for any changes to the public meeting date or time.

Written Statements: Pursuant to 41 CFR 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session. Written comments must be received by the DAC–IPAD at least five (5) business days prior to the meeting date so that they may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted via email to the DAC–IPAD at *whs.pentagon.em.mbx.dacipad@mail.mil* in the following formats: Adobe Acrobat or Microsoft Word. Please note that since the DAC–IPAD operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection. Oral statements from the public will be permitted, though the number and length of such oral statements may be limited based on the time available and the number of such requests. Oral presentations by members of the public will be permitted from 3:45 p.m. to 4:00 p.m. on August 23, 2018, in front of the Committee members.

Dated: August 7, 2018.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2018–17149 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: Chief Management Officer, 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 Business Board (''the Board'') will take place.

DATES: Closed to the public Wednesday, August 8, 2018 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: Rooms 3E155 & 3E863 in the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roma Laster, (703) 697–2168 (Voice), (703) 614–4365 (Facsimile), *roma.k.laster.civ@mail.mil* (Email). Mailing address is Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155. The Board's website is: *http://dbb.defense.gov/.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense (DoD) and the Designated Federal Officer, the Defense Business Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the meeting on August 8, 2018 of the Defense Business Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement. 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 (5 U.S.C. 552b), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the Board is to examine and advise the Secretary of Defense and the Deputy Secretary of Defense, through the Chief Management Officer (CMO) of the Department of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Agenda: The meeting will begin at 8:00 a.m. in Room 3E155 with opening remarks from Ms. Roma Laster, the Board's Designated Federal Officer (DFO, and Mr. Bill Simon, Chairman of the Board. Following opening comments, the Board will receive briefings from the Boston Consulting Group and McKinsey & Company, Inc. on cost management efforts within the Department. The Board will next meet in Room 3E863 with the Secretary and the Deputy Secretary of the Defense for a classified discussion of the National Defense Strategy. The meeting will adjourn not later than 1:00 p.m.

Meeting Accessibility: In accordance with section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the Board's meeting will be closed to the public. Specifically, the CMO, in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1) and (c)(4).

The U.S.C. 552b(c)(1) determination is based on the consideration that the Secretary and the Deputy Secretary of Defense discussions will involve classified matters of national defense or foreign policy. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without disclosing secret or otherwise classified material. The 5 U.S.C. 552b(c)(4) determination is based on the fact that both the Boston Consulting Group and McKinsey & Company. Inc. will disclose commercial information that is privileged or confidential. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the Board's advice and recommendations to the DoD.

Written Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the Board at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the Board's DFO at any point. Submit written statement to the Board's organizational mailbox at: *osd.pentagon.odam.mbx.defense-business-board@mail.mil.* Please note that since the Board operates in accordance with the provisions of the FACA, all submitted comments will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's website.

Dated: August 7, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2018–17147 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–07]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: DSCA at *dsca.ncr.lmo.mbx.info@mail.mil* or (703) 697–9709.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–07 with attached Policy Justification.

Dated: August 7, 2018.

Shelly E. Finke,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUL 2 6 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 18-07, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Bahrain for defense articles and services estimated to cost $70 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified document provided under separate cover)

BILLING CODE 5001–06–C

Transmittal No. 18–07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* The Government of Bahrain

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	$ 0 million
Other	$70 million
TOTAL	$70 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE): None

Non-MDE: Follow-On Technical Support (FOTS) for the Royal Bahrain Navy Ship SABHA (FFG–90), formerly the USS Jack Williams (FFG–24), transferred as Excess Defense Article on September 13, 1996. Also includes engineering, technical, and logistics services, documentation, and modification material for U.S. Navy supplied systems and equipment and other related elements of logistics and program support.

(iv) *Military Department:* Navy (BA–P–GAV, Amendment 12)

(v) *Prior Related Cases, if any:* BA–P–GAV

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* July 26, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Bahrain—Follow-On Technical Support (FOTS) for the Royal Bahrain Navy Ship SABHA (FFG–90)

The Government of Bahrain has requested to buy items and services in support of Follow-On Technical Support (FOTS) for the Royal Bahrain Navy Ship SABHA (FFG–90), formerly the USS Jack Williams (FFG–24), transferred as Excess Defense Article on September 13, 1996. Also includes engineering, technical, and logistics services, documentation, and modification material for U.S. Navy supplied systems and equipment and other related elements of logistics and program support. The estimated program value is $70 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by helping to improve the security of a regional partner which is an important security partner in the region.

Bahrain intends to use this support in order to keep the ship in operational readiness status for coastal defense and security. Bahrain will have no difficulty absorbing this support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

There is no prime contractor involved in this proposed sale. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require approximately three (3) U.S. Government and six (6) contractor representatives to travel to Bahrain for an extended period for equipment fielding, systems checkout, training and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2018–17153 Filed 8–9–18; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board; Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; correction.

SUMMARY: The notice of an open meeting scheduled for August 30, 2018 published in the **Federal Register** on July 11, 2018 has a new date and time. The meeting will now be held on August 28, 2018 at 1:00 p.m.

DATES: The Inland Waterways Users Board will meet from 1:00 p.m. to 5:00 p.m. on August 28, 2018. Public registration will begin at 12:15 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, the Designated Federal Officer (DFO) for the committee, in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–6438; and by email at *Mark.Pointon@usace.army.mil.* Alternatively, contact Mr. Kenneth E. Lichtman, the Alternate Designated Federal Officer (ADFO), in writing at the Institute for Water Resources, U.S. Army Corps of Engineers, ATTN: CEIWR–GW, 7701 Telegraph Road, Casey Building, Alexandria, VA 22315–3868; by telephone at 703–428–8083; and by email at *Kenneth.E.Lichtman@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2018–17157 Filed 8–9–18; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: Session 1: 9:00 a.m.–9:50 a.m., Session 2: 10:00 a.m.–11:30 a.m., Session 3: 11:30 a.m.–12:30 p.m., August 28, 2018.

PLACE: 625 Indiana Avenue, Room 352, Washington, DC 20004.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled hearing be conducted in a meeting, the Defense Nuclear Facilities Safety Board has determined that an open meeting and hearing furthers the public interests underlying both the Government in the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Board's public hearing on August 28, 2018. The goal for the hearing is to gather information on (1) the objectives of and intended improvements to be accomplished by DOE Order 140.1, Interface with the Defense Nuclear Facilities Safety Board; (2) DNFSB access to information, facilities, and personnel; and (3) potential impacts to the DNFSB resident inspector program.

In session 1, the Board will hear the Secretary of Energy's (or his designee's) position on interface between the DNFSB and DOE. The Board and the Secretary of Energy will discuss the objectives and intended improvements for accomplishment through the development of Order 140.1. In session 2, the Board will hear testimony regarding access to information, facilities, and personnel including potential impacts to the DNFSB resident inspector program. The Board and the panel of participants will discuss changes in access to information, facilities, and personnel as a result of DOE Order 140.1; intended changes from the DOE interface manual to the Order and execution challenges; and potential impacts to the DNFSB resident inspector program as a result of DOE Order 140.1.

The agenda for the hearing is posted on the Board's website (*www.dnfsb.gov*). Public participation in the hearing is invited during the public comment period of the agenda. Persons interested in speaking during the public comment period are encouraged to pre-register by submitting a request in writing to the Board's address listed above, emailing *hearing@dnfsb.gov,* or calling the Office of the General Counsel at (202) 694–7000 or (800) 788–4016 prior to close of business on August 21, 2018. The Board asks that commenters describe the nature and scope of their oral presentations. Those who pre-register will be scheduled to speak first. Individual oral comments may be limited by the time available, depending on the number of persons who register. At the beginning of the hearing, the Board will post a list of speakers at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent

deemed appropriate. Written comments and documents will be accepted at the hearing or may be sent to the Board's Washington, DC, office. The Board will hold the hearing record open until September 28, 2018, for the receipt of additional materials.

The hearing will be presented live through internet video streaming. A link to the presentation will be available on the Board's website, and a recording will be posted soon after. A transcript of these sessions and the associated correspondence will be made available on the Board's website. The Board specifically reserves its right to further schedule and otherwise regulate the course of the hearing, to recess, reconvene, postpone, or adjourn the hearing, conduct further reviews, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Contact Person for More Information: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016.

Dated: August 7, 2018.

Joyce Connery,

Acting Chairman.

[FR Doc. 2018–17317 Filed 8–8–18; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0081

Agency Information Collection Activities; Comment Request; International Resource Information System (IRIS)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before October 9, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0081. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sara Starke, 202–453–7681.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: International Resource Information System (IRIS).

OMB Control Number: 1840–0759.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 6,596.

Total Estimated Number of Annual Burden Hours: 35,712.

Abstract: The International Resource Information System (IRIS) is an online performance reporting system for International and Foreign Language Education (IFLE) grantees. IFLE grantees are institutions of higher education, organizations and individuals funded under Title VI of the Higher Education Act of 1965, as amended (HEA) and/or the Mutual Educational and Cultural Exchange Act (Fulbright-Hays Act). Grantees under these programs enter budget and performance measure data for interim, annual and final performance reports via IRIS, as well as submit International Travel Approval Requests and Grant Activation Requests.

Dated: August 7, 2018.

Kate Mullan,

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

[FR Doc. 2018–17209 Filed 8–9–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Special Programs for Indian Children—Demonstration Grants; Supplemental Notice

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Supplemental notice.

SUMMARY: On June 26, 2018, we published in the **Federal Register** a notice inviting applications (NIA) for fiscal year (FY) 2018 for the Indian Education Discretionary Grants Programs—Demonstration Grants for Indian Children program, Catalog of Federal Domestic Assistance (CFDA) number 84.299A. This notice clarifies the selection criteria and requirements that apply to this competition.

DATES:

Deadline for Transmittal of Applications: August 10, 2018.

Deadline for Intergovernmental Review: September 10, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Tara Ramsey, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W203, Washington, DC 20202. Telephone: (202) 260–3774. Email: *NYCP.OIE@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 26, 2018 we published in the **Federal Register** an NIA for this program (83 FR 29769) that listed a number of selection criteria, including assigned point values, and requirements for this competition. Additionally, we posted an application package for the program on

the Department's website at *www2.ed.gov/programs/indiandemo/applicant.html* and *Grants.gov*. Since that time, we have discovered that some parts of the selection criteria in the application package did not match the selection criteria in the NIA, and that some of the application package instructions relating to ''Part 6, Other Attachments'' did not match requirements and criteria in the NIA. Although we noted in the application package that the NIA was the official document governing this competition, we are publishing this supplemental notice to clarify that the selection criteria and requirements in the NIA are the official selection criteria and requirements for this competition. Please refer to the NIA for the selection criteria, including assigned point values, and requirements that apply to this competition. In addition to having been published in the **Federal Register**, the NIA is attached at the end of the application package under ''Legal and Regulatory Information.'' We also have updated the application package on the Department's website and *grants.gov* to correct the items described above. Please refer to those two websites for an updated application package.

Applicants that have already submitted timely applications may resubmit their applications but are not required to do so.

Applicants must submit their applications in *Grants.gov* by 4:30:00 p.m., Washington, DC time on August 10, 2018. Instructions for submitting an application can be found in the NIA.

Note: All information in the NIA remains the same.

Program Authority: 20 U.S.C. 7441.

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 7, 2018.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2018–17145 Filed 8–9–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2018–ICCD–0082]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) Main Study Design Revision, Operational Field Test First Follow-Up (OFT2) and Second Follow-Up (OFT3), and Main Study Base Year (MS1) and Tracking for First Follow-Up (MS2)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before September 10, 2018.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2018–ICCD–0082. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2017–18 (MGLS: 2017) Main Study Design Revision, Operational Field Test First Follow-up (OFT2) and Second Follow-up (OFT3), and Main Study Base Year (MS1) and Tracking for First Follow-up (MS2).

OMB Control Number: 1850–0911.

Type of Review: A Revision of an existing information Collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 121,554.

Total Estimated Number of Annual Burden Hours: 61,501.

Abstract: The Middle Grades Longitudinal Study of 2017–18 (MGLS:2017) is the first study conducted by the National Center for Education Statistics (NCES) to follow a nationally representative sample of sixth grade students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years

and will allow researchers to examine associations between contextual factors and student outcomes. The study focuses on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study includes students with disabilities for whom descriptive information on their outcomes, educational experiences, and special education services are being collected. In preparation for the Main Study (MS), the data collection instruments and procedures were field tested. An Item Validation Field Test (IVFT) was conducted from January through May 2016 to determine the psychometric properties of assessment and survey items and the predictive potential of items so that valid, reliable, and useful assessment and survey instruments could be developed for the Main Study. The MGLS:2017 Operational Field Test (OFT) Base Year (OFT1) data collection was conducted from January through May 2017 to test the near-final instruments and recruitment and data collection procedures and materials in preparation for the MGLS:2017 Main Study Base Year (MS1). Tracking of students and associated recruitment of schools for the OFT First Follow-up (OFT2) data collection began in August 2017. The primary purpose of the OFT2 was to: (a) Obtain information on recruiting, particularly for students in three focal IDEA-defined disability groups: Specific learning disability, autism, and emotional disturbance; (b) obtain a tracking sample that can be used to study mobility patterns in subsequent years; and (c) test protocols, items, and administrative procedures. The MS1 district and school recruitment began in February 2017. The MS1 and OFT2 data collections took place from January to July 2018. OMB approved the MGLS:2017 MS1 and OFT1 data collection, and MS2 tracking and recruitment in October 2017, with the latest change request approved in April 2018 (OMB #1850–0911 v.16–19). Originally, NCES planned for MGLS:2017 to conduct annual main study follow-up data collections first beginning in January 2019 and next beginning in January 2020, when most of the students in the sample will be in grades 7 and 8, respectively. However, due to lower than expected response rates experienced in the sixth grade data collection, this request is to: (1) Schedule the MS2 data collection for January–July 2020 (when most sample students will be in the eighth grade) instead of January-July 2019 (thus dropping the originally planned seventh grade round of data collection), (2) notify participating districts and schools of this change in data collection schedule, (3) discontinue the procedures designed to oversample students in specific IDEA-defined disability groups, and (4) conduct MS2 and OFT3 tracking activities.

Dated: August 7, 2018.

Kate Mullan,

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

[FR Doc. 2018–17224 Filed 8–9–18; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 18–70–LNG]

Mexico Pacific Limited LLC; Application for Long-Term, Multi-Contract Authorization To Export Domestically Produced Natural Gas Through Mexico to Non-Free Trade Agreement Countries After Liquefaction to Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on June 18, 2018, by Mexico Pacific Limited LLC (MPL). MPL requests long-term, multi-contract authorization to export domestically produced natural gas in a volume equivalent to 12 million metric tons per annum of liquefied natural gas (LNG)—or approximately 621 billion cubic feet (Bcf) per year (1.7 Bcf per day) of natural gas. Specifically, MPL seeks to export this natural gas to its proposed LNG production and storage facility to be constructed in the state of Sonora, Mexico (MPL Facility), using existing cross-border natural gas transmission pipelines. At the MPL Facility, MPL plans to liquefy the U.S.-sourced natural gas into LNG. MPL requests authorization to export the U.S.-sourced LNG by vessel from Mexico to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Only MPL's proposed export of LNG produced from U.S.-sourced natural gas to non-FTA countries is subject to this Notice. MPL requests this non-FTA authorization for a 20-year term to commence on the earlier of the date of first export or five years from date of the requested authorization. MPL requests this authorization on its own behalf and as agent for other entities who hold title to the LNG at the time of export. MPL filed the Application under section 3 of the Natural Gas Act (NGA). Additional details can be found in MPL's Application, posted on the DOE/FE website at: *https://www.energy.gov/sites/prod/files/2018/07/f53/18-70-LNGapp.pdf.* Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, October 9, 2018.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Larine Moore, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7970; (202) 586–9478.

Cassandra Bernstein or Ronald (R.J.) Colwell, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793; (202) 586–8499.

SUPPLEMENTARY INFORMATION:

DOE/FE Evaluation

In the Application, MPL requests authorization to export U.S.-sourced natural gas in the form of LNG from the proposed MPL Facility, to be located in Mexico, to both FTA countries and non-FTA countries. This Notice applies only to the non-FTA portion of the Application filed under section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review MPL's request for a FTA export authorization separately

pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

In reviewing this Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider one or more of the following studies examining the cumulative impacts of exporting domestically produced LNG:

• *Effect of Increased Levels of Liquefied Natural Gas on U.S. Energy Markets,* conducted by the U.S. Energy Information Administration upon DOE's request (2014 EIA LNG Export Study); [1]

• *The Macroeconomic Impact of Increasing U.S. LNG Exports,* conducted jointly by the Center for Energy Studies at Rice University's Baker Institute for Public Policy and Oxford Economics, on behalf of DOE (2015 LNG Export Study); [2] and

• *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports,* conducted by NERA Economic Consulting on behalf of DOE (2018 LNG Export Study).[3]

Additionally, DOE will consider the following environmental documents:

• *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014); [4] and

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States,* 79 FR 32260 (June 4, 2014).[5]

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 18–70–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 18–70–LNG. *Please note:* If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Signed in Washington, DC, on August 6, 2018.

Shawn Bennett,

Deputy Assistant Secretary, Office of Oil and Natural Gas.

[FR Doc. 2018–17182 Filed 8–9–18; 8:45 am]

BILLING CODE 6450–01–P

[1] The 2014 EIA LNG Export Study, published on Oct. 29, 2014, is available at: *https://www.eia.gov/analysis/requests/fe/.*

[2] The 2015 LNG Export Study, dated Oct. 29, 2015, is available at: *http://energy.gov/sites/prod/files/2015/12/f27/20151113_macro_impact_of_lng_exports_0.pdf.*

[3] The 2018 LNG Export Study, dated June 7, 2018, is available at: *https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.* DOE is currently evaluating public comments received on this Study (83 FR 27314).

[4] The Addendum and related documents are available at: *https://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf.*

[5] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

DEPARTMENT OF ENERGY

Energy Information Administration

Proposed Agency Information Collection

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA requests a three-year extension, with changes, to the Oil and Gas Reserves System Survey Program as required by the Paperwork Reduction Act of 1995. This survey system includes: Form EIA–64A, *Annual Report of the Origin of Natural Gas Liquids Production;* Form EIA–23L, *Annual Report of Domestic Oil and Gas Reserves, County Level Report;* and Form EIA–23S, *Annual Survey of Domestic Oil and Gas Reserves, Summary Level Report.*

DATES: EIA must receive all comments on this proposed information collection no later than October 9, 2018. If you anticipate difficulties in submitting your comments by the deadline, contact the person listed in the below **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Send your comments to Steven Grape, U.S. Energy Information Administration, 1000 Independence Avenue SW, EI–24 Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steven Grape, telephone 202–586–1868, fax at (202) 586–4420, or by email at *steven.grape@eia.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.* 1905–0057;

(2) *Information Collection Request Title:* Oil and Gas Reserves System;

(3) *Type of Request:* Renewal with changes;

(4) *Purpose:* Information reported on Form EIA–23L is used to provide national and regional estimates on the proved reserves of crude oil, natural gas, and natural gas liquids. Data collected on this form include proved reserves and production for crude oil, lease condensate, and natural gas by state and federal offshore regions. Information reported on Form EIA–64A is used to generate EIA's state-level and federal offshore estimates of dry natural gas reserves and production (natural gas that remains after natural gas liquids are extracted). EIA releases annual reserves and production estimates through its website. These data are also used in EIA reports concerning U.S. crude oil, natural gas, and natural gas liquids reserves, and are incorporated in a number of other reports and analyses such as EIA's *Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual,* and *Natural Gas Annual.*

Congress and other federal agencies rely on the objective analysis, quality, reliability, and usefulness of EIA's crude oil and natural gas reserves estimates. These federal agencies include: The U.S. Department of Energy; Bureau of Ocean Energy Management, Department of Interior; Internal Revenue Service, Department of the Treasury; and the Securities and Exchange Commission. Each federal agency uses EIA's estimates on proved reserves for their official use to meet their data needs. EIA's published estimates on proved reserves of domestic crude oil and natural gas are essential to the development, implementation, and evaluation of energy policy and legislation. There are no proposed changes to Forms EIA–23L and EIA–23S.

(4a) *Proposed Changes to Information Collection:* EIA proposes to collect the following additional information on Form EIA–64A, *Annual Report of the Origin of Natural Gas Liquids Production:*

- Section 2. Add Item 2.1 to collect the total outlet volume of residue natural gas produced and add Item 2.3 to collect the volume of residue natural gas sent to a pipeline. Add Item 2.4: The amount of electricity consumed annually at the natural gas plant. The number of natural gas processing plants that are 100% electrically-powered is increasing. Federal air quality restrictions imposed on sources of combustion emissions is one reason for the increasing trend in using electricity as a power source rather than relying on natural gas as a fuel for processing and other plant operations.
- Section 3.0, Add Item 3.1C: The annual total of natural gas liquids (NGL) reported separately by components or products produced at the natural gas processing plant by Area of Origin in Section 3 of Form EIA–64A. Currently, only the total plant NGL volume shown on Line 4.8 is reported by Area of Origin.
- Delete the data element Gas Shrinkage Resulting from Natural Gas Liquids Extracted currently shown as Item 5.0 on Form EIA–64A. Respondents currently report their estimate of the volumes of gas shrinkage in millions of cubic feet (MMCF) caused from the removal of natural gas liquids from the natural gas received at the plant. Respondents will no longer need to report this information. The shrinkage volumes for a respondent will be calculated by EIA using the component data reported in Section 3.
- The burden per response for Form EIA–64A changed from 6 hours to 4 hours. Cognitive research showed that the weighted average time estimate to gather and report information on the proposed modified new Form EIA–64A was less than 3 hours. The majority of the information reported on this form is information that companies customarily track in the normal course of their business activities. Some companies may take longer than 3 hours to complete Form EIA–64A so EIA extended the burden per response estimate to 4 hours to account for some companies that may require additional time.

The mode of reporting information will also change. Operators will be required to log in to the *EIA Data xChange Portal* to report their information and submit Form EIA–64A. By identifying and selecting each plant within the portal, respondent information will be populated automatically in order to reduce reporting burden.

(5) *Annual Estimated Number of Respondents:* 1,644;

(6) *Annual Estimated Number of Total Responses:* 1,644;

(7) *Annual Estimated Number of Burden Hours:* 29,252;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained in the normal course of business. The cost of burden hours is estimated to be $2,214,084 (29,252 burden hours times $75.69 per hour). Therefore, other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining and providing the information.

Comments are invited on these proposed changes and: (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, 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: 15 U.S.C. 772(b), 15 U.S.C. 790(a), and the DOE Organization Act of 1977, 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, August 6, 2018.

Nanda Srinivasan,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2018–17183 Filed 8–9–18; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2159–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Crazy Mountain Wind LLC

This is a supplemental notice in the above-referenced proceeding of Crazy Mountain Wind LLC's application for market-based rate authority, with an accompanying rate tariff, noting that

such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 27, 2018.

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

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

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

Dated: August 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17197 Filed 8–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2628–065]

Alabama Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 2628–065.

c. *Dated Filed:* June 1, 2018.

d. *Submitted By:* Alabama Power Company (Alabama Power).

e. *Name of Project:* R.L. Harris Hydroelectric Project (Harris Project).

f. *Location:* The project is located on the Tallapoosa River the City of Lineville in Randolph, Clay, and Cleburne Counties, Alabama. The project also includes land within the James D. Martin-Skyline Wildlife Management Area located approximately 110 miles north of Harris Reservoir in Jackson County, Alabama. The project occupies 4.90 acres of federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Angie Anderegg, Harris Relicensing Project Manager, Alabama Power Company, 600 18th Street, Birmingham, AL 35203; (205) 257–2251 or *ARSEGARS@southernco.com.*

i. *FERC Contact:* Sarah Salazar at (202) 502–6863 or email at *sarah.salazar@ferc.gov.*

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

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Alabama Power as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Alabama Power filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

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

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

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy

Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2628–065.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 29, 2018.

p. We intend to prepare either an environmental assessment (EA) or Environmental Impact Statement (EIS). The meetings listed below will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting—Lineville, Alabama

Date & Time: Tuesday, August 28, 2018 at 6:30 p.m.

Location: Wedowee Marine South, 9681 Highway 48, Lineville, Alabama 36266, (770) 843–3054.

Daytime Scoping Meeting—Lineville, Alabama

Date & Time: Wednesday, August 29, 2018 at 9 a.m.

Location: Wedowee Marine South, 9681 Highway 48, Lineville, Alabama 36266, (770) 843–3054.

Please RSVP to *harrisrelicensing@southernco.com,* or call Cecile Jones at 205–257–1701, on or before August 15, 2018, if you plan to attend one of the scoping meetings in Lineville. Directions to Wedowee Marine South are available at *www.harrisrelicensing.com* and in Appendix C of the Commission's Scoping Document 1, described below.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct an Environmental Site Review (site visit) of the project on Tuesday, August 28, 2018, starting at 9:00 a.m., and ending at or about 4:30 p.m. All participants should meet at the R.L. Harris Dam located at 2761 County Road 100, Lineville, AL 36266. Directions to the R.L. Harris Dam are available at *www.harrisrelicensing.com* and in Appendix C of the Commission's SD1. Participants must notify Cecile Jones at (205) 257–1701 or *www.harrisrelicensing.com,* on or before August 15, 2018, if they plan to attend the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Dated: August 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17200 Filed 8–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER18–2158–000]

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

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

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

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 27, 2018.

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

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

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's

Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17201 Filed 8–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

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

Filings Instituting Proceedings

Docket Number: PR18–71–000.
Applicants: Southern California Gas Company.
Description: Tariff filing per 284.123(b),(e)+(g): OSHD Rate Revision Filing—July 2018 to be effective 7/30/2018.
Filed Date: 7/30/18.
Accession Number: 201807305121.
Comments Due: 5 p.m. ET 8/20/18.
284.123(g) Protests Due: 5 p.m. ET 9/28/18.

Docket Number: PR18–72–000.
Applicants: Agua Blanca, LLC.
Description: Tariff filing per 284.123(b),(e)/: Baseline refiled to be effective 7/1/2018.
Filed Date: 7/31/18.
Accession Number: 201807315187.
Comments/Protests Due: 5 p.m. ET 8/21/18.

Docket Number: PR18–73–000.
Applicants: Liberty Utilities (Midstates Natural Gas) Corp.
Description: Tariff filing per 284.123(b),(e)/: Application for Approval of Revised Statement of Rates to be effective 7/1/2018.
Filed Date: 8/2/18.
Accession Number: 201808025047.
Comments/Protests Due: 5 p.m. ET 8/23/18.

Docket Number: PR18–74–000.
Applicants: Columbia Gas of Ohio, Inc.
Description: Tariff filing per 284.123(b),(e)/: COH change Terms and Conditions effective 9–1–2018.
Filed Date: 8/2/18.
Accession Number: 201808025081.
Comments/Protests Due: 5 p.m. ET 8/23/18.

Docket Numbers: RP18–1038–000.
Applicants: Northern Border Pipeline Company.
Description: § 4(d) Rate Filing: Best Bid in GT&C 6.26.4 and 6.37.3 to be effective 9/1/2018.
Filed Date: 8/1/18.
Accession Number: 20180801–5156.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–789–002.
Applicants: Cheniere Corpus Christi Pipeline, LP.
Description: Compliance filing Baseline Compliance Filing (Metadata Update)—RP18–789–000 to be effective 6/1/2018.
Filed Date: 8/1/18.
Accession Number: 20180801–5164.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–1039–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Eco-Energy—8952449 to be effective 8/2/2018.
Filed Date: 8/2/18.
Accession Number: 20180802–5023.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: RP18–1040–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—8/3/2018 to be effective 8/3/2018.
Filed Date: 8/2/18.
Accession Number: 20180802–5113.
Comments Due: 5 p.m. ET 8/14/18.

Docket Numbers: RP18–1041–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: Great Lakes Gas Transmission Limited Partnership Semi-Annual Transporter's Use Report.
Filed Date: 7/31/18.
Accession Number: 20180731–5237.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–1042–000.
Applicants: MoGas Pipeline LLC.
Description: Penalty Revenue Crediting Report of MoGas Pipeline LLC.
Filed Date: 7/31/18.
Accession Number: 20180731–5238.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–1043–000.
Applicants: UGI Storage Company.
Description: Operational Purchases and Sales Report of UGI Storage Company.
Filed Date: 8/1/18.
Accession Number: 20180801–5211.
Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: RP18–1044–000.
Applicants: ARP Mountaineer Production, LLC, Summit Natural Resources, LLC.
Description: Joint Petition for Temporary Waiver of Capacity Release Regulations of ARP Mountaineer Production, LLC, et al. under RP18–1044.
Filed Date: 8/2/18.
Accession Number: 20180802–5138.
Comments Due: 5 p.m. ET 8/9/18.

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

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

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

Dated: August 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17198 Filed 8–9–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

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

Docket Numbers: EC06–129–007.
Applicants: Capital Research and Management Company, Capital Group International, Inc., Capital International, Inc., Capital International Limited, Capital International Sàrl, Capital International KK, Capital Guardian Trust Company.
Description: Request for Extension of Blanket Authorization Under Section 203 of the Federal Power Act of Capital Research and Management Company, et al.
Filed Date: 8/3/18.
Accession Number: 20180803–5187.
Comments Due: 5 p.m. ET 8/24/18.

Docket Numbers: EC18–132–000.
Applicants: Linde Energy Services, Inc.
Description: Application for Authorization under Section 203 of the

Federal Power Act, et al. of Linde Energy Services, Inc.

Filed Date: 8/3/18.

Accession Number: 20180803–5156.

Comments Due: 5 p.m. ET 8/24/18.

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

Docket Numbers: ER10–2317–000; ER10–2331–000; ER13–1351–000.

Applicants: BE CA LLC, J.P. Morgan Ventures Energy Corporation, Florida Power Development LLC.

Description: Supplement to June 4, 2018 Notice of Non-Material Change in Status of the J.P. Morgan Sellers, et al.

Filed Date: 7/23/18.

Accession Number: 20180723–5227.

Comments Due: 5 p.m. ET 8/13/18.

Docket Numbers: ER18–2144–000; ES18–54–000.

Applicants: Big Sky North, LLC.

Description: Request for Waivers and Blanket Authorization to Issue Securities and Assume Liabilities of Big Sky North, LLC, et al.

Filed Date: 8/2/18.

Accession Number: 20180802–5137.

Comments Due: 5 p.m. ET 8/23/18.

Docket Numbers: ER18–2161–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits 4 ECSAs, Service Agreement Nos. 4968, 4977, 4978, and 5028 to be effective 10/6/2018.

Filed Date: 8/6/18.

Accession Number: 20180806–5005.

Comments Due: 5 p.m. ET 8/27/18.

Docket Numbers: ER18–2163–000; ER18–2164–000; ER18–2165–000; ER18–2166–000; ER18–2167–000; ER18–2168–000; ER18–2169–000; ER18–2170–000; ER18–2171–000; ER18–2172–000; ER18–2173–000.

Applicants: Burley Butte Wind Park, LLC, Camp Reed Wind Park, LLC, Golden Valley Wind Park, LLC, Milner Dam Wind Park, LLC, Oregon Trail Wind Park, LLC, Payne's Ferry Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Salmon Falls Wind Park, LLC, Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, Yahoo Creek Wind Park, LLC.

Description: Notice of Cancellation of Market Base Rate tariff of Burley Butte Wind Park, LLC, et al.

Filed Date: 8/3/18.

Accession Number: 20180803–5192.

Comments Due: 5 p.m. ET 8/24/18.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH18–12–000.

Applicants: AltaGas Ltd., WGL Holdings, Inc.

Description: AltaGas Ltd., et al. submits FERC 65–A Notice of Change in Facts of Exemption Notification.

Filed Date: 8/3/18.

Accession Number: 20180803–5165.

Comments Due: 5 p.m. ET 8/24/18.

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

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

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

Dated: August 6, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–17199 Filed 8–9–18; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9982–12–OEI]

Privacy Act of 1974; System of Records; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a New System of Records; correction.

SUMMARY: The Environmental Protection Agency's (EPA) Office of Environmental Information (OEI), Office of Enterprise Information Programs (OEIP), eDiscovery Division, published a document in the **Federal Register** of July 27, 2018, giving notice that it proposes to establish a new system of records pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The document did not include the comments due by date.

FOR FURTHER INFORMATION CONTACT: Brian K. Thompson, Acting Director, 202–564–4256.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of July 27, 2018, in FR Doc. 2018–16117, on page 35637, in the first column, correct the **DATES** caption to read:

DATES: Persons wishing to comment on this system of records notice must do so by August 27, 2018. If no comments are received, the systems of records notice will become effective by August 27, 2018.

Dated: August 7, 2018.

Amy Lamson,

Acting Director, Office of Policy, Regulatory Management Division.

[FR Doc. 2018–17194 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0534, FRL–9981–79–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Identification, Listing and Rulemaking Petitions (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Identification, Listing and Rulemaking Petitions (Renewal) (EPA ICR No. 1189.27, OMB Control No. 2050–0053) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through November 30, 2018. The burden associated with 2015 Coal Combustion Residuals final rule (CCR) is being moved from this ICR into a separate ICR entitled ''Disposal of Coal Combustion Residuals from Electric Utilities'' (EPA ICR No. 2571.01, OMB Control No. 2050–NEW). An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 9, 2018.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0534, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200

Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Narendra Chaudhari, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–308–0454; fax number: 703–308–0514; email address: *chaudhari.narendra@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency to implement a comprehensive program for the safe management of hazardous waste. In addition, Congress wrote that ''[a]ny person may petition the Administrator for the promulgation, amendment or repeal of any regulation'' under RCRA (section 7004(a)).

40 CFR parts 260 and 261 contain provisions that allow regulated entities to apply for petitions, variances, exclusions, and exemptions from various RCRA requirements.

The following are some examples of information required from petitioners under 40 CFR part 260. Under 40 CFR 260.20(b), all rulemaking petitioners must submit basic information with their demonstrations, including name, address, and statement of interest in the proposed action. Under § 260.21, all petitioners for equivalent testing or analytical methods must include specific information in their petitions and demonstrate to the satisfaction of the Administrator that the proposed method is equal to, or superior to, the corresponding method in terms of its sensitivity, accuracy, and reproducibility. Under § 260.22, petitions to amend part 261 to exclude a waste produced at a particular facility (more simply, to delist a waste) must meet extensive informational requirements. When a petition is submitted, the Agency reviews materials, deliberates, publishes its tentative decision in the **Federal Register**, and requests public comment. The EPA also may hold informal public hearings (if requested by an interested person or at the discretion of the Administrator) to hear oral comments on its tentative decision. After evaluating all comments, the EPA publishes its final decision in the **Federal Register**.

Form numbers: None.

Respondents/affected entities: Business and other for-profit.

Respondent's obligation to respond: Mandatory (RCRA 7004(a)).

Estimated number of respondents: 2,603.

Frequency of response: On occasion.

Total estimated burden: 485,069 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $64,007,121, which includes $51,653,044 in annualized O&M costs and $12,354,077 in annualized labor costs.

Changes in estimates: The burden hours are likely to decrease because the burden associated with the CCR final rule are being moved into a separate ICR.

Dated: July 25, 2018.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2018–17193 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0082, FRL–9981–78–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; National Minimum Criteria for Disposal of Coal Combustion Residuals From Electric Utilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), National Minimum Criteria for Disposal of Coal Combustion Residuals from Electric Utilities (EPA ICR No. 2571.01, OMB Control No. 2050–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. The burden associated with this ICR was previously covered by the Identification, Listing and Rulemaking Petitions ICR (EPA ICR No. 1189.26, OMB Control No. 2050–0053) and is currently approved through November 30, 2018. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 9, 2018.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–OLEM–2018–0082, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Kirsten Hillyer, Office of Resource Conservation and Recovery (mail code 5304P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 703–347–0369; fax number: 703–308–0514; email address: *hillyer.kirsten@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, the EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, the EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: On April 17, 2015, the EPA published a final rule to regulate the disposal of coal combustion residuals (CCR) from electric utilities as solid waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA) (80 FR 21302). EPA established national minimum criteria for existing and new CCR landfills and CCR surface impoundments and all lateral expansions to include location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, and recordkeeping, notification, and internet posting requirements.

In December 2016, the President signed the Water Infrastructure Improvements for the Nation (WIIN) Act. The WIIN Act amended RCRA Subtitle D and established new statutory provisions applicable to CCR landfills and CCR surface impoundments. In particular, the WIIN Act provides that states may, but are not required to, develop and submit a permit (or other system of prior approval) program for CCR disposal to EPA for approval. Such a program does not have to be identical to the requirements in the CCR rule (40 CFR part 257, subpart D), but must be at least as protective as the CCR rule. EPA developed an interim final guidance document that provides information about the provisions of the 2016 WIIN Act related to CCR as well as the process and procedures EPA will generally use to review and make determinations on state CCR permit programs. The release of this interim final guidance was announced on August 15, 2017 (82 FR 38685), and EPA accepted public comment for thirty days.

On June 14, 2016, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) ordered a partial vacatur. As a consequence of the vacatur, EPA published a direct final rule on August 5, 2016 (81 FR 51802), to remove 40 CFR 257.100(b), (c), and (d), which provided ''early closure'' provisions for certain inactive CCR surface impoundments. It also extended compliance deadlines for those units.

On July 17, 2018, EPA signed a rule to finalize certain revisions to the 2015 CCR regulations to: provide states with approved CCR permit programs under the WIIN Act, or EPA where EPA is the permitting authority, the ability to use alternate performance standards; to revise the groundwater protection standard for constituents which do not have an established drinking water standard (known as a maximum contaminant level or MCL); and to provide facilities triggered into closure additional time to cease receiving waste and initiate closure.

Form Numbers: None.

Respondents/affected entities: Business and other for-profit.

Respondent's obligation to respond: mandatory 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a); 33 U.S.C. 1345(d) and (e).

Estimated number of respondents: 534.

Frequency of response: On occasion.

Total estimated burden: 358,957 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $63,858,128, which includes $41,112,513 in annualized O&M costs and $22,745,615 in annualized labor costs.

Changes in Estimates: The existing burden hours have been revised to reflect changes in the regulatory program realized as a result of the August 2016 direct final action, the Interim Final Guidance for state CCR programs, and the July 2018 final amendments to the 2015 CCR rule. The burden hours are likely to change additionally in the future due to ongoing litigation and EPA's stated intention to reconsider additional portions of the 2015 rule. Any future burden changes will be evaluated once those changes are known.

Dated: July 25, 2018.

Barnes Johnson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2018–17189 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9981–72–Region 6]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Innophos, Inc. Geismar, Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a UIC no migration petition.

SUMMARY: Notice is hereby given that an exemption to the Land Disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Innophos for two Class I hazardous waste injection wells located at their Geismar, Louisiana facility. The company has adequately demonstrated to the satisfaction of the EPA by the petition application and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by Innophos of the specific restricted hazardous wastes identified in this exemption request, into Class I hazardous waste injection wells DW#1 and DW#2 until July 12, 2048, unless

the EPA moves to terminate this exemption or other petition condition limitations are reached. Additional conditions included in this final decision may be reviewed by contacting the EPA Region 6 Ground Water/UIC Section. A public notice was issued May 24, 2018, and the public comment period closed on July 9, 2018, and no comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of July 12, 2018.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Division, Safe Drinking Water Branch (6WQ–S), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665–8324.

Dated: July 12, 2018.

Charles W. Maguire,

Director, Water Division.

[FR Doc. 2018–17195 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9980–44]

Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations and Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by the registrants to voluntarily cancel certain pesticide product registrations and to amend certain product registrations to terminate uses. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled and uses terminated only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before September 10, 2018.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

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.*

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. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. What action is the agency taking?

This notice announces receipt by EPA of requests from pesticide registrants to cancel certain pesticide products and amend product registrations to terminate certain uses. The affected products and the registrants making the requests are identified in Tables 1, 1A, 2 & 3 of this unit. The cancellations of the two triforine products, EPA Reg. Nos. 239–2435 and 82534–1, are the last registered products containing this active ingredient. The cancellation of the ten siduron products listed in Table 1A, are the last registered products containing this active ingredient.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order in the **Federal Register** canceling and amending the affected registrations.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
100–797	100	Apron XL WS	Metalaxyl-M.
100–1065	100	Scimitar WP Insecticide in Water-Soluble Packs	lambda-Cyhalothrin.
100–1174	100	Impasse Termite Bait	Lufenuron.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
100–1181	100	Zyrox Plus Termite Baiting Technology	Lufenuron.
100–1257	100	Lufenuron Termite Bait	Lufenuron.
239–2435	239	Ortho Rose Disease Control	Triforine.
279–3312	279	Capture 8% ME Insecticide/Miticide	Bifenthrin.
279–9533	279	Fluthiacet-Methyl WSP Herbicide	Fluthiacet-methyl.
352–392	352	DuPont Velpar L Herbicide	Hexazinone.
352–570	352	DuPont DPX–E9636 75 DF Herbicide	Rimsulfuron.
352–572	352	DuPont DPX–79406 75 DF Herbicide	Nicosulfuron & Rimsulfuron.
352–573	352	DuPont Synchrony STS DF Herbicide	Chlorimuron & Thifensulfuron.
352–574	352	DuPont Synchrony STS SP Herbicide	Chlorimuron & Thifensulfuron.
352–576	352	DuPont Staple Herbicide	Pyrithiobac-sodium.
352–581	352	DuPont Velpar DF Herbicide	Hexazinone.
352–585	352	Basis Gold Herbicide	Atrazine, Nicosulfuron & Rimsulfuron.
352–599	352	DuPont Synchrony STS Herbicide	Chlorimuron & Thifensulfuron.
352–619	352	DuPont Steadfast ATZ Herbicide	Atrazine, Nicosulfuron & Rimsulfuron.
352–650	352	DuPont Synchrony XP (MP) Herbicide	Chlorimuron & Thifensulfuron.
352–667	352	DuUPont Stout (MP)	Thifensulfuron & Nicosulfuron.
352–721	352	DuPont Stout Herbicide	Thifensulfuron & Nicosulfuron.
352–749	352	DuPont STS07 Broadleaf Herbicide	Thifensulfuron & Chlorimuron.
352–759	352	DuPont DPX–QFU30 (MP) Herbicide	Thifensulfuron & Rimsulfuron.
1448–52	1448	Busan 40	Metam-Potassium.
1448–74	1448	PNMDC	Metam-Potassium.
1839–30	1839	BTC 824 P100	Alkyl* dimethyl benzyl ammonium chloride *(100% C14).
2693–11	2693	Supertrop Antifouling Bottom Paint 46 Red	Cuprous oxide.
2693–12	2693	Bottomkote Antifouling 49 Red	Cuprous oxide.
2693–19	2693	Viny-Lux Vinyl Antifouling Paint 350 Red	Cuprous oxide.
2693–33	2693	Offshore Antifouling Red 1605	Cuprous oxide.
2693–54	2693	International NB Supertrop Antifouling Paint NB1609	Cuprous oxide.
2693–58	2693	Bottomkote Antifouling Paint 59 Green	Cuprous oxide.
2693–59	2693	Bottomkote Antifouling Paint 69 Blue	Cuprous oxide.
2693–90	2693	Red Hand Antifouling 72 Blue	Cuprous oxide.
2693–97	2693	Supertrop Antifouling Paint 45 Blue	Cuprous oxide.
2693–121	2693	Super Viny-Lux Vinyl Antifouling Red 459	Cuprous oxide.
2693–135	2693	XUU 284	Cuprous oxide.
2693–143	2693	Ultra-Kote 2669H Blue	Cuprous oxide.
2693–146	2693	Seaproof Paint X–255 Evertox Blue Copper Anti-Fouling.	Cuprous oxide.
2693–147	2693	Regatta 3900 Anti-Fouling Red Latex	Cuprous oxide.
2693–165	2693	Seaproof X–254 Evertox Green Copper Anti-Fouling	Cuprous oxide.
2693–166	2693	Seaproof 42 90 Tritox Red Anti-Fouling	Cuprous oxide.
2693–167	2693	Seaproof X–253 Evertox Red Copper Anti-Fouling	Cuprous oxide.
2693–168	2693	Regatta Vinyltex 55 Fast Red Antifouling	Cuprous oxide.
2693–169	2693	Seaproof 1600 Plastic Red Copper Antifouling	Cuprous oxide.
2693–171	2693	Baltimore Red Copper Paint	Cuprous oxide.
2693–192	2693	Ultra with Bio-Lux Blue	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
2693–201	2693	Ultra Plus—Blue	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
2693–205	2693	Ultra Plus Blue	Cuprous oxide & 1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)-.
2693–219	2693	Super KL Plus with Irgarol II—Black	1,3,5-Triazine-2,4-diamine, N-cyclopropyl-N′-(1,1-dimethylethyl)-6-(methylthio)- & Cuprous oxide.
2935–389	2935	Nusan 30 E.C	2-(Thiocyanomethylthio)benzothiazole.
4787–65	4787	Azoxystrobin Technical	Azoxystrobin.
9688–107	9688	Chemsico Insect Spray	Piperonyl butoxide & Pyrethrins.
9688–110	9688	Chemsico Patio Spray	Piperonyl butoxide; Tetramethrin & Permethrin.
9688–150	9688	Chemsico Aerosol Insecticide PP	Pyrethrins & Piperonyl butoxide.
9688–225	9688	Chemsico Insect Spray PP	Pyrethrins & Piperonyl butoxide.
9688–228	9688	Chemsico Wasp & Hornet Killer FEQ 24	Piperonyl butoxide; Permethrin & Tetramethrin.
9688–236	9688	Chemsico Aerosol Insecticide TPP	Piperonyl butoxide; Permethrin & Tetramethrin.
9688–247	9688	Chemsico Wasp & Hornet Killer FEQ C24	Piperonyl butoxide; Permethrin & Tetramethrin.
9688–273	9688	Chemsico Insecticide RTU OP	Pyrethrins.
10324–195	10324	Maquat 615 SRTU–BOV	1-Decanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride & Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16).
15136–9	15136	Wavicide-06 Plus	Ethanol & Glutaraldehyde.
23566–10	23566	Racing Vinyl 640 Red	Cuprous oxide.
23566–18	23566	America's Cup 681 Blue	Cuprous oxide.

TABLE 1—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
34160–1	34160	Pine-Oil Disinfectant Detergent Concentrate	Pine oil.
61282–53	61282	Biophene Liquid Disinfectant	2-Benzyl-4-chlorophenol; 4-tert-Amylphenol & o-Phenylphenol (NO INERT USE).
61842–43	61842	DuPont Velpar Alfamax MP Herbicide	Diuron & Hexazinone.
61842–44	61842	DuPont Velpar K–4 Max Herbicide	Diuron & Hexazinone.
63838–6	63838	Dibrom NPA	2,2-Dibromo-3-nitrilopropionamide.
73770–1	73770	Fresh Aire	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16).
81964–3	81964	Acephate 90% SP	Acephate.
82523–1	82523	Aerisguard Bioactive Coil Treatment	Triclosan.
82534–1	82534	Triforine Technical	Triforine.
83122–1	83122	Pro-Tek 50 Fabric/Apparel (Garment) Treatment	Permethrin.
83122–2	83122	Bond-It Insect Repellent Fabric Treatment	Permethrin.
88751–1	88751	A-Liquid	Silver & Copper as elemental.
OR–030029	19713	Drexel Captan 4L Fungicide	Captan.
OR–040004	100	Fulfill	Pymetrozine.
OR–040005	100	Fulfill	Pymetrozine.
OR–900019	10163	Treflan TR–10 Granules	Trifluralin.
OR–940037	62719	Sonalan HFP	Ethalfluralin.
OR–950013	100	Fusilade DX	Fluazifop-P-butyl.
OR–990039	100	Bravo 825	Chlorothalonil.
OR–990040	100	Bravo 720	Chlorothalonil.
VA–110002	100	Ridomil Gold SL	Metalaxyl-M.
WA–040024	100	Fusilade DX Herbicide	Fluazifop-P-butyl.
WA–050002	5481	Orthene 75 S Soluble Powder (Water Soluble Packets).	Acephate.

TABLE 1A—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredient
538–60	538	Starter Fertilizer with Crabgrass Preventer	Siduron.
961–297	961	Greenfield Modern Trebl	Siduron.
961–309	961	Greenskeeper Crabgrass Killer Contains 4.6% Tupersan.	Siduron.
961–319	961	Lebanon Spring Seeding Crabgrass Preventer with Grass Food.	Siduron.
8378–63	8378	Shaw's Turf Food with Tupersan 350	Siduron.
8378–64	8378	Shaw's Tupersan 470 Granules	Siduron.
9198–50	9198	The Anersons Fertilizer with 3.5% Tupersan	Siduron.
10163–213	10163	Tupersan Herbicide	Siduron.
10163–214	10163	Tupersan 70 Herbicide	Siduron.
10163–216	10163	Siduron Technical	Siduron.

The registrants for the pesticide product registrations listed in Table 1A have requested to the Agency via letter, that the cancellations become effective December 31, 2020.

TABLE 1B—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredient
432–1412	432	Armada 50 WP	Triadimefon & Trifloxystrobin.

The registrant for the pesticide product registration listed in Table 1B has requested to the Agency via letter, that the cancellation becomes effective at the federal level on December 31, 2018.

TABLE 2—PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENT

Registration No.	Company No.	Product name	Active ingredients	Uses to be terminated
1839–208	1839	BTC 1455	Alkyl* dimethyl benzyl ammonium chloride *(95%C14, 3%C12, 2%C16).	Golf courses and golf commercial turf/lawns.
19713–691	19713	Drexel Chlorothalonil Technical	Chlorothalonil	Antimicrobrial uses.
47000–103	47000	CT 10 Concentrate	Permethrin	Golf courses.
53883–379	53883	Quali-Pro Prodiamine 4L	Prodiamine	Use in drainage ditches for California & Arizona.
61842–13	61842	Sinbar Herbicide	Terbacil	Grass grown for seed (Grass seed crops).
61842–14	61842	Terbacil Technical Herbicide	Terbacil	Grass grown for seed (Grass seed crops).
61842–27	61842	Sinbar WDG (Status—Inactive), (Sinbar WDG Agricultural Herbicide—(Status—Active).	Terbacil	Grass grown for seed (Grass seed crops).
70553–2	70553	Permethrin Technical	Permethrin	Terrestrial food and feed uses.

Table 3 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1, Table 1A, Table 1B 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, Table 1A, Table 1B and Table 2 of this unit.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
239	The Scotts Company, d/b/a The Ortho Group, 14111 Scottslawn Road, Marysville, OH 43041.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
352	E. I. Du Pont De Nemours and Company, Attn: Manager, US Registration, DuPont Crop Protection, Chestnut Run Plaza (CRP 720/2E5), 974 Centre Rd., Wilmington, DE 19805.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709.
538	Scotts Company, The, 14111 Scottslawn Road, Marysville, OH 43041.
961	Lebanon Seaboard Corporation, 1600 East Cumberland Street, Lebanon, PA 17042.
1448	Buckman Laboratories, Inc., 1256 North McLean Blvd., Memphis, TN 38108.
1839	Stepan Company, 22 W. Frontage Rd., Northfield, IL 60093.
2693	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
2935	Wilbur-Ellis Company, LLC, 2903 S. Cedar Ave., Fresno, CA 93725.
4787	Cheminova A/S, Agent Name: FMC Corporation, 1735 Market Street, Room 1971, Philadelphia, PA 19103.
5481	Amvac Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
8378	Knox Fertilizer Company, Inc., Agent Name: Fred Betz Regulatory Strategies, 922 Melvin Road, Annapolis, MD 21403.
9198	The Andersons, Inc., 1947 Briarfield Blvd, P.O. Box 119, Maumee, OH 43537.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
10324	Mason Chemical Company, 2744 E. Kemper Rd., Cincinnati, OH 45241.
15136	Medical Chemical Corp., 19430 Van Ness Ave., Torrance, CA 90501.
19713	Drexel Chemical Company, P.O. Box 13327, Memphis, TN 38113–0327.
23566	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
34160	Lighthouse for The Blind of Houston, Agent Name: Laird's Regulatory Consultants, Inc., 17804 Braemar Place, Leesburg, VA 20175–7046.
47000	Chem-Tech, Ltd., 620 Lesher Place, Lansing, MI 48912.
53883	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
61282	Hacco, Inc., 620 Lesher Place, Lansing, MI 48912.
61842	Tessenderlo Kerley, Inc., Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct NW, Gig Harbor, WA 98332.
62719	Dow Agrosciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054.
63838	Enviro Tech Chemical Services, Inc., 500 Winmoore Way, Modesto, CA 95358.
70553	Meghmani Organics Limited, Meghmani House, Shree Nivas Society, Agent Name: Butz Consulting, LLC, 13411 Marble Rock Dr., Chantilly, VA 20151.
73770	Dial Manufacturing, Inc., 25 South 51st Avenue, Phoenix, AZ 85043.
81964	Chemstarr, LLC, Agent Name: Pyxis Regulatory Consulting Inc., 4110 136th Street Ct NW, Gig Harbor, WA 98332.
82523	Aeris Environmental, Ltd., Agent Name: Scientific & Regulatory Consultants, Inc., 201 W. Van Buren Street, Columbia City, IN 46725.
82534	Summit Agro North America Holding Corporation, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct NW, Gig Harbor, WA 98332.
83122	Garnik Industries, LLC, 261 5th Avenue, Suite 2001, New York, NY 10016.

TABLE 3—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS—Continued

EPA company No.	Company name and address
88751	Toto USA, Inc., Agent Name: Technology Sciences Group, Inc., 1150 18th Street, NW, Suite 1000, Washington, DC 20036.

III. 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**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants listed in Table 3 of Unit II have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

IV. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for product cancellation or use termination should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation or termination action, the effective date of cancellation or termination and all other provisions of any earlier cancellation or termination action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the requests for voluntary cancellation and amendments to terminate uses are granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Tables 1, 1A, 1B and 2 of Unit II.

A. For Product 10324–195

The registrant has requested to the Agency via letter, an 18-month sell thru period.

For all other voluntary product cancellations, identified in Table 1, Table 1A and Table 1B 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, Table 1A & Table 1B of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Once EPA has approved product labels reflecting the requested amendments to terminate uses, identified in Table 2 of Unit II, registrants will be permitted to sell or distribute products under the previously approved labeling for a period of 18 months after the date of **Federal Register** publication of the cancellation order, 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: July 13, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2018–17191 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9040–7]

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 07/30/2018 Through 08/03/2018

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. 20180177, Draft, USCG, AK, Coast Guard Polar Icebreaker Acquisition Program, Comment Period Ends: 09/24/2018, Contact: Christine Wiegand 202–475–3742.

EIS No. 20180178, Draft, NHTSA, REG, Draft EIS for The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021–2026 Passenger Cars and Light Trucks, Comment Period Ends: 09/24/2018, Contact: Ken Katz 202–366–4936.

EIS No. 20180179, Final Supplement, USACE, WA, Mount St. Helens Long-Term Sediment Management Plan, Review Period Ends: 09/10/2018, Contact: Mike Turaski, Project Manager 503–808–4704.

EIS No. 20180180, Draft, BLM, CA, Desert Quartzite Solar Project Draft Plan Amendment, Environmental Impact Statement and Environmental Impact Report, Comment Period Ends: 11/08/2018, Contact: Brandon G. Anderson 760–833–7140.

Dated: August 7, 2018.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2018–17135 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9981–59-Region 2]

Proposed CERCLA Cost Recovery Settlement for the Barrio Vietnam Superfund Site, Guaynabo, Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), notice is hereby given by the U.S. Environmental Protection Agency (''EPA''), Region 2, of a proposed cost recovery settlement agreement pursuant to CERCLA, with Ecolab Manufacturing Inc., Olay LLC, and The Procter & Gamble Company (collectively ''Settling Parties'') related to the Barrio Vietnam Superfund Site (''Site''), located in Guaynabo, Puerto Rico. This notice informs the public of its opportunity to comment on the settlement.

DATES: Comments must be submitted on or before September 10, 2018.

ADDRESSES: Written comments should be addressed to the EPA employee identified below. The proposed settlement is available for public inspection at EPA Region 2 offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the Barrio Vietnam Superfund Site, located in Guaynabo, Puerto Rico, Index No. II–CERCLA–02–2018–2014. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Argie Korkidis Cirillo, Attorney, Office of Regional Counsel, New York/Caribbean Superfund Branch, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, NY 10007–1866. Email: *cirillo.argie@epa.gov* Telephone: 212–637–3178.

SUPPLEMENTARY INFORMATION: EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and are jointly and severally liable for response costs incurred or to be incurred at or in connection with the Site. Within 30 days of the Effective Date of this Settlement Agreement, Settling Parties shall pay to the EPA Hazardous Substance Superfund the amount of $1,084,864.29. The settlement includes a covenant by EPA not to sue or to take administrative action against the Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for EPA's response costs paid in connection with the Site through the Effective Date of the Agreement. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, New York, New York 10007–1866.

Dated: July 12, 2018.

John Prince,

Acting Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2.

[FR Doc. 2018–17203 Filed 8–9–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0065]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before October 9, 2018. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–0065.

Title: Applications for New Authorization or Modification of Existing Authorization Under Part 5 of the FCC Rules—Experimental Radio Service.

Form Number: FCC Form 442.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; Not-for-profit institutions, Individuals or households, State, Local or Tribal Government.

Number of Respondents and Responses: 405 respondents; 655 responses.

Estimated Time per Response: 15 hours.

Frequency of Response: On occasion reporting requirements; Recordkeeping requirements; and Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 4, 302, 303, 307 and 336 of the Communications Act of 1934, as amended.

Total Annual Burden: 3,474 hours.

Total Annual Cost: $52,150.

Privacy Act Impact Assessment: This information collection affects individuals or households. The Commission has a System of Records, FCC/OET–1 ''Experimental Radio Station License Files'' which covers the personally identifiable information (PII) that individual applicants may include in their submissions for experimental radio authorizations. The system of records notice (SORN) was published in the **Federal Register** on April 5, 2006, *see* 71 FR 17234, 17241. The SORN may be viewed at *https://www.fcc.gov/general/privacy-act-information.*

Nature and Extent of Confidentiality: Applicants may request that any information supplied be withheld from public inspection, *e.g.,* granted confidentiality, pursuant to 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) after this 60-day comment period to obtain the three-year clearance.

On June 29, 2016, the Commission adopted a Second Report and Order, in ET Docket No. 10–236 and 06–155; FCC 16–86, which updates Part 5 of the CFR—''Experimental Radio Service'' (ERS).[1] The Commission's recent Report and Order revises and streamlines the rule part under for the ERS. This rule change allows licensees operation under frequency bands mentioned in Section 5.303 and as state, within rule part 15.205(a). These rule changes update procedures used to obtain and use an experimental license.

Section 5.303 Frequencies

(a) Licensees may operate in any frequency band, including those above 38.6 GHz, except for frequency bands exclusively allocated to the passive services (including the radio astronomy service). In addition, licensees may not use any frequency or frequency band below 38.6 GHz that is listed in § 15.205(a) of this chapter.

(b) Exception: Licensees may use frequencies listed in § 15.205(a) of this chapter for testing medical devices (as defined in § 5.402(b) of this chapter), if the device is designed to comply with all applicable service rules in Part 18, Industrial, Scientific, and Medical Equipment; Part 95, Personal Radio Services Subpart H—Wireless Medical Telemetry Service; or Part 95, Subpart I—Medical Device Radiocommunication Service.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2018–17098 Filed 8–9–18; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* In the Matter of Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10–236; 2006 Biennial Review of Telecommunications Regulations—Part 2, Administered by the Office of Engineering and Technology (OET), ET Docket No. 06–155; 31 FCC Rcd 7529 (2016), FCC 16–86.

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 August 28, 2018.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kelley V. Ayres, Minden, Nebraska, individually, as trustee of the Eloise R. Agee Non-Exempt Trust, Minden, Nebraska, and as a member of the Ayres Family Group;* to retain voting shares of First Minden Financial Corporation (Company), and thereby indirectly retain shares of First Bank and Trust Company, both of Minden, Nebraska. Additionally, Lynda S. Ayres, Minden, Nebraska, to join the Ayres Family Group, which, acting in concert, controls Company.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Shirley W. Nelson 2014 Trust UA 3/05/2014, 9/06/2001 Shirley W. Nelson Revocable Trust, Alamo, California, Steven P. Nelson Jr., Summit Stock Trust UA 6/28/2018, Alamo, California, Bobby Westmoreland, Celina, Tennessee, and Lester Kenny Westmoreland, Celina, Tennessee;* to retain shares of Summit Bancshares, Inc., and thereby indirectly retain shares of Summit Bank, both of Oakland, California.

Board of Governors of the Federal Reserve System, August 7, 2018.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2018–17215 Filed 8–9–18; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2018–04; Docket No. 2018–0002; Sequence No. 19]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for the Sale of the Plum Island and an Ancillary Support Facility at Orient Point, New York

AGENCY: Office of Real Property Utilization & Disposal, General Services Administration (GSA).

ACTION: Notice of intent.

SUMMARY: The U.S. General Services Administration (GSA) as the operational Joint Lead Agency, announces its Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) for the sale of Plum Island, New York and an ancillary support facility at Orient Point, New York (hereinafter collectively referred to as Plum Island). That sale is now anticipated to occur no sooner than 2023. The U.S. Department of Homeland Security (DHS) will act as a Joint Lead Agency in ongoing consultation with GSA for the NEPA and associated regulatory compliance activities. The SEIS prepared during this process will supersede the Final EIS (FEIS) issued on June 25, 2013. After publication of the

SEIS, a new Record of Decision (ROD) will be issued to supersede the ROD issued on August 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. John L.A. Dugan, Real Property Utilization & Disposal Division, General Services Administration, 10 Causeway Street, Room 1100, Boston, MA 02222, or email *john.dugan@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Description

Plum Island is an 840-acre island located approximately 1.5 miles off the northeast tip of Orient Point, Long Island, New York. Plum Island is formerly the home of the U.S. Army's Fort Terry, and was transferred to the United States Department of Agriculture (USDA) in 1954 to establish a research facility for foot-and-mouth disease. In 2003, Plum Island was transferred to DHS, and DHS now, in cooperation with the USDA, operates Plum Island Animal Disease Center (PIADC). In addition to the buildings and facilities that support the PIADC mission, other assets on Plum Island include natural undeveloped land, the Plum Island Lighthouse constructed in 1869, and buildings and structures associated with the former Fort Terry.

Statutory Authority

Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), and the President's Council on Environmental Quality Regulations (40 CFR 1500–1508), as implemented by the GSA Order PBS P 1095.4C, GSA and DHS will prepare the SEIS for the sale of Plum Island. The sale is mandated in Section 540 of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, United States Public Law 110–329. United States Public Law 110–329 requires the Secretary of the DHS to liquidate the Plum Island asset by directing the Administrator of the GSA to sell through public sale all real and related personal property and transportation assets which support Plum Island operations, subject to such terms and conditions as necessary to protect government interests and meet program requirements. The Public Law mandates the public sale as a result of the determination by DHS to construct and operate a new National Bio and Agro Defense Facility (NBAF) in Manhattan, Kansas and move its operations to the NBAF (Record of Decision dated January 16, 2009).

Background

The purpose of the SEIS will be to document conditions that have changed and new information that has become available since the publication of the FEIS and ROD, and will provide a thorough analysis of those conditions and the new information. Items to be studied and analyzed in the SEIS will include, but are not limited to the following: The biological inventory known as the ''Biodiversity and Ecological Potential of Plum Island, New York'', also known as the Four-Seasons Study; any activities undertaken by the U.S. Fish and Wildlife Service on Plum Island; the zoning plan for Plum Island adopted by the Town of Southold in August 2013; the completion by DHS of a descriptive interpretation of Plum Island's environmental condition, known as a Conceptual Site Model; ongoing environmental remediation and mission closure activities by DHS; activity undertaken by the Army Corps of Engineers under the Formerly Used Defense Site program; progress by DHS under Section 110 of the National Historic Preservation Act; and, the availability of more definitive dates for the transfer of the PIADC mission off Plum Island and the sale of Plum Island.

The Joint Lead Agencies anticipate scoping for the SEIS will begin in 2019. When the scoping process is initiated, a notice will be posted in the **Federal Register** and sent to interested parties including those who commented on the prior NEPA process that concluded with the issuance of the ROD dated August 29, 2013. The agencies anticipate that in addition to preparing a SEIS, the Federal Consistency Review process under the Coastal Zone Management Act and any applicable requirements of the Endangered Species Act will be addressed. After the scoping is completed, a SEIS will incorporate findings from the FEIS, and further document and analyze conditions that have changed, and new information that has become available, since the publication of the FEIS and ROD. The SEIS will identify potentially significant direct, indirect, and cumulative impacts on historical and biological resources, land use, air quality, water quality, water resources, and socioeconomics, as well as other environmental issues that could occur as a result of the proposed action. For potentially significant impacts, the SEIS may identify avoidance, minimization, or mitigation measures to reduce these impacts, where feasible. Once published, the SEIS will supersede the FEIS and ROD issued in 2013.

August 6, 2018

Barbara J. Salfity,

Branch Chief, Real Property Utilization & Disposal Division, General Services Administration.

[FR Doc. 2018–17212 Filed 8–9–18; 8:45 am]

BILLING CODE 6820–51–P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS–2018–06; Docket No. 2018–0002; Sequence No. 18]

Notice of Availability and Announcement of Meeting for the Draft Environmental Impact Statement for the Otay Mesa Port of Entry, San Diego, California

AGENCY: Public Building Service (PBS), General Services Administration (GSA).

ACTION: Notice of availability; announcement of meeting.

SUMMARY: This notice announces the availability of the Draft Environmental Impact Statement (DEIS), which examines the potential impacts of a proposal by the General Services Administration (GSA) to modernize and expand the existing Otay Mesa Land Port of Entry (LPOE) located at the United States (U.S.)-Mexico border in the City of San Diego community of Otay Mesa, in San Diego County, California. The DEIS describes the reason the project is being proposed, the alternatives being considered, the potential impacts of each of the alternatives on the existing environment, and avoidance, minimization, and/or mitigation measures.

As the lead agency in this undertaking, GSA is acting on behalf of its major tenant at this facility, the Department of Homeland Security's (DHS) Customs and Border Protection (CBP).

DATES: A public meeting for the DEIS will be held on Thursday, August 9th, 2018, from 4:00 p.m. to 7:00 p.m., Pacific Time (PT). Interested parties are encouraged to attend and provide written comments on the DEIS. The comment period for the DEIS ends Friday, August 31, 2018. After this date, GSA will prepare the Final EIS.

ADDRESSES: The meeting will be held at the Holiday Inn Express and Suites San Diego, 2296 Niels Bohr Court, San Diego, CA, 92154, telephone 619–710–0900.

Further information, including an electronic copy of the DEIS, may be found online on the following website: *https://www.gsa.gov/about-us/regions/*

welcome-to-the-pacific-rim-region-9/land-ports-of-entry/otay-mesa-land-port-of-entry. Questions or comments concerning the DEIS should be directed to: Osmahn Kadri, NEPA Project Manager, 50 United Nations Plaza, 3345, Mailbox #9, San Francisco, CA, 94102, or via email to *osmahn.kadri@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Osmahn A. Kadri, NEPA Project Manager, GSA, at 415–522–3617. Please also call this number if special assistance is needed to attend and participate in the public meeting.

SUPPLEMENTARY INFORMATION:

Background

The Otay Mesa LPOE is located approximately 17 miles southeast of downtown San Diego, just north of the U.S. border and the Baja California Peninsula of Mexico. When it was constructed in 1983, its primary purpose was to divert growing commercial truck traffic from the increasingly busy San Ysidro LPOE to the west, at the southern terminus of Interstate 5. The Otay Mesa LPOE processes commercial and privately-owned vehicle and pedestrian traffic. Since the LPOE opened, vehicle and pedestrian traffic and the population and general development in the area have grown. It is now one of the ten busiest land ports in the country and is the busiest commercial port on the California-Mexico border, processing the second highest volume of trucks, and third highest dollar volume of trade among all U.S.-Mexico LPOEs. Ever-increasing traffic loads and new security initiatives require increased capacity and new inspection technology to be installed and implemented at existing facilities.

The Project's purpose is to improve the efficiency, effectiveness, security and safety at the existing Otay Mesa LPOE. The Project's need, or the need to which the GSA is responding, is to increase the LPOE's capacity due to increased demand, and to address public and employee safety and border security concerns.

The DEIS considers two ''action'' alternatives and one ''no action'' alternative. The Preferred Alternative would include the development of an approximately 10-acre GSA-owned plot of land to the immediate east of the existing commercial import lot. The new lot would be used to construct commercial inspection buildings and additional commercial import lanes. It would also include improvements to existing pedestrian lanes and personal vehicle inspection lanes; relocation of personnel currently housed in the Pedestrian, Commercial Import and Commercial Export buildings; renovation of existing facilities throughout the Otay Mesa LPOE; and demolition of facilities that would no longer be needed would also occur. New construction would include commercial import and exit booths, six additional pedestrian lanes in the Pedestrian Building, a Commercial Annex Building (CAB), a return-to-Mexico lane for commercial traffic, a pedestrian ramp and parking areas for the new commercial lot. Building renovations would include the installation of energy conservation measures and water conservation measures across the Otay Mesa LPOE, the correction of deficiencies throughout existing facilities (*e.g.,* updating security systems, updating HVAC systems, improving lighting and repaving old asphalt surfaces), and refurbishing the interiors of the pedestrian, commercial import and commercial export buildings including repainting and replacing flooring.

The Reduced Build Alternative would include many of the same activities as under the Preferred Alternative; however, the overall activity level would be lower. Notably, no new construction would occur on the 10-acre GSA-owned plot of land, and the Commercial Annex Building would not be constructed; instead, the plot of land would be paved and used as additional space for the commercial vehicle inspection booths which would be reconfigured to increase traffic flow. Renovation of existing facilities would still occur, but activities would be limited to updating security and HVAC systems and repainting interiors.

The No Action alternative assumes that modernization and expansion of the existing LPOE would not occur and that a new facility would not be constructed adjacent to the existing LPOE. The LPOE would continue to operate under current conditions.

Public Meeting

The meeting will be conducted in an open house format, where project information will be presented and distributed. Comments must be received by August 31, 2018, and emailed to *osmahn.kadri@gsa.gov* or sent to the address listed above.

Dated: August 2, 2018.

Matthew Jear,

Director, Portfolio Management Division, Pacific Rim Region, Public Buildings Service.

[FR Doc. 2018–17211 Filed 8–9–18; 8:45 am]

BILLING CODE 6820–YF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–1112; Docket No. CDC–2018–0072]

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 FoodNet Population Survey. The FoodNet Population Survey is conducted in 10 states and collects data on the prevalence of acute gastrointestinal illness in the United States and exposures associated with foodborne illness.

DATES: CDC must receive written comments on or before October 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0072 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 Jeffrey M. Zirger, 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.*

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

FoodNet Population Survey—Extension ICR—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Foodborne illnesses represent a significant public health burden in the United States. It is estimated that each year, 48 million Americans (1 in 6) become ill, 128,000 are hospitalized, and 3,000 die as the result of a foodborne illness. Since 1996, the Foodborne Diseases Active Surveillance Network (FoodNet) has conducted active population-based surveillance for Campylobacter, Cryptosporidium, Cyclospora, Listeria, Salmonella, Shiga toxin-producing Escherichia coli O157 and non-O157, Shigella, Vibrio, and Yersinia infections. Data from FoodNet serves as the nation's ''report card'' on food safety by monitoring progress toward CDC Healthy People 2020 objectives.

Since the previous OMB approval, pilot testing has been completed and data collection began in all states. As of July 10, 2018 a total of 11,657 surveys have been completed between all survey modes including landline, cell phone, web, and mail. CDC is seeking two years of OMB clearance for an extension of control number 0920–1112.

Evaluation of efforts to control foodborne illnesses can only be done effectively if there is an accurate estimate of the total number of illnesses that occur, and if these estimates are recalculated and monitored over time. Estimates of the total burden start with accurate and reliable estimates of the number of acute gastrointestinal illness episodes that occur in the general community. To more precisely estimate this and to describe the frequency of important exposures associated with illness, FoodNet created the Population Survey.

The FoodNet Population Survey is a survey of persons residing in the surveillance area. Data are collected on the prevalence and severity of acute gastrointestinal illness in the general population, describe common symptoms associated with diarrhea, and determine the proportion of persons with diarrhea who seek medical care. The survey also collects data on exposures (*e.g.* food, water, animal contact) commonly associated with foodborne illness. Information about food exposures in the general public has proved invaluable during outbreak investigations. The ability to compare exposures reported by outbreak cases to the 'background' exposure in the general population allows investigators to more quickly pinpoint a source and enact control measures.

CDC seeks approval for an OMB extension to continue this important work. The total estimated Burden Hours for this collection is 6,067 annually. There is no cost to the respondents other than their time.

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)
U.S. General Population	Population Survey	18,200	1	20/60	6,067
Total					6,067

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. 2018–17176 Filed 8–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–0234; Docket No. CDC–2018–0073]

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 the National Ambulatory Medical

Care Survey (NAMCS). The goal of the project is to assess the health of the population through patient use of physician offices, community health centers (CHCs), and to monitor the characteristics of physician practices].

DATES: CDC must receive written comments on or before October 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0073 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 Jeffrey M. Zirger, 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.*

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

National Ambulatory Medical Care Survey (NAMCS) (OMB Control No. 0920–0234, Exp. Date 03/31/2019)—Revision- National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Ambulatory Medical Care Survey (NAMCS) was conducted intermittently from 1973 through 1985, and annually since 1989. The survey is conducted under authority of Section 306 of the Public Health Service Act (42 U.S.C. 242k).

NAMCS is part of the ambulatory care component of the National Health Care Surveys (NHCS), a family of provider-based surveys that capture health care utilization from a variety of settings, including hospital inpatient and long-term care facilities. NCHS surveys of health care providers include NAMCS, the National Hospital Ambulatory Medical Care Survey (NHAMCS) (OMB No. 0920–0278, Exp. Date 06/30/2021), the National Hospital Care Survey (OMB No. 0920–0212, Exp. Date 01/31/2019), and National Study of Long-term Care Providers (OMB No. 0920–0943, Exp. Date 12/31/2019).

An overarching purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States; this fulfills one of NCHS missions, to monitor the nation's health. In addition, NAMCS provides ambulatory medical care data to study: (1) The performance of the U.S. health care system, (2) care for the rapidly aging population, (3) changes in services such as health insurance coverage change, (4) the introduction of new medical technologies, and (5) the use of EHRs. Ongoing societal changes have led to considerable diversification in the organization, financing, and technological delivery of ambulatory medical care. This diversification is evidenced by the proliferation of insurance and benefit alternatives for individuals, the development of new forms of physician group practices and practice arrangements (such as office-based practices owned by hospitals), and growth in the number of alternative sites of care.

Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. Since more than 80% of all direct ambulatory medical care visits occur in physician offices, NAMCS provides data on the majority of ambulatory medical care services.

In addition to health care provided in physician offices and outpatient and emergency departments, community health centers (CHCs) play an important role in the health care community by providing care to people who might not be able to afford it otherwise. CHCs are local, non-profit, community-owned health care settings, which serve approximately 23 million individuals throughout the United States. Prior to 2006, visits made to CHCs, although captured in NAMCS, were not purposely included in the sampling plan; at that time, CHCs did not represent a separate NAMCS stratum. In an attempt to obtain a more accurate picture of health care provided in the United States, a sample of 104 CHCs was included in the 2006 NAMCS panel. There has been annual data collection from CHCs since that time, and these settings will continue to be sampled in 2019–2021. The total estimated annual number of Burden Hours are 4,953. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Traditional Office-based Physicians or Staff.	2018 Physician Induction Interview (NAMCS–1).	122	1	30/60	61
Traditional Office-based Physicians or Staff.	2019+ Physician Induction Interview (NAMCS–1).	1,097	1	30/60	549
Traditional Office-based Physicians or Staff.	2018 Pulling, re-filing medical record forms (FR abstracts).	99	30	1/60	50
Traditional Office-based Physicians or Staff.	2019+ Pulling, re-filing medical record forms (FR abstracts).	893	30	1/60	447
MU Office-based Physician Staff	2019+ MU Physician Induction Interview (NAMCS–PFI).	2,000	1	45/60	1,500
MU Office-based Physician Staff	2019+ Pulling, re-filing medical record forms (MU Onboarding).	2,000	1	60/60	2,000
Community Health Center Executive/ Medical Directors.	2018 Induction Interview—service delivery site (NAMCS–201).	12	1	30/60	6
Community Health Center Executive/ Medical Directors.	2019+ Induction Interview—service delivery site (NAMCS–201).	104	1	30/60	52
Community Health Center Providers	2018 Induction Interview—Providers (NAMCS–1).	27	1	30/60	14
Community Health Center Providers	2019+ Induction Interview—Providers (NAMCS–1).	234	1	30/60	117
Community Health Center Provider Staff.	2018 Pulling, re-filing medical record forms (FR abstracts).	27	30	1/60	14
Community Health Center Provider Staff.	2019+ Pulling, re-filing medical record forms (FR abstracts).	234	30	1/60	117
Traditional Physician Office-based and Community Health Center Staff.	2018 Pulling, re-filing medical record forms (FR abstracts) for the Reabstraction Study.	3	10	1/60	1
Traditional Physician Office-based and Community Health Center Staff.	2019+ Reinterview Study	100	1	15/60	25
Total	.....	.....	.....	.....	4,953

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. 2018–17175 Filed 8–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–18–18APX; Docket No. CDC–2018–0066]

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 ''Dental Survey: Improving outpatient antibiotic use through implementation and evaluation of Core Elements of Outpatient Antibiotic Stewardship.'' This information collection request will generate data to assess knowledge, attitudes, practices and perceived barriers to appropriate antibiotic prescribing in a representative sample of dental providers. Results will be used to inform interventions for this specific provider population and support our efforts to improve antimicrobial stewardship within outpatient clinics.

DATES: CDC must receive written comments on or before October 9, 2018.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2018–0066 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 Jeffrey M. Zirger, 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.*

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

Dental Survey: Improving outpatient antibiotic use through implementation and evaluation of Core Elements of Outpatient Antibiotic Stewardship—New Information Collection Request—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Antibiotic resistance is a growing problem that has been shown to be a result of wide-spread antibiotic use and misuse. While efforts to improve antibiotic use to date have been primarily implemented in the inpatient setting, the majority of antibiotics are prescribed in the outpatient setting. Up to 50% of all antibiotics prescribed for acute respiratory tract infections (ARI) are proposed to be inappropriate. Interventions that have been demonstrated to decrease inappropriate use include audit-and-feedback, academic detailing, clinical decision support systems (CDSS), provider-focused public commitments to reduce inappropriate antibiotic use, and delayed antibiotic prescriptions. However, current data is limited due to short study timeframes and lack of sustainability.

In a pilot project, phone interviews were conducted with six dental providers and three pediatricians, specifically those who could speak to the knowledge, attitudes and behaviors of their peers. PRA was deemed not applicable by the NCEZID PRA representative for this pilot. We identified six dental providers that were recruited for a phone interview with our team's healthcare psychologist. Semi-structured interviews were used to assess: (1) Knowledge about antibiotic prescribing (what constitutes appropriate and inappropriate prescribing); (2) the providers current antibiotic prescribing practices; (3) beliefs about the consequences of inappropriate and appropriate prescribing (*e.g.,* consequences for the provider, for individual patients, and for the healthcare system); (4) attitudes about antibiotic prescribing (expected negative and positive reactions to appropriate prescribing); (5) subjective norms (beliefs related to what is ''normal'' antibiotic prescribing for the provider and for peers); (6) control beliefs related to appropriate prescribing (factors that make appropriate prescribing easy or difficult, *e.g.,* barriers); and (7) future planned behaviors along with perceived solutions to promote appropriate antibiotic prescribing.

During the analysis of the six dental interviews it was determined by the team that these interviews contained very unique information in terms of knowledge, attitudes and behaviors compared to other non-dental providers. Therefore, it was also determined that information saturation was not reached during this first data collection phase. We want to continue our data collect efforts within this specific population. This information will be crucial in future design of scalable and sustainable outpatient antibiotic stewardship interventions that incorporate all Core Elements of Outpatient Antibiotic Stewardship and to be able to implement it across a network of dental outpatient facilities.

The total estimated annual Burden Hours are 50. There will be no anticipated costs to respondents other than their time.

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)
Dental Providers	Dental Survey CDC Outpatient SHEPheRD.	100	1	.5	50
Total					50

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. 2018–17174 Filed 8–9–18; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10516 and CMS–10561]

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 September 10, 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.*

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.*

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:

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II; *Use:* The original approved ICR affiliated with this final rule was titled Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II and was approved on 8/26/2015. This request serves as the formal request for renewal of the clearance. This ICR includes some of the ICRs from the previously approved final rule. The program integrity data collections and third-party disclosure requirements will assist HHS in determining Exchange compliance with Federal standards. The data collection and third-party disclosure requirements will also assist HHS in monitoring QHP issuers in FFEs for compliance with Federal QHP issuer standards. The data collected by health insurance issuers and Exchanges will help to inform HHS, Exchanges, and health insurance issuers as to the participation of individuals, employers, and employees in the individual Exchange, and SHOP. *Form Number:* CMS–10516 (OMB Control Number: 0938–1277); *Frequency:* Annually; *Affected Public:* Private Sector, State, Business, and Not-for Profits; *Number of Respondents:* 1,915; *Number of Responses:* 1,915; *Total Annual Hours:* 48,732. (For questions regarding this collection, contact Leigha Basini at (301) 492–4380.)

2. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Essential Community Provider Data Collection to Support QHP Certification for PYs 2021–2023; *Use:* For plan years beginning on or after January 1, 2021, Health and Human Services (HHS) intends to continue collecting more complete provider data for inclusion on the HHS Essential Community Provider (ECP) list to ensure a more accurate reflection of the universe of qualified available ECPs in a given service area that can be counted toward an issuer's satisfaction of the ECP standard. HHS intends to continue collecting these data on qualified and available ECPs directly from providers through the online ECP petition. Providers will submit an ECP petition to be added to the HHS ECP list or update required data fields to remain on the list. *Form Number:* CMS–10561 (OMB control number: 0938–1295); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit Institutions); *Number of Respondents:* 14,260; *Total Annual Responses:* 14,260; *Total Annual Hours:* 7,468. (For policy questions regarding this collection contact Deborah Hunter at (202) 309–1098).

Dated: August 7, 2018.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2018–17190 Filed 8–9–18; 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: Multi-site Implementation Evaluation of Tribal Home Visiting (MUSE).

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services has launched a national multi-site evaluation of Tribal Maternal, Infant, and Early Childhood Home Visiting (TMIECHV) programs. MUSE is the first multi-site, multi-model study that will systematically explore how home visiting programs are operating across diverse tribal contexts and identify factors that lead to programs' success. The evaluation will provide information that will help the federal government design and support federal home visiting initiatives in tribal communities and similar populations. Evaluation findings will also assist programs with improving home visiting services for children and families. The aims of MUSE are to (1) identify and describe the primary influences shaping tribal home visiting program planning; (2) identify and describe how home visiting programs are being implemented; and (3) explore supports to home visiting implementation in tribal communities. To address these aims, the evaluation will gather data about participating home visiting programs from program staff and parent program participants and utilize administrative program data.

The current Notice is specific to data collection efforts needed to address the MUSE aims. Quantitative and qualitative data will be collected from program staff and parent program participants at each program site. Program sites will also submit local administrative data to the evaluation team. After obtaining informed consent from all respondents, data collection will include: (1) A Caregiver Enrollment Form, (2) a survey of caregivers receiving home visiting services at enrollment (baseline), (3) a follow-up survey of caregivers receiving home visiting services at 6 and 12 months, (4) a Rapid Reflect self-completed questionnaire completed by caregivers after selected home visits; (5) a Rapid Reflect self-completed questionnaire completed by home visitors after selected home visits; (6) a one-time survey of home visitors; (7) a one-time survey of program coordinators/managers; (8) a one-time survey of program directors; (9) a one-time survey of local program evaluators; (10) a one-time survey for program managers on program implementation, (11) qualitative interviews of home visitors at each site; (12) qualitative interviews of program coordinators/managers and program directors at each site; (13) qualitative interviews of local program evaluators at each site; (14) qualitative interviews of caregivers receiving home visiting services; (15) a log of implementation activities completed by program coordinators/managers on training, family group activities, and supervision; and 156 electronic compilation and submission of administrative program data.

All data collection will be used to generate information about how tribal home visiting program services are planned and delivered, and about what individual, organizational, community, and external factors support successful program implementation.

Respondents: Caregivers enrolled in TMIECHV programs and TMIECHV program staff (program directors, program coordinators/managers, home visitors, and local program evaluators).

Annual Burden Estimates: We will request approval for three years, which will accommodate an approximate 27 month data collection period and any potential delays in the data collection timeline.

Instrument	Total number of respondents	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Caregiver Enrollment Form	93	31	14	.08	35
Caregiver Survey—Baseline	565	188	1	.25	47
Caregiver Survey—6 & 12 Month Follow-up	380	127	2	.50	127
Rapid Reflect Self-Completed Home Visit Questionnaire for Caregivers	1,136	[1] 568	6	.08	273
Rapid Reflect Self Completed Home Visit Questionnaire for Home Visitors	93	[1] 47	66	.2	620
Home Visitor Survey	81	27	1	1.17	32
Program Coordinator/Manager Survey	21	7	1	1	7
Program Director Survey	21	7	1	.75	5
Local Program Evaluator Survey	30	10	1	.5	5
Program Implementation Survey	34	11	1	.25	3
Qualitative Interviews of Home Visitors	42	14	1	2	28
Qualitative Interviews of Program Coordinators/Managers and Program Directors	34	11	1	1.5	17
Qualitative Interviews of Local Program Evaluators	30	10	1	1.5	15
Qualitative Interviews of Caregivers	51	17	1	1	17
Implementation Logs	17	[1] 9	24	.67	145
Administrative Program Data	17	[1] 9	4	24	864

[1] The annual number of respondents is annualized over 2 years for instruments that are completed by respondents on an ongoing basis.

Estimated Total Annual Burden Hours: 2,240.

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

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

Desk Officer for the Administration for Children and Families.

Emily B. Jabbour,

ACF/OPRE Certifying Officer.

[FR Doc. 2018–17121 Filed 8–9–18; 8:45 am]

BILLING CODE 4184–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Proposed Projects

Title: Supplemental Nutrition Assistance Program (SNAP) Matching Program Performance Outcomes.

OMB No. 0970–0464.

Description: State agencies administering the Supplemental Nutrition Assistance Program (SNAP) are mandated to participate in a computer matching program with the federal Office of Child Support Enforcement (OCSE). The matching program compares SNAP applicant and recipient information with employment and wage information maintained in the National Directory of New Hires (NDNH). The outcomes of the compared information help state SNAP agencies with administering the program and verifying and determining an individual's benefit eligibility. To receive NDNH information, state agencies enter into a computer matching agreement and adhere to its terms and conditions, including providing OCSE with annual performance outcomes attributable to the use of NDNH information.

The Office of Management and Budget (OMB) requires OCSE to periodically report performance measurements demonstrating how the use of information in the NDNH supports OCSE's strategic mission, goals, and objectives. OCSE will provide the annual SNAP performance outcomes to OMB.

The information collection activities for the SNAP performance outcomes reports are authorized by: (1) Subsection 453(j)(10) of the Social Security Act (42 U.S.C. 653(j)(10)), which allows the Secretary of the U.S. Department of Health and Human Services to disclose information maintained in the NDNH to state agencies administering SNAP under the Nutrition Act of 2008, as amended by the Agriculture Act of 2014; (2) the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (5 U.S.C. 552a), which sets forth the terms and conditions of a computer matching program; and, (3) the Government Performance and Results Modernization Act of 2010 (Pub. L. 111–352), which requires agencies to report program performance outcomes to the Office of Management and Budget and for the reports to be available to the public.

Respondents: State SNAP Agencies.

ANNUAL BURDEN ESTIMATES

Information collection title	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
SNAP Matching Program Performance Outcomes	53	1	1.92	101.76

Estimated Total Annual Burden Hours: 101.76.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 330 C Street SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

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

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2018–17152 Filed 8–9–18; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–2582]

Human Dermal (Skin) Safety Testing for Topical Drug Products: Regulatory Utility and Evaluation; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing the following 1-day public workshop entitled ''Human Dermal (Skin) Safety Testing for Topical Drug Products: Regulatory Utility and Evaluation.'' The purpose of the public workshop is to provide a forum to discuss the current state and future directions of the collection of human data on the potential skin toxicity with the use of medications applied topically. The workshop will review current approaches to the collection of human data during the clinical development of topical drug products. The workshop will also address the impact of human skin toxicity studies on drug labeling and consider alternative approaches to providing information about skin toxicity.

DATES: The public workshop will be held on September 10, 2018, from 8:30 a.m. to 4 p.m. Eastern Time. Submit either electronic or written comments on this public workshop by October 10, 2018. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503, Section A), Silver Spring, MD 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed. For parking and security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

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 October 10, 2018. The

https://www.regulations.gov electronic filing system will accept comments until midnight Eastern Time at the end of October 10, 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–2018–N–2582 for ''Human Dermal (Skin) Safety Testing for Topical Drug Products: Regulatory Utility and Evaluation; Public Workshop; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Tisha Washington, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1019, *tisha.washington@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public workshop entitled ''Human Dermal (Skin) Safety Testing for Topical Drug Products: Regulatory Utility and Evaluation'' to discuss the current state and future directions of the collection of human data on the potential skin risks from use of topical drug products, including irritancy, sensitization, phototoxicity, and photoallergenicity.

II. Topics for Discussion at the Public Workshop

The morning session of the workshop will focus on review and discussion of current approaches for the collection of human skin toxicity data, limitations of these approaches, and their impact on labeling of topical drug products. The afternoon session of the workshop will be a panel discussion by individuals with different perspectives about alternative approaches to provide information about skin toxicity. Thirty minutes of the afternoon session will be allocated to an open public hearing. The Agency encourages health care providers, industry representatives, and other interested persons to attend this public workshop.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website by September 4, 2018: *https://www.eventbrite.com/e/fda-public-workshop-human-dermal-safety-testing-for-topical-drug-products-tickets-47483161414.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone, and intended attendance method—in person or by webcast. You may also indicate if you wish to present at the public comment session (see *Requests for Oral Presentations*). For those unable to attend in person, FDA will provide a live webcast of the workshop.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by 5 p.m. Eastern Time, September 4, 2018. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been accepted. Seating will be available on a first-come, first-served basis. If time and space permit, onsite registration on the day of the workshop will be provided beginning at 8:15 a.m. Eastern Time; FDA will let the public know whether onsite registration is available before the day of the public workshop.

An agenda for the workshop and any other background materials will be made available 5 days before the workshop at *https://www.fda.gov/Drugs/NewsEvents/ucm611203.htm.*

If you need special accommodations due to a disability, please contact Tisha

Washington, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1019, *tisha.washington@fda.hhs.gov* no later than September 4, 2018.

Requests for Oral Presentations: During online registration you may indicate if you wish to present at the public comment session, and which topic(s) you wish to address. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and request time for a joint presentation. Following the close of registration, we will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will select and notify participants by September 5, 2018. All requests to make oral presentations must be received by the close of registration on September 4, 2018. If selected for presentation, any presentation materials must be emailed to Tisha Washington (see **FOR FURTHER INFORMATION CONTACT**) no later than close of business, September 6, 2018. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast. The webcast link will be available on the following web page 5 days before the workshop at: *https://www.fda.gov/Drugs/NewsEvents/ucm611203.htm.*

If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *https://www.adobe.com/go/connectpro_overview.* FDA 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.

Transcripts: Please be advised that as soon as a transcript of the public workshop is available, it will be accessible at *https://www.regulations.gov.* It may be viewed at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A link to the transcript will also be available on the internet at *https://www.fda.gov/Drugs/NewsEvents/ucm611203.htm.*

Dated: August 6, 2018.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2018–17130 Filed 8–9–18; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

HHS Approval of Entities That Certify Medical Review Officers

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice publishes a list of the Department of Health and Human Services (HHS) approved Medical Review Officers certification entities. The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines), applicable on October 1, 2017, addresses the role and qualifications of Medical Review Officers (MROs) and HHS approval of entities that certify MROs.

FOR FURTHER INFORMATION CONTACT: Sean J. Belouin, Pharm.D., CAPT, United States Public Health Service, Senior Pharmacology and Regulatory Policy Advisor, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 16N06D, Rockville, Maryland 20857; Telephone: (240) 276–2716; Email: *sean.belouin@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Subpart M—Medical Review Officer (MRO), Section 13.2 of the Mandatory Guidelines, ''How are nationally recognized entities or subspecialty boards that certify MROs approved?'' states as follows: ''All nationally recognized entities or subspecialty boards which seek approval by the Secretary to certify physicians as MROs for federal workplace drug testing programs must submit their qualifications, a sample examination, and other necessary supporting examination materials (*e.g.,* answers, previous examination statistics or other background examination information, if requested) (OMB Control No.: 0930–0158). Approval will be based on an objective review of qualifications that include a copy of the MRO applicant application form, documentation that the continuing education courses are accredited by a professional organization, and the delivery method and content of the examination. Each approved MRO certification entity must resubmit their qualifications for approval every two years. The Secretary shall publish at least every two years a notice in the **Federal Register** listing those entities and subspecialty boards that have been approved. This notice is also available on the internet at *http://www.samhsa.gov/workplace/drug-testing.*''

HHS has completed its review of entities that certify MROs, in accordance with requests submitted by such entities to HHS.

The HHS Secretary approves the following MRO certifying entities that offer MRO certification through examination:

American Association of Medical Review Officers (AAMRO), P.O. Box 12873, Research Triangle Park, NC 27709, Phone: (919) 489–5407, Fax: (919) 490–1010, Email: *bbrandon@aamro.com,* website: *http://www.aamro.com/.*

Medical Review Officer Certification Council (MROCC), 3231 S. Halsted St, #167, Chicago, IL 60608, Phone: (847) 631–0599, Fax: (847) 483–1282, Email: *mrocc@mrocc.org,* website: *http://www.mrocc.org/.*

DATES: HHS approval is effective July 31, 2018.

Alex M. Azar II,

Secretary.

[FR Doc. 2018–17184 Filed 8–9–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

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

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Closed: September 13, 2018.

Time: 9:00 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700–B Rockledge Drive, Conference Rooms A & B, Bethesda, MD 20817.

Open: September 13, 2018.

Time: 9:45 a.m. to 3:00 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700–B Rockledge Drive, Conference Rooms A & B, Bethesda, MD 20817.

Contact Person: Abraham P. Bautista, Ph.D., Executive Secretary, National Advisory Council, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700–B Rockledge Drive, Suite 1458, MSC 6902, Bethesda, MD 20892, 301–443–9737 *bautista@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.niaaa.nih.gov/news-events/meetings-events-exhibits,* where an agenda and any additional information for the meetings will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 6, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17107 Filed 8–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ADC P30 Review.

Date: September 17–18, 2018.

Time: 2:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly St., Bethesda, MD 20814.

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–496–9374, *grimaldim2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 6, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17103 Filed 8–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Chronic Pain: The Science of Complementary and Integrative Health Approaches

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This symposium on September 11, 2018, sponsored by the National Center for Complementary and Integrative Health, will bring leading researchers to discuss the science and potential uses of complementary and integrative health approaches in treating chronic pain.

DATES: The meeting will be held on September 11, 2018, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Boston Convention and Exhibition Center, 415 Summer Street, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting, see the NCCIH website, *https://nccih.nih.gov/chronic-pain-symposium-2018?nav=govd,* the 17th World Congress on Pain website, *https://www.iaspworldcongressonpain.org/program/current-satellite-symposia/#toggle-id-3,* or contact Dr. Wen Chen, Acting Branch Chief and Program Director, Basic and Mechanistic Research, Division of Extramural Research, National Center for Complementary and Integrative Health, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, telephone: 301–451–3989; email: *when.chen2@nih.gov.*

SUPPLEMENTARY INFORMATION: This symposium, sponsored by the National Center for Complementary and Integrative Health, will bring leading researchers from multiple disciplines to discuss the science and potential uses of complementary and integrative health approaches in treating chronic pain. The symposium will highlight current concerns regarding the opioid epidemic and the potential roles of complementary and integrative health approaches in addressing this crisis. The objectives of the symposia are to: Present the past, present, and future of natural products research and pain management, focusing on our current understanding of the ascending and descending neural mechanisms by which different natural products may contribute to analgesia; ascertain the mechanisms by which a variety of mind and body approaches may modulate pain; and discuss translational potential for complementary and integrative approaches for individual-based chronic pain management.

Interested individuals can register for the symposia at: *https://www.iaspworldcongressonpain.org/registration/.* Once you have created a free IASP account, you can choose to register for a Satellite Symposium only. Choose the Satellite Symposium ''Chronic Pain: The Science of Complementary and Integrative Health Approaches.'' The registration fee is $20 for the 1-day symposium.

Dated: August 6, 2018.

David Shurtleff,

Acting Director, National Center for Complementary and Integrative Health, National Institutes of Health.

[FR Doc. 2018–17118 Filed 8–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group; Neuroscience Review Subcommittee.

Date: October 19, 2018.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700–B Rockledge Drive, Conference Rooms A & B, Bethesda, MD 20817.

Contact Person: Beata Buzas, Ph.D., Scientific Review Officer, Office of Extramural Activities, National Institute on Alcohol Abuse and Alcoholism, 6700–B Rockledge Drive, Room 2116, Bethesda, MD 20892, 301–443–0800, *bbuzas@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: August 6, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17105 Filed 8–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, August 14, 2018, 1:00 p.m. to August 14, 2018, 4:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Conference Room TE406, Rockville, MD 20850 which was published in the **Federal Register** on August 02, 2018, 83 FR 37820.

The meeting notice is being amended to change the meeting times for the open and closed sessions. The open session will be held from 1:00 p.m. to 3:45 p.m. The closed session will be held from 3:50 p.m. to 4:30 p.m. The meeting is partially closed to the public.

Dated: August 6, 2018.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2018–17104 Filed 8–9–18; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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) 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.

Proposed Project: State Targeted Response to the Opioid Crisis Grant Program Mid-Year and End-Year Performance Reports

(OMB No. 0930–0378)—In Use Without OMB Approval

The Substance Abuse and Mental Health Services Administration (SAMHSA) is authorized under Section 1003 of the 21st Century Cures Act, as amended, to support a grant program, for up to 2 years, that addresses the supplemental activities pertaining to opioids currently undertaken by the state agency or territory and will support a comprehensive response to the opioid epidemic.

SAMHSA received approval from OMB in September 2017 to collect performance data from Opioid State Targeted Response (STR) grantees (OMB No. 0930–0378). However, SAMHSA omitted a data collection table (Table E) in the original OMB request. This data table is currently in use by Opioid STR grantees, who are reporting Table E data to SAMHSA on a semi-annual basis. In order to correct this violation, SAMHSA is now seeking OMB approval for a new data collection package that includes not only the instruments originally approved by OMB in September 2017, but also this additional data collection table. It is important for SAMHSA to continue to collect this information in order to assess the impact of funding from the Opioid STR program on increasing access to prevention strategies, as well as treatment and recovery services to address the opioid crisis. Additionally, this data will provide SAMHSA with critical information to effectively manage the Opioid STR program, to help states and territories adopt, or scale-up, effective practices and policies, and to help prepare to implement the new State Opioid Response grant program.

The primary purpose of the Opioid STR program is to address the opioid crisis by increasing access to treatment, reducing unmet treatment need, and reducing opioid overdose related deaths through the provision of prevention, treatment and recovery activities for opioid use disorder (OUD) (including prescription opioids as well as illicit drugs such as heroin).

There are 57 (states and jurisdictions) award recipients in this program. All funded states and jurisdictions report on their implementation and performance through an online data collection system. Award recipients report performance on the following measures specific to this program: number of people who receive OUD treatment, number of people who receive OUD recovery services, number of providers implementing medication-assisted treatment, and the number of OUD prevention and treatment providers trained, to include nurse practitioners, physician assistants, as well as physicians, nurses, counselors, social workers, case managers, etc. This information is collected at the mid-point and conclusion of each grant award year. Additionally, each award recipient describes the purposes for which the grant funds received were expended and the activities implemented under the program.

ANNUALIZED ESTIMATED BURDEN HOURS FOR THE PROGRESS REPORT

Respondent	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
State and Jurisdictions	57	2	114	8.5	969

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by October 9, 2018.

Summer King,

Statistician.

[FR Doc. 2018–17127 Filed 8–9–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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) 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.

Project: Minority AIDS Initiative-Management Reporting Tools (MAI–MRTs)

OMB No. 0930–0357—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the revision of Minority AIDS Initiative (MAI) monitoring tools, which includes both youth and adult questionnaires as well as the quarterly progress report. This revision includes the inclusion of new cohorts, substantial revisions to the youth and adult questionnaires, updates to the data used to estimate response rates and expected numbers of participants by service duration (see Table 1 below).

The cohorts of grantees funded by the MAI and included in this clearance request are:

- Capacity Building Initiative (CBI) 2015
- Capacity Building Initiative (CBI) 2016
- Capacity Building Initiative (CBI) 2017
- Capacity Building Initiative (CBI) 2018
- Prevention Navigators 2017
- Secretary's Minority AIDS Initiative Fund (SMAIF) 2018

The target population for the CBI grantees will be at-risk minority adolescents and young adults. All MAI grantees are expected to report their monitoring data using SAMHSA's Strategic Prevention Framework (SPF) and to target minority populations, as well as other high risk groups residing in communities of color with high prevalence of Substance Abuse and HIV/AIDS. The primary objectives of the monitoring tools include:

- Assess the success of the MAI in reducing risk factors and increasing protective factors associated with the transmission of the Human Immunodeficiency Virus (HIV), Hepatitis C Virus (HCV) and other sexually-transmitted diseases (STD).
- Measure the effectiveness of evidence-based programs and infrastructure development activities such as: Outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, testing, referrals to appropriate medical treatment and/or other intervention strategies (*i.e.,* cultural enrichment activities, educational and vocational resources, social marketing campaigns, and computer-based curricula).
- Investigate intervention types and features that yield the best outcomes for specific population groups.
- Assess the extent to which access to health care was enhanced for population groups and individuals vulnerable to behavioral health disparities residing in communities targeted by funded interventions.
- Assess the process of adopting and implementing the SPF with the target populations.

Revisions to the monitoring tools include the following:

Quarterly Progress Report (QPR)

- Removed Numbers Served, HIV Testing, VH Testing, VH Vaccination, and Referrals for Services Not Funded by MAI funds from the Implementation Section. These data will be collected via the participant level
- Added opioid items to lists for targeted outcome measures, name of direct services list, indirect services—environmental strategy list and environmental strategy purpose
- Added Promising Approaches and Innovations Section (2 questions)
- Added upload screen for Final Evaluation Report (for closeout grantees only) tool

The following two tools have been added to this data collection, but were approved under OMB No. 0930–0347 with the exception of the new items listed below. Items that were removed are due to their not being central to the evaluation.

Adult Questionnaire

- Aligned questions with the Center for Substance Abuse Treatment (CSAT)/ Center for Mental Health Service (CMHS) tools & the Rapid HIV Hepatitis Form, where possible
- Removed some demographic questions related to language, education, employment status, health,

military details, and relationship status
- Removed some knowledge & attitude questions about peer behavior & how they feel about it, sex refusal skills, & HIV knowledge
- Removed some behavior questions related to other tobacco products, electronic vapor products, synthetic marijuana, mental health, and experience with alcohol use.
- Added opioid drug questions
- Added questions to capture details on the intervention and the referrals to the record management section (completed by grantee staff)

Youth Questionnaire

In addition to all items listed above, on the youth questionnaire, SAMHSA also removed non-essential questions related to:
- Interest in school & feelings about ethnic identity
- Relationships with parents or guardians
- Friend substance abuse and sexual behavior
- Exposure to prevention education messages

The following two tools have been deleted from this data collection:
- Indirect Service Outcomes (ISO)
- HIV Testing Retrospective Reporting Tool

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

Type of respondent activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Quarterly Progress Report	155	4	620	4	2,480
Adult level questionnaire	12,000	2	24,000	.20	4,800
Youth questionnaire	3,000	2	6,000	.20	600
Total	15,155		30,620		7,880

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by October 9, 2018.

Summer King,

Statistician.

[FR Doc. 2018–17126 Filed 8–9–18; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0281]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0094

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0094, Ships Carrying Bulk Hazardous Liquids; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before September 10, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0281] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: dhsdeskofficer@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0281], and must be received by September 10, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents

mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0094.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (83 FR 24133, May 24, 2018) required by 44 U.S.C. 3506(c)(2). That Notice elicited one comment. The comment was unrelated to this Information Collection request. Accordingly, no changes have been made to the Collection.

Information Collection Request

Title: Ships Carrying Bulk Hazardous Liquids.

OMB Control Number: 1625–0094.

Summary: This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

Need: Under 46 U.S.C. 3703, the Coast Guard is authorized to prescribe regulations for protection against hazards to life, property, and navigation and vessel safety, and protection of the marine environment. The regulations for the safe transport by vessel of certain bulk dangerous cargoes are contained in 46 CFR part 153.

Forms: CG–4602B, Cargo Record Book; CG–5148, International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk; CG–5148A, Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk; CG–5148B Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk; and CG–5461, International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

Respondents: Owners and operators of chemical tank vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 5,539 hours to 7,611 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: July 31, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–17138 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0785]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0095

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0095, Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions, without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 9, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0785] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2018–0785], and must be received by October 9, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be

viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Oil and Hazardous Material Pollution Prevention and Safety Records, Equivalents/Alternatives and Exemptions.

OMB Control Number: 1625–0095.

Summary: The information is used by the Coast Guard to ensure that an oil or hazardous material requirement alternative or exemption provides an equivalent level of safety and protection from pollution.

Need: Under 33 U.S.C. 1321 and Executive Order 12777 the Coast Guard is authorized to prescribe regulations to prevent the discharge of oil and hazardous substances from vessels and facilities and to contain such discharges. Coast Guard regulations in 33 CFR parts 154–156 are intended to: (1) Prevent or mitigate the results of an accidental release of bulk liquid hazardous materials being transferred at waterfront facilities; (2) ensure that facilities and vessels that use vapor control systems are in compliance with the safety standards developed by the Coast Guard; (3) provide equipment and operational requirements for facilities and vessels that transfer oil or hazardous materials in bulk to or from vessels with a 250 or more barrel capacity; and (4) provide procedures for vessel or facility operators who request exemption or partial exemption from the requirements of the pollution prevention regulations.

Forms: None.

Respondents: Owners and operators of bulk oil and hazardous materials facilities and vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 1,440 hours to 1,720 hours a year due to an increase in the estimated number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: July 31, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–17137 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0784]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0014

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0014, Request for Designation and Exemption of Oceanographic Research Vessel, without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before October 9, 2018.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0784] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public participation and request for comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–612), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2018–0784], and must be received by October 9, 2018.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include

any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information Collection Request

Title: Request for Designation and Exemption of Oceanographic Research Vessels.

OMB Control Number: 1625–0014.

Summary: This collection requires submission of specific information about a vessel in order for the vessel to be designated as an Oceanographic Research Vessel (ORV).

Need: Title 46 U.S.C. 2113 authorizes the Secretary of the Department of Homeland Security to exempt Oceanographic Research Vessels (ORV), by regulation, from provisions of Subtitle II, of Title 46, Shipping, of the United States Code, concerning maritime safety and seaman's welfare laws. This information is necessary to ensure a vessel qualifies for the designation of ORV under 46 CFR part 3 and 46 CFR part 14, subpart D.

Forms: None.

Respondents: Owners or operators of certain vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 25 hours to 36 hours a year due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: July 31, 2018.

James D. Roppel,

U.S. Coast Guard, Acting Chief, Office of Information Management.

[FR Doc. 2018–17136 Filed 8–9–18; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0117]

Agency Information Collection Activities: Free Trade Agreements

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted (no later than September 10, 2018) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (83 FR 18581) on April 27, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Free Trade agreements.

OMB Number: 1651–0117.

Form Number: None.

Type of Review: Extension (without change).

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Affected Public: Businesses.

Abstract: Free trade agreements are established to reduce and eliminate trade barriers, strengthen and develop economic relations, and to lay the foundation for further cooperation to expand and enhance benefits of the agreement. These agreements establish free trade by reduced-duty treatment on imported goods.

The U.S. has entered into the following Free Trade Agreements: United States-Chile Free Trade Agreement (US–CFTA) (Pub. L. 108–77); the Republic of Singapore (Pub. L. 108–78, 117 Stat. 948,19 U.S.C. 3805 note); Australia (Pub. L. 108–286); Morocco (Pub. L. 108–302); Jordan (Pub. L. 107–43); Bahrain (Pub. L. 109–169); Oman (Pub. L. 109–283); Peru (Pub. L. 110–138, 121 Stat. 1455); Korea (Pub. L. 112–41); Colombia (Pub. L. 112–42, 125 Stat. 462); Panama (Pub. L. 112–43); and Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (CAFTA–DR) (Pub. L. 109–53, 119 Stat. 462).

These free trade agreements involve collection of data elements such as information about the importer and exporter of the goods, a description of the goods, tariff classification number, and the preference criterion in the Rules of Origin.

Respondents can obtain information on how to make claims under these Free Trade Agreements by going to *http://www.cbp.gov/trade/free-trade-agreements* and use a standard fillable

format for the FTA submission by going to *http://www.cbp.gov/document/guides/certification-origin-template.*

Estimated Number of Respondents: 359,400.

Estimated Number of Total Annual Responses: 361,000.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 722,000.

Dated: August 7, 2018.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2018–17173 Filed 8–9–18; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0053]

Agency Information Collection Activities: Allegation of Counterfeiting and Intellectual Piracy; Extension Without Change, of a Currently Approved Collection

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for sixty days until October 9, 2018.

ADDRESSES: Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Chief Information Office, Forms Management Office, U.S. Immigrations and Customs Enforcement, 801 I Street NW, Mailstop 5800, Washington, DC 20536–5800.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without changes, of a currently approved information collection.

(2) *Title of the Form/Collection:* Allegation of Counterfeiting and Intellectual Piracy.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form 73–048, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This electronic form/collection will be utilized by the public and law enforcement partners as part of an automated allegation and deconfliction program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Number of respondents	Form name/Form No.	Avg. burden per response (in hours)
12,000	Allegation of Counterfeiting and Intellectual Piracy	.033

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,890 annual burden hours.

Dated: August 7, 2018.

Scott Elmore,

Program Manager, PRA Clearance, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2018–17165 Filed 8–9–18; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2018–N180; FXES11130600000–189–FF06E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 11 Species in the Mountain-Prairie Region

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of six animal and five plant species. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review of the species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than October 9, 2018. However, we will continue to accept new information about any listed species at any time.

FOR FURTHER INFORMATION CONTACT: For information on a particular species, contact the appropriate person or office listed in the table in the **SUPPLEMENTARY INFORMATION** section. Individuals who

are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year status reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review. For additional information about 5-year status reviews, go to *http://www.fws.gov/endangered/what-we-do/recovery-overview.html,* scroll down to ''Learn More about 5-Year Status Reviews,'' and click on our factsheet.

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for the species.

Which species are under review?

This notice announces our active review of the eleven species listed in the tables below.

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
			Animal			
Black-footed ferret	*Mustela nigripes*	Endangered	Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Texas, Utah, Wyoming, U.S.A; Canada; Mexico.	32 FR 4001; 03/11/1967	John Hughes, Wildlife Biologist, 970–897–2730 x229; *john_hughes@fws.gov*.	National Black-footed Ferret Conservation Center, P.O. Box 190, Wellington, CO 80459.
Gunnison sage-grouse.	*Centrocercus minimus*.	Threatened	Colorado, Utah, U.S.A	79 FR 69191; 11/20/2014	Ann Timberman, Colorado Field Office, 970–628–7181; *ann_timberman@fws.gov*.	Ecological Services, Western Colorado Field Office, 445 W. Gunnison Ave., #240, Grand Junction, CO 81501–5711.
Preble's meadow jumping mouse.	*Zapus hudsonius preblei*.	Threatened	Colorado, Wyoming, U.S.A.	73 FR 39790; 07/10/2008	Drue DeBerry, CO/NE Project Leader, 303–236–4774; *drue_deberry@fws.gov*.	Ecological Services, Colorado Field Office, P.O. Box 25486–DFC, Denver, CO 80225.
Neosho madtom ..	*Noturus placidus*	Threatened	Kansas, Missouri, Oklahoma, U.S.A.	55 FR 21148; 5/22/1990	Jason Luginbill, Project Leader, 785–539–3474; *jason_luginbill@fws.gov*.	Ecological Services, Kansas Field Office, 2609 Anderson Ave., Manhattan, KS 66502.
Utah prairie dog ...	*Cynomys parvidens*.	Threatened	Utah, U.S.A	76 FR 36053; 6/21/2011	Larry Crist, Project Leader, 801–975–3330; *larry_crist@fws.gov*.	Ecological Services, Utah Field Office, 2369 W. Orton Circle, #50, West Valley City, UT 84119.
Wyoming toad	*Bufo hemiophrys baxteri*.	Endangered	Wyoming, U.S.A	49 FR 1992; 1/17/1984 ...	Tyler Abbott, Project Leader, 307–772–2374; *tyler_abbott@fws.gov*.	Ecological Services, Wyoming Field Office, 5353 Yellowstone Road, #308A, Cheyenne, WY 82009.
			Plants			
Parachute beardtongue.	*Penstemon debilis*.	Threatened	Colorado, U.S.A	76 FR 45054; 07/27/2011	Ann Timberman, Colorado Field Office, 970–628–7181; *ann_timberman@fws.gov*.	Ecological Services, Western Colorado Field Office, 445 W. Gunnison Ave., #240, Grand Junction, CO 81501–5711.
Blowout penstemon.	*Penstemon haydenii*.	Endangered	Nebraska, Wyoming, U.S.A.	52 FR 32926; 9/1/1987 ...	Eliza Hines, Nebraska Field Office, 308–382–6468; *eliza_hines@fws.gov*.	Ecological Services, Nebraska Field Office, 9325 S. Alda Road, Wood River, NE 68883.
Clay phacelia	*Phacelia argillacea*.	Endangered	Utah, U.S.A	43 FR 44810; 9/28/1978	Larry Crist, Project Leader, 801–975–3330; *larry_crist@fws.gov*.	Ecological Services, Utah Field Office, 2369 W. Orton Circle, #50, West Valley City, UT 84119.
Last chance townsendia.	*Townsendia aprica*.	Threatened	Utah, U.S.A	50 FR 33734; 8/21/1985	Larry Crist, Project Leader, 801–975–3330; *larry_crist@fws.gov*.	Ecological Services, Utah Field Office, 2369 W. Orton Circle, #50, West Valley City, UT 84119.

Common name	Scientific name	Listing status	Historical range	Final listing rule (**Federal Register** citation and publication date)	Contact person, phone, email	Contact person's U.S. mail address
Desert yellowhead	*Yermo xanthocephalus.*	Threatened	Wyoming, U.S.A	67 FR 11442; 3/14/2002	Tyler Abbott, Project Leader, 307–772–2374; *tyler_abbott@fws.gov.*	Ecological Services, Wyoming Field Office, 5353 Yellowstone Road, #308A, Cheyenne, WY 82009.

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What information do we consider in our review?'' for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

How do I ask questions or provide information?

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in the table above. You may also direct questions to those contacts. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

Public Availability of Submissions

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Contents of Public Comments

Please make your comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to be relevant to agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations.

Completed and Active Reviews

A list of all completed and currently active 5-year status reviews addressing species for which the Mountain-Prairie Region of the U.S. Fish and Wildlife Service has lead responsibility is available at *http://www.fws.gov/endangered/.*

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 9, 2018.

Matt Hogan,

Deputy Regional Director, Mountain-Prairie Region.

[FR Doc. 2018–17143 Filed 8–9–18; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX18EB00A181100; OMB Control Number 1028–0085]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; National Land Remote Sensing Education, Outreach and Research Activity

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before September 10, 2018.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to USGS, Information Collections Clearance Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0085 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Sarah Cook by email at *scook@usgs.gov,* or by telephone at 703–648–6136. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: We, the USGS, in accordance with the Paperwork Reduction Act of 1995, provide the general public and other Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on May 31, 2018, 83 FR 25038. No comments have been received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire

comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Land Remote Sensing Education, Outreach and Research Activity (NLRSEORA) is an effort that involves the development of a U.S. national consortium in building the capability to receive, process and archive remotely sensed data for the purpose of providing access to university and state organizations in a ready-to-use format; and to expand the science of remote sensing through education, research/applications development and outreach in areas such as environmental monitoring to include the effects of climate variability on water availability (or lack thereof) and phenology, natural resource management and disaster analysis. Respondents are submitting proposals to acquire funding for a national (U.S.) program to promote the uses of space-based land remote sensing data and technologies through education and outreach at the state and local level and through university-based and collaborative research projects. The information collected will ensure that sufficient and relevant information is available to evaluate and select a proposal for funding. A panel of USGS Land Resources Mission Area managers and scientists will review each proposal to evaluate the technical merit, requirements, and priorities identified in the call for proposals.

This notice concerns the collection of information that is sufficient and relevant to evaluate and select proposals for funding. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Title of Collection: National Land Remote Sensing Education, Outreach and Research Activity

OMB Control Number: 1028–0085.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Public or private institutions of higher education including universities; State and local governments (including county, city, township or special district governments); independent school districts, Native American Tribal governments or organizations, nonprofit organizations (with or without 501(c)(3) status).

Total Estimated Number of Annual Respondents: Approximately 5 respondents.

Total Estimated Number of Annual Responses: Approximately 7 responses.

Estimated Completion Time per Response: 168 hours in total. We expect to receive approximately 5 applications per year, taking each applicant approximately 24 hours to complete the application process. We anticipate awarding one (1) grant per year. The grantee will be required to submit an interim Annual Progress Report to the designated USGS Project Officer within 90 days of the end of the project period and a final report on or before 90 working days after the expiration of the agreement. We anticipate the grantee will take approximately 24 hours to submit each interim annual report and the final report.

Total Estimated Number of Annual Burden Hours: 168 hours per year.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour-cost'' burdens associated with this IC.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Timothy Newman,

Program Coordinator, National Land Imaging Program, U.S. Geological Survey.

[FR Doc. 2018–17110 Filed 8–9–18; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX18EB00A181100; OMB Control Number 1028–0085/Renewal]

Agency Information Collection Activities; National Land Remote Sensing Education, Outreach and Research Activity

Correction

Notice document 2018–16986 appearing on pages 39115 through 39116, in the issue of August 8, 2018, was inadvertently published in error and is hereby withdrawn.

[FR Doc. C1–2018–16986 Filed 8–9–18; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(LLCAD06000.51010000.ER0000.LVRWB09B2920.18X5017AP) CACA49397; MO#4500121476]

Notice of Availability of the Draft Environmental Impact Statement and Environmental Impact Report and Draft Land Use Plan Amendment to the California Desert Conservation Area Plan for the Desert Quartzite Solar Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a draft Environmental Impact Statement (EIS), and, in collaboration with Riverside County, a draft Environmental Impact Report (EIR) for the Desert Quartzite Solar Project (DQSP). A draft Land Use Plan Amendment to the California Desert Conservation Area Plan (CDCA) is also included. This notice announces the opening of the public comment period, following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**.

DATES: To ensure that all comments will be considered, the BLM must receive written comments on the draft plan amendment and draft EIS/EIR by November 8, 2018. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, the project website, and/or mailings.

ADDRESSES: The public may submit comments related to the project during the public comment period by using any of the following methods:

- *Website: https://goo.gl/GmkJk4.*
- *Email: blm_ca_desert_quartzite_solar_project@blm.gov.*
- *Mail:* Desert Quartzite Solar Project, Bureau of Land Management Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92234.

Copies of the draft EIS/EIR and draft plan amendment are available at the

BLM-Palm Springs-South Coast Field Office at the above address and at the BLM California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, CA 92553, and electronically on the project website referenced above.

FOR FURTHER INFORMATION CONTACT: Brandon G. Anderson, BLM project manager, telephone: (760) 833–7140; email: *bganderson@blm.gov*; address Bureau of Land Management, Palm Springs-South Coast Field Office, 1201 Bird Center Drive, Palm Springs, CA 92262.

Persons who use telecommunication devices for the deaf may call the Federal Relay Service (FRS) at (307) 775–6115 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 questions with the above individual regarding the project. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Desert Quartzite LLC, a wholly owned subsidiary of First Solar Development LLC, applied for a right-of-way (ROW) grant for a photovoltaic solar project, application number CACA–049397, with the Bureau of Land Management. The Applicant proposes to construct, operate, maintain, and decommission the DQSP in the southern California inland desert. The Project would generate up to 450 megawatts (MW) using solar photovoltaic (PV) technology.

The ROW grant application was originally filed for 7,245 acres on September 28, 2007, but has since been revised. The total project area under application for BLM and County approval is 5,275 acres, including 5,115 acres of BLM-administered lands for the ROW grant, and 160 acres of private land for the Riverside County Conditional Use Permit. Within this application area, the Applicant has proposed a project that would occupy 3,831 acres. This includes 3,560 acres for the portion of the solar facility on BLM-managed public lands; 54 acres for the proposed 230 kilovolt (kV) generation interconnection [gen-tie] line on BLM public lands, two acres for the offsite portion of a buried telecommunications line on BLM public lands, 56.8 acres of temporary projects, 4.5 acres for the external access road and 154 acres for the portion of the solar facility on private lands. The larger acreage under application would allow the BLM and the County to consider various site layouts as project alternatives in the environmental analyses for the proposed project.

Although the Notice of Intent (NOI) to prepare an Environmental Impact Statement for the Desert Quartzite Solar Project and a possible amendment to the California Desert Conservation Area (CDCA) plan, 80 FR 12195 (March 6, 2015), stated that the Project would be capable of generating 300 MW, advances in photovoltaic solar technology will allow the generation of additional megawatts on the same footprint proposed in the project's Plan of Development.

In addition to the proposed action, the draft EIS/EIR considers a ''no action'' alternative and two action alternatives. Alternative 2, Resource Avoidance, would authorize a 450-MW PV array on approximately 2,845 acres, and Alternative 3, Reduced Project Alternative, would authorize a 285-MW PV array on approximately 2,112 acres. Like the Proposed Action, under each of these alternatives, the BLM would amend the CDCA plan to allow the project. Under the No Action Alternative, the BLM would deny the ROW application, and would not amend the CDCA plan to allow the project.

The BLM has identified Alternative 2, Resource Avoidance, as the BLM Preferred Alternative for the draft EIS. The BLM and its cooperating agencies are seeking comments on the draft EIS, including the comparison of alternatives presented in the document.

Riverside County is the lead agency for the State under the California Environmental Quality Act (CEQA). The draft plan amendment EIS/EIR was prepared as a joint Federal/State environmental document that analyzes the impacts of the Project under both NEPA and CEQA.

Public input is important and will be considered in the environmental and land-use planning analysis. Please note that public comments and information submitted (including names, street addresses, and email addresses of persons who submit comments) will be available for public review and disclosure at the above address during regular business hours (8:00 a.m. to 4:00 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Jerome E. Perez,

State Director, California.

[FR Doc. 2018–16959 Filed 8–9–18; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0026042; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Riverside Metropolitan Museum, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Riverside Metropolitan Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Riverside Metropolitan Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Riverside Metropolitan Museum at the address in this notice by September 10, 2018.

ADDRESSES: Robyn G. Peterson, Ph.D., Museum Director, Riverside Metropolitan Museum, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5792, email *rpeterson@riversideca.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory

of human remains and associated funerary objects under the control of the Riverside Metropolitan Museum, Riverside, CA. The human remains and associated funerary objects were removed from Mason Valley, San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Riverside Metropolitan Museum professional staff in consultation with Clint Linton, a member of the Kumeyaay Cultural Repatriation Committee and representative of the following Indian Tribes: The Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California); Ewiiaapayp Band of Kumeyaay Indians of California; Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation); Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; and Sycuan Band of the Kumeyaay Nation, hereafter referred to as ''The Tribes.''

History and Description of the Remains

At an unknown date, human remains representing, at minimum, one individual were removed from an unknown cremation site in the Mason Valley, San Diego County, CA. In 1972, the Riverside Metropolitan Museum purchased the cremated human remains together with associated funerary objects from Charles F. Irwin of Long Beach, CA. No known individuals were identified. The six associated funerary objects include: Three lumps of burned asphaltum, one length of 14 fused glass beads, one burned fiber cloth, and one piece of asphaltum with burned plant remains and 3-ply cordage inclusions.

It was determined through collections research and geographic location that the cremated human remains and associated funerary objects are of Kumeyaay/Diegueno origin from Mason Valley, San Diego County, CA. Museum records indicate ''Indian Cremation Remains.'' Mason Valley extends through San Diego and Imperial Counties as well as Baja Norte. While the nation of original inhabitants has been called ''Southern Diegueno,'' ''Diegueno-Kamia Ipai-Tipai,'' and ''Mission Indians,'' the tribes prefer to be called Kumeyaay. The Kumeyaay are a federation of autonomous self-governing bands that have clearly defined territories and are represented by The Tribes.

Determinations Made by the Riverside Metropolitan Museum

Officials of the Riverside Metropolitan Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the six objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Robyn G. Peterson, Ph. D., Museum Director, Riverside Metropolitan Museum 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5792, email *rpeterson@riversideca.gov,* by September 10, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Riverside Metropolitan Museum is responsible for notifying The Tribes that this notice has been published.

Dated: July 13, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17218 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA- NPS0026041; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Anniston Museum of Natural History, Anniston, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Anniston Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian Tribes or Native Hawaiian organizations. Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Anniston Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Anniston Museum of Natural History at the address in this notice by September 10, 2018.

ADDRESSES: Daniel D. Spaulding, Anniston Museum of Natural History, 800 Museum Drive, Anniston, AL 36206, telephone (256) 237–6766, email *dspaulding@annistonmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated

funerary objects under the control of the Anniston Museum of Natural History, Anniston, AL. The human remains and associated funerary objects were removed from Moundville, Tuscaloosa County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Anniston Museum of Natural History professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1933–1937, human remains representing, at minimum, two individuals were removed from Moundville in Tuscaloosa County, AL. These human remains and funerary objects were removed by Philip James Fitzgerald, an excavator with the Civilian Conservation Corps, during the excavation of the Moundville site. Upon Fitzgerald's death, the human remains and funerary objects were transferred to his daughter, Phyllis Fitzgerald Richardson. In May 1990, Mrs. Richardson donated the human remains and funerary objects to the Anniston Museum of Natural History. The human remains include one human skull with mandible, four neck vertebrae, and one human molar tooth. The human remains have been dated to the Moundville Period (ca. A.D. 1200–1500). No genders are known. No known individuals were identified. The 10 associated funerary objects are one incised pottery jar, one incised pottery bowl, four game stones of varying size and stone type, one unperforated, oblong stone pendant, one stone projectile point, one perforated bone awl, and one unperforated bone awl.

Determinations Made by the Anniston Museum of Natural History

Officials of the Anniston Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on their being excavated from a known Native American burial site and dated to the time period during which the site is known to have been occupied by Native Americans.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian Tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation.

Additional Requestors and Disposition

Representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Daniel D. Spaulding, Anniston Museum of Natural History, 800 Museum Drive, Anniston, AL 36206, telephone (256) 237–6766, email *dspaulding@annistonmuseum.org,* by September 10, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Choctaw Nation of Oklahoma and The Muscogee (Creek) Nation may proceed.

The Anniston Museum of Natural History is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and United Keetoowah Band of Cherokee Indians in Oklahoma that this notice has been published.

Dated: July 13, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17214 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0025997; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The American Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the American Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the American Museum of Natural History at the address in this notice by September 10, 2018.

ADDRESSES: Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of inventories of human remains and associated funerary objects under the control of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Mercer County, NJ, and Richmond County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the American Museum of Natural History professional staff in consultation with representatives of the Delaware Nation, Oklahoma, and the Delaware Tribe of Indians. The Delaware Nation, Oklahoma, and the Delaware Tribe of Indians invited the Stockbridge Munsee Community, Wisconsin, to attend the consultation meeting, but they did not participate.

History and Description of the Remains

In 1897, human remains representing, at minimum, three individuals were removed from the top soil of Trench D in Lalor Field, Lalor Estate, South of Trenton, Mercer County, NJ. The human remains were excavated by Ernest Volk during an American Museum of Natural History (AMNH) sponsored expedition. The AMNH acquired the individuals that same year. No known individuals were identified. The human remains include a sub-adult who is represented by a single element and two adults who are represented by cranial and post-cranial elements. The sex of these individuals cannot be determined. Two associated funerary objects—two pieces of pottery—were found with these human remains. One of these pottery pieces is a spall with no markings on its surface, and the other is small and fragmentary.

The top soil of Trench D at Lalor Field consists of late Middle Woodland, Late Woodland, and early historic deposits. Thus, it is highly likely that these human remains can be assigned to the Terminal Middle Woodland or later. These human remains were determined to be Native American based on their archeological context and collection history.

In 1909, human remains, representing at minimum, 16 individuals, were removed from the Bowman's Brook site, Mariner's Harbor, Staten Island, Richmond County, NY, by Alanson Skinner. The AMNH acquired these individuals as a gift that same year. No known individuals were identified. These individuals include three sub-adults, one adult male, 10 adults of indeterminate sex and two individuals of indeterminate sex and age. There are no associated funerary objects.

Bowman's Brook is a multi-component site, comprising part of the larger Mariner's Harbor site complex on the northwestern shore of Staten Island. Consisting of five distinguishable levels, its occupation spans the Middle and Late Archaic, Early and Middle Woodland, and the Late Woodland component for which the site is best known, the Bowman's Brook phase. Skinner's excavations were focused on the uppermost level. Radiocarbon dates obtained in 1986 indicate that the burials belong to the Late Woodland period; and date from A.D. 1083±153 to A.D. 1340±70. These human remains were determined to be Native American based on their archeological context and collection history.

In 1895, human remains representing at minimum, 24 individuals and 167 associated funerary objects were removed from Burial Ridge, Tottenville, Staten Island, Richmond County, NY. These individuals were collected by George H. Pepper and M.H. Saville as part of an AMNH sponsored expedition. The museum accessioned the human remains and funerary objects that same year. No known individuals were identified. The human remains include one adult female, six adult males, two adults who may be male, 10 adults of indeterminate sex and five sub-adults. The 167 associated funerary objects include: 14 bone points, three stone points; eight turtle shells; five sherds; 24 pieces of animal bone; two pieces of worked bone; one antler piece; one flint arrow; two pieces of mica; one flint implement; six flint blanks for arrowheads; 13 leaf-shaped flint pieces; 11 flint pieces; three stone implements; one piece of smoky quartz; seven pieces of deer antler; five deer bones; one lynx mandible; one piece of red clay; 53 pieces of beaver teeth; one block of sand with shells; two valves of clam shells and two oyster shells.

Around 1895, human remains representing, at minimum, two individuals, were removed from a location presumed to be Burial Ridge, Tottenville, Staten Island, Richmond County, New York, NY. These human remains were probably collected by George H. Pepper and M.H. Saville as part of an AMNH sponsored expedition. The museum likely accessioned the human remains that same year. No known individuals were identified. The human remains include two adults of indeterminate sex. There are no associated funerary objects.

In 1900, human remains, representing at minimum two individuals and one associated funerary object were removed from Burial Ridge, Tottenville, Staten Island, Richmond County, NY by Mark Raymond Harrington. The AMNH acquired the human remains and funerary objects as a gift from F.W. Putnam in 1909. No known individuals were identified. The human remains include one sub-adult and one adult of indeterminate age. The one associated funerary object is a piece of deer bone.

The human remains from Burial Ridge, Tottenville, were determined to be Native American based on archeological context, associated funerary objects and collection history. While Burial Ridge at Tottenville, Staten Island has Archaic through early Contact Period components, contextual information and scholarly literature indicate that the human remains date to the Terminal Middle Woodland and Late Woodland Periods. Radiocarbon dates reinforce this interpretation: One individual dates to the Terminal Middle Woodland, three additional individuals and two nearby features date to the Late Woodland. The individuals and associated funerary objects described in this Notice date to the Terminal Middle Woodland or Late Middle Woodland periods.

Oral tradition recounts the Delaware migration into the region from the west or northwest. Archeological and linguistic evidence indicates the arrival of Delawarean-speakers in the Delaware Valley and Staten Island no earlier than the Terminal Middle Woodland (A.D. 500–800). Information presented by the Delaware Nation, Oklahoma and the Delaware Tribe of Indians indicates that these three locales were traditionally occupied by the Delaware until progressive removals westward began in the early 1700s.

Based on oral tradition, linguistic and archeological evidence and information presented during multiple consultations, the American Museum of Natural History has determined that a cultural affiliation exists between the human remains and associated funerary objects and the Delaware (Lenape) people.

Determinations Made by the American Museum of Natural History

Officials of the American Museum of Natural History have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 47 individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(3)(A), the 170 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and Delaware Nation, Oklahoma; Delaware Tribe of Indians; and Stockbridge Munsee Community, Wisconsin.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org,* by September 10, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and Stockbridge-Munsee Community, Wisconsin, may proceed.

The American Museum of Natural History is responsible for notifying the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and Stockbridge-Munsee Community, Wisconsin, that this notice has been published.

Dated: July 10, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17217 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0025998; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Heard Museum, Phoenix, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Heard Museum has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Heard Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Heard Museum at the address in this notice by September 10, 2018.

ADDRESSES: David Roche, Director/CEO, Heard Museum, 2301 North Central Avenue, Phoenix, AZ 85004, telephone (602) 252–8840, email *director@heard.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Heard Museum, Phoenix, AZ. The human remains and associated funerary objects were removed from Central and possibly Southern Arizona.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Heard Museum professional staff in consultation with representatives of Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico.

History and Description of the Remains

Between 1935 and 1960, human remains representing, at minimum, one individual were removed by Mr. Cross from an unknown site in Maricopa County, AZ. The human remains together with associated funerary objects, were acquired by Claud Black, then acquired by Harold Kennedy, and finally acquired by the Heard Museum in 1970, which assigned them catalog number NA–SW–SD–A1–30. The human remains are of a large individual, probably male. No known individuals were identified. The four associated funerary objects are: one piece of shell, two animal bone shafts, and one jar. The cultural affiliation of the jar and cremation has been changed from Salado to Hohokam, based on an updated pottery type identification of Salt Red.

Prior to 1982, human remains representing, at minimum, one individual were removed from an unknown site in central or southern AZ. The human remains were found in museum storage in 1982, and bore a Hohokam catalog number, NA–SW–HH–T–1. The human remains are those of a middle-aged adult of unknown gender. No known individuals were identified. No associated funerary objects are present. The Hohokam attribution is based on the catalog number and the typical Hohokam dentition exhibited by the human remains.

Prior to 1960, human remains representing, at minimum, one individual were removed from alternatively, Sacaton, Pinal County, AZ; Cashion, Maricopa County, AZ; or La Ciudad Ruin, Phoenix, Maricopa County, AZ. The human remains consist of a small bag of cremated bone fragments weighing less than 1 gram. In 1990, the human remains were found in a box which contained a returned loan; the bag was assigned catalog number 3288–1. The returned loan comprised two jars (NA–SW–HH–A4–14 and NA–SW–HH–A4–16) that had been collected by Carl A. Moosberg, from Sacaton, Pinal County, AZ; one jar (NA–SW–HH–A4–46) that had been collected by Russell Cross from Cashion, Maricopa County, AZ; and one jar (NA–SW–HH–A1–10) that had been collected by Frank Mitalsky, a.k.a. Frank Midvale, from La

Ciudad Ruin, Phoenix, Maricopa County, AZ. The Hohokam attribution of the human remains is based on their association with the Hohokam jars; the human remains are presumed to have come from one of the jars. All of the jars were repatriated to the Gila River Indian Community in 1992.

The Hohokam lived in central and southern Arizona from about A.D. 1 to 1450. In 1990, the Ak-Chin Indian Community, Gila River Indian Community, Salt River Pima-Maricopa Community, and Tohono O'odham Nation jointly asserted a cultural affiliation to ancestors described as ''Hohokam.'' In 1994, the Hopi Tribe asserted its cultural affiliation to Hohokam followed by the Pueblo of Zuni in 1995.

Determinations Made by the Heard Museum

Officials of the Heard Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and Ak-Chin Indian Community (previously listed as the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona); Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes.'')

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to David Roche, Director/CEO, Heard Museum, 2301 North Central Avenue, Phoenix, AZ 85004, telephone (602) 252–8840, email *director@heard.org,* by September 10, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Heard Museum is responsible for notifying The Tribes that this notice has been published.

Dated: July 10, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17220 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–DTS#–FR00000034]

Potential National Monument Designations

AGENCY: National Park Service, Interior.

ACTION: Request for comments.

SUMMARY: The National Park Service is seeking public comments on three potential national monument designations: The Medgar and Myrlie Evers Home, Mississippi; Mill Springs Battlefield, Kentucky; and Camp Nelson, Kentucky.

DATES: Written comments will be accepted until September 10, 2018.

ADDRESSES: Written comments may be sent to the National Park Service online at *https://parkplanning.nps.gov/potential_monuments_Aug2018.* Comments will not be accepted by fax, email, or by any method other than specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

FOR FURTHER INFORMATION CONTACT: Charles Laudner, Senior Advisor—Office of Congressional and Legislative Affairs, National Park Service, 1849 C Street NW, Washington, DC 20240. Phone (202) 513–7212. Email: *CA_Laudner@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Medgar and Mylie Evers, Home, Mississippi

Medgar Evers was an important national figure in the Civil Rights Movement of the 1950s and 1960s. The assassination of Medgar Evers on June 12, 1963, in the carport of his home in Jackson, Mississippi, was one of the catalysts for the passage of the Civil Rights Act of 1964. Both Medgar and Myrlie, his wife, were major contributors to advancing the goals of the civil rights movement on a national level. The Secretary of the Interior designated the Evers' house a National Historic Landmark on December 23, 2016.

Mill Springs Battlefield, Kentucky

On January 19, 1862, Union and Confederate forces met in the Battle of Mill Springs in Kentucky. The result was an important victory for the Union in the American Civil War which opened the door to Federal invasion of southern states. The battlefield has been designated as a National Historic Landmark. The Mill Springs Battlefield Visitor Center and Museum is located in Nancy, Kentucky.

Camp Nelson, Kentucky

During the American Civil War, Camp Nelson in Jessamine County, Kentucky, served as an important training area for African Americans who joined the Union Army to fight for their freedom. The camp began as a fortified U.S. Army supply depot, hospital, and garrison in 1863. As well as becoming one of the largest recruitment and training centers for African American soldiers, it served as a refugee camp for their wives and children. In 2013, the Secretary of the Interior designated Camp Nelson a National Historic Landmark.

Authority

A potential National Monument designation of these sites by the President through the Antiquities Act, 54 U.S.C. 320301, may serve to preserve their nationally significant historic resources.

The Antiquities Act has been used to preserve and protect natural and historical resources on Federal lands for future generations. President Theodore Roosevelt signed the Antiquities Act in 1906 providing a foundation for natural resource conservation and cultural preservation. It requires that such monuments be limited to ''the smallest area of land compatible'' with the proper care and management for the protection of the identified objects.

Public Comments

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 6, 2018.

P. Daniel Smith,

Deputy Director, exercising the authority of the Director.

[FR Doc. 2018–17133 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–KEMO–25224; PPSEKEMOS0/PPMPSPD1Z.YM00000]

Establishment of a New Fee Area at Kennesaw Mountain National Battlefield Park

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to comply with section 804 of the Federal Lands Recreation Enhancement Act of 2004. The act requires agencies to give the public advance notice (6 months) of the establishment of a new recreation fee area.

DATES: We will begin collecting fees on February 6, 2019.

FOR FURTHER INFORMATION CONTACT: Nancy Walther, Superintendent, 900 Kennesaw Mountain Drive, Kennesaw, GA 30152. 770–427–4686, extension 223, or via email at *nancy_walther@nps.gov.*

SUPPLEMENTARY INFORMATION: Kennesaw Mountain National Battlefield Park plans to collect the following recreation fees at the park beginning in six months: $5 per vehicle per day; $1 per pedestrian per day and $40 park annual pass. Revenue will be used to cover the cost of collections at the park and address the park's deferred maintenance backlog. These fees were determined by the National Park Service's group pricing model and comments from the public and stakeholders. In accordance with NPS public involvement guidelines, the park engaged numerous individuals, organizations, and local, state, and Federal government representatives while planning for the implementation of this fee.

Dated: August 3, 2018.

Lena McDowall,

Deputy Director, Management and Administration.

[FR Doc. 2018–17210 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0026039; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: The American Museum of Natural History, New York, NY; Correction; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The American Museum of Natural History has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on May 11, 2016. This notice corrects the minimum number of individuals. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the American Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the American Museum of Natural History at the address in this notice by September 10, 2018.

ADDRESSES: Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals published in a correction to a Notice of Inventory Completion in the **Federal Register** (81 FR 29304–29305, May 11, 2016). Four individuals were omitted from the inventory of human remains and associated funerary objects from the Sebonac site. Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (81 FR 29305, May 11, 2016), column 1, paragraph 5, sentence 2 is corrected by substituting the following sentence:

In 1902, human remains representing, at minimum, 20 individuals, including 1 adult female, 3 adults of unknown sex, and 16 subadults of unknown sex, were removed from the Sebonac site, Shinnecock Hills, Suffolk County, NY, during Raymond M. Harrington's excavations, sponsored by Frederick Ward Putnam and the American Museum of Natural History.

In the **Federal Register** (81 FR 29305, May 11, 2016), column 1, paragraph 6, sentence 2 is corrected by substituting the following sentence:

Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 20 individuals of Native American ancestry.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org,* by September 10, 2018. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Shinnecock Indian Nation may proceed.

The American Museum of Natural History is responsible for notifying the Shinnecock Indian Nation that this notice has been published.

Dated: July 13, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17219 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0026040; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Thomas Gilcrease Institute of American History and Art, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Thomas Gilcrease Institute of American History and Art (Gilcrease Museum), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of unassociated funerary object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the Gilcrease Museum. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Gilcrease Museum at the address in this notice by September 10, 2018.

ADDRESSES: Laura Bryant, Anthropology Collections Manager, Thomas Gilcrease Institute of American History and Art, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Gilcrease Museum, Tulsa, OK, that meets the definition of unassociated funerary object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural item. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

In the early to mid-1900s, one cultural item was removed from a burial in Lee County, MS. A note with the item includes the name W. C. Wyman. Wyman's relationship to the burial site is unclear. The note also states that the item in question was found ''with other relics, silver, brass'' and that it had been ''150 years since burial.'' None of these other items is in Gilcrease Museum's possession. Through the Gilcrease Foundation, Thomas Gilcrease purchased the item from Dr. T. Hugh Young of Nashville, TN prior to 1962. In 1963 or 1964, Young donated the item to the Gilcrease Museum, which is owned by the City of Tulsa. The unassociated funerary object in question is a Carters Quarter style whelk shell gorget (accession number 90.456).

Though this shell gorget lacks a clear provenience, the details included in the note are consistent for Tupelo, MS, a well-known Chickasaw village site from the 18th century. The Carters Quarter style of gorget is often found in eastern Tennessee, in pre-18th century contexts. Consultation on Chickasaw customary practice indicated that this item was most likely manufactured in Tennessee and later when it had become an heirloom, that it was placed in the burial of a Chickasaw ancestor at Tupelo, Mississippi.

Determinations Made by the Gilcrease Museum

Officials of the Gilcrease Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and The Chickasaw Nation.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to Laura Bryant, Gilcrease Museum, 1400 North Gilcrease Museum Road, Tulsa, OK 74127, telephone (918) 596–2747, email *laura-bryant@utulsa.edu,* by September 10, 2018. After that date, if no additional claimants have come forward, transfer of control of the unassociated funerary object to The Chickasaw Nation may proceed.

The Gilcrease Museum is responsible for notifying The Chickasaw Nation that this notice has been published.

Dated: July 13, 2018.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2018–17216 Filed 8–9–18; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Mesh Networking Products and Related Components Thereof, DN 3333;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Sipco LLC on August 6, 2018. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless mesh networking products and related components thereof. The complaint names as respondents: Emerson Electric Co. of St. Louis, MO; Emerson Process Management LLLP of Bloomington, MN; Emerson Process Management Asia Pacific Private Limited of Singapore; Emerson Process Management Manufacturing (M) Sdn. Bhd. of Malaysia; Fisher-Rosemount Systems, Inc. of Round Rock, TX; Rosemount Inc. of Shakaopee, MN; Analog Devices, Inc. of Norwood, MA; Linear Technology LLC of Milpitas, CA; Dust Networks, Inc. of Union City, CA; Tadiran Batteries Inc. of Lake Success, NY; and Tadiran Batteries Ltd. of Israel. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register.** Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3333'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 6, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17116 Filed 8–9–18; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1380 (Final)]

Tapered Roller Bearings From Korea

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is not materially injured or threatened with material injury by reason of imports of tapered roller bearings from Korea that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] [3]

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 83 FR 29092 (June 22, 2018). Whether establishment of an industry in the United States is materially retarded is not an issue in this investigation.

[3] Commissioner Rhonda K. Schmidtlein dissenting. Commissioner Jason E. Kearns did not

Continued

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted this investigation effective June 28, 2017, following receipt of a petition filed with the Commission and Commerce by The Timken Company, North Canton, Ohio. The Commission scheduled the final phase of the investigation following notification of a preliminary determination by Commerce that imports of tapered roller bearings from Korea were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 27, 2018 (83 FR 8504). The hearing was held in Washington, DC, on June 5, 2018, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determination in this investigation on August 6, 2018. The views of the Commission are contained in USITC Publication 4806 (August 2018), entitled *Tapered Roller Bearings from Korea: Investigation No. 731–TA–1380 (Final).*

By order of the Commission.

Issued: August 6, 2018.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2018–17125 Filed 8–9–18; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–18–036]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 24, 2018 at 9:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 731–TA–678–679 and 681–682 (Fourth Review) (Stainless Steel Bar from Brazil, India, Japan, and Spain). The Commission is currently scheduled to complete and file its determinations and views of the Commission by September 11, 2018.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 7, 2018.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2018–17260 Filed 8–8–18; 11:15 am]

BILLING CODE 7020–02–P

participate in the determination in this investigation.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Bharanidharan Padmanabhan, M.D., Ph.D.; Decision and Order

On October 20, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause to Bharanidharan Padmanabhan, M.D., Ph.D. (hereinafter, Respondent), of Brookline, Massachusetts. Order to Show Cause (hereinafter, OSC), at 1. The Show Cause Order proposes the revocation of Respondent's Certificate of Registration on the ground that he does ''not have authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which . . . [he is] registered with the DEA.'' *Id.* at 1 (citing 21 U.S.C. 823(f) and 824(a)(3)).

Regarding jurisdiction, the Show Cause Order alleges that Respondent holds DEA Certificate of Registration No. BP7993290 at the registered address of 30 Gardner Road #6A, Brookline, Massachusetts 02445. OSC, at 1. This registration authorizes Respondent to dispense controlled substances in schedules II through V as a practitioner. The Show Cause Order alleges that this registration expires on March 31, 2020. *Id.*

The substantive ground for the proceeding, as alleged in the Show Cause Order, is that Respondent is ''without authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which . . . [he is] registered . . . with the DEA.'' *Id.* at 1. Specifically, the Show Cause Order alleges that the Massachusetts ''Board of Registration in Medicine Indefinitely Suspended . . . [Respondent's] medical license'' on May 11, 2017, and that this indefinite suspension ''became effective on July 11, 2017 and remains in effect.'' *Id.*

The Show Cause Order notifies Respondent of his right to request a hearing on the allegations or to submit a written statement while waiving his right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The Show Cause Order also notifies Respondent of the opportunity to submit a corrective action plan. OSC, at 2–3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated November 13, 2017, Respondent requested a hearing. Hearing Request, at 1. According to the Hearing Request, Respondent ''wish[es] to show why . . . [he] should retain'' Certificate of Registration No. BP7993290. *Id.* Respondent's Hearing Request refers to the ''alleged'' action of the Massachusetts Board of Registration in Medicine (hereinafter, Massachusetts Board) ''indefinitely suspending . . . [his] license'' as ''corrupt and legally void,'' and states his ''position [to be] that DEA must hold all action in abeyance till the federal courts have ruled on the unlawfulness of the racketeers' action in May 2017.'' *Id.* at 2.[1]

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). I adopt the following statement of procedural history from the ALJ's Order Denying The Respo[n]dent's Request for Abeyance, Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge dated January 26, 2018 (hereinafter, R.D.).

On November 20, 2017, this tribunal ordered the Government to file evidence to support the allegations that the Respondent lacked state authority to handle controlled substances.

On December 4, 2017, the Government filed a Motion for Summary Disposition . . . . The Government submitted evidence that the Commonwealth of Massachusetts Board of Registration in Medicine indefinitely suspended the Respondent's medical license on May 11, 2017, in the form of the Final Decision and Order from Commonwealth of Massachusetts Board of Registration . . . . Gov't Mot. at Ex. 2, a. The Suspension was stayed for sixty days [a period which has since expired] to allow the

[1] There is no corrective action plan, or indication that Respondent submitted a corrective action plan, in the record before me.

Respondent to enter into a probation agreement with the Board and to comply with a series of conditions set out within the Board's Final Decision and Order of Suspension. *Id.* The Government also offered the Declaration of . . . the Lead Diversion Investigator (DI . . .) in the instant investigation, who swore under oath that the Respondent's Massachusetts Medical License remained suspended, as of December 1, 2017. Gov't Mot. at Ex. 2. On the basis of the Respondent's suspended medical license, the Government argued that the Respondent no longer meets the definition of ''practi[ti]oner'' under the Controlled Substances Act, 21 U.S.C. 802(21), and under 21 U.S.C. 823(f), which ''sets forth the requirements for obtaining a registration as a practi[ti]oner.'' Gov't Mot. at 4. As such, the Government argued that Respondent's . . . [registration] should be revoked. *Id.* at 6.

The Respondent . . . timely filed his Opposition to the Government's Submission of Evidence and Request for Summary Disposition on December 15, 2017. In his reply, the Respondent avers three claims. First, ''Respondent does indeed possess a Massachusetts medical license.'' [3] [Resp't Reply at 1.] [n.3: The Respondent argues that Merriam-Webster's definition of the term ''possess'' is controlling and that the Government ''consciously mischaracterize[ed] the Respondent's Request for a Hearing,'' as the Respondent's medical license[ ] is ''still in his possession . . . . It still exists. It is owned.'' Resp't Reply at 1.] Second, that he has not lost state authority to handle controlled substances because his Massachusetts Controlled Substance Registration Certificate (Massachusetts CSR) issued by the Massachusetts Department of Health is still in effect, thus, he argues, there are factual and legal issues in dispute. Resp't Reply at 3–5. Third, this tribunal should not rely on [the] DI . . . affidavit as it ''aims to conceal facts and falsely present the party line'' and [the] DI . . . has ''intentionally, deliberately, consciously [. . .] and in bad faith [. . .] made a concerted effort to mislead the ALJ in order to assist the market actors [to] exclude a competitor from the medical marketplace.'' *Id.* at 9–10. Thus, the Respondent argued that ''[g]ranting the Government's request for a summary taking, euphemistically called here a 'disposition,' would be inequitable, contrary to law and would reward renting of state powers.'' *Id.* at 10. As such, the Respondent requested this tribunal deny the Government's request for summary disposition and dismiss the instant case. *Id.* at 11.

On December 19, 2017, this tribunal ordered the Government to respond to the Respondent's reply opposing the Government's submission of evidence and summary disposition request. The Order directed the Government to file a copy of the Respondent's Massachusetts CSR Certificate and evidence of its present status, as well as any evidence of official state action that may have been taken regarding the Registration in 2017. Moreover, the Government was ordered to brief relevant Massachusetts case law, statutory law, and regulations, as well as relevant federal case law, statutory law and regulations.

The Government filed its response in further support of its request for summary disposition on January 5, 2018. The Government argued that ''the formal status of Respondent's Massachusetts CSR Certificate is irrelevant to these proceedings, as any Massachusetts CSR Certificate which Respondent possessed became void as a matter of law the moment that Respondent's medical license was suspended'' pursuant to 105 Code of Massachusetts Regulations § 700.120 and Massachusetts General Laws Ch. 94C §§ 7(f), 9(a). Gov't Resp. Mot. at 4. On January 26, 2018, the Government filed a copy of Respondent's Massachusetts CSR Certificate. Gov't Mot for Leave, at . . . [5]. The Government does not ''dispute Respondent's assertion that he is in [physical] possession of a Massachusetts CSR Certificate and that the Massachusetts Department of Public Health has not yet taken action to revoke his certificate.'' . . . [Gov't Resp. Mot. at 5.] Rather, the Government argues that ''it is irrelevant whether formal action has been taken to revoke Respondent's Massachusetts CSR Certificate as it is already void . . . [for] the pendency of Respondent's [medical license] suspension.'' *Id.* at 6. Thus, while the Respondent does ''possess a Massachusetts CSR Certificate, [ ] he does not possess authority to handle controlled substances.'' *Id.*

The Respondent replied to the Government's Response further supporting summary disposition on January 24, 2018. The Respondent argues that the Government falsely defamed him as a liar, the Government deliberately flouted a clear order from this tribunal, the Respondent's medical license suspension is void ab initio,[4] and the controlling legal authority is the Massachusetts statute (Massachusetts General Laws Ch. 94C[)], not the regulation cited by the Government (105 Code of Massachusetts Regulations § 700.120). Resp't Sur-Reply at 1–6. [n.4: The Respondent cites multiple cases in support of his conclusion that ''the May 2017 action by criminal racketeers within the state medical board in violation of the Sherman Act was extra-jurisdictional and legally void, it naturally follows that any action by other actors, state or federal, who claim authority based on a previous action that is void ab . . . [initio], is equally void.'' Resp't Sur-Rely at 5–6. These cases are inapt and irrelevant to Respondent's argument, and relate to matters way beyond the narrow focus of this inquiry.] [2]

R.D., at 2–4.[3]

The ALJ granted the Government's Motion for Summary Disposition and recommended that Respondent's registration be revoked.

At this juncture, no dispute exists over the fact that the Respondent currently lacks state authority to handle controlled substances in the Commonwealth of Massachusetts because the Medical Board suspended his medical license, thus voiding his Massachusetts CSR Certificate. Because the Respondent lacks state authority at the present time, Agency precedent dictates that he is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter that could be introduced at a hearing that would, in the Agency's view, provide authority to allow the Respondent to continue to hold his DEA . . . [registration].

Id. at 10. By letter dated February 21, 2018, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions and that the time period to do so had expired.

I issue this Decision and Order based on the entire, legible record before me.

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[2] The record contains illegible material submitted by Respondent. Chambers staff was contacted to ascertain whether legible versions of Respondent's submissions are available. The versions that Chambers staff provided are not more legible than the original versions that the ALJ certified and transmitted. I reviewed, analyzed, and considered the legible material in the record. As I am not able to read illegible material, my Decision and Order are based only on the legible material in the record.

[3] I agree with the ALJ's conclusions about the Respondent's following allegations and arguments. First, regarding Respondent's allegations that Government personnel engaged in wrongdoing, I agree with the ALJ that, ''There is no evidence before me suggesting [that the] DI . . . or any other Government personnel . . . engaged in any false assertions or misrepresentations to this tribunal.'' R.D., at 5. I also agree with the ALJ that, ''[T]here is no evidence in the record before me that the Government falsely defamed the Respondent as a liar, or even suggested that service at a later date than that of the tribunal was done for unfair advantage.'' *Id.* Second, concerning Respondent's claim that the Government deliberately violated an ALJ Order, I agree with the ALJ that ''the Government has fully complied with this tribunal's order.'' *Id.* Third, as to Respondent's position that these proceedings should be dismissed or held in abeyance pending the outcome of his federal court litigation, the ALJ's Order Directing the Filing of Government Evidence of Lack of State Authority Allegation and Briefing Schedule states that, ''A review of the docket sheets in the pending law suits cited by the Respondent fail[s] to disclose any order by the District Court to hold the instant proceeding in abeyance.'' Order Directing the Filing of Government Evidence dated November 20, 2017, at 1 n.2. Against the backdrop of the ALJ's review, I agree with him that Respondent's requests are inconsistent with Agency precedent. As the ALJ notes, '' '[i]t is not DEA's policy to stay [administrative] proceedings . . . while registrants litigate in other forums.' '' R.D., at 6, citing *Newcare Home Health Servs.,* 72 FR 42,126, 42,127 n.2 (2007). I agree with the ALJ that ''the Respondent's request for an abeyance—in essence to stay these proceedings—until the federal courts have ruled on his cases and his request to dismiss the proceedings'' should be denied. R.D., at 7. As the Agency has pointed out, ''Respondent can always apply for a new registration if [he] prevails'' regarding the indefinite suspension of his medical license. *Newcare Home Health Servs.,* 72 FR at 42,127 n.2.

I further note that the ALJ specifically granted Respondent ''leave to file notice and proof regarding (but limited to) any restoration of his state medical license prior to the transmission of the matter to the Administrator.'' R.D., at 7. According to the ALJ's certification and transmittal of the record dated February 21, 2018, the Respondent had not filed notice and proof regarding any restoration of his State medical license by that time. The record, therefore, contains no evidence that Respondent is currently authorized to practice medicine in Massachusetts.

21 CFR 1301.43(e). I make the following findings of fact.

Findings of Fact

Respondent's DEA Registration

Respondent is the holder of DEA Certificate of Registration No. BP7993290, pursuant to which he is authorized to dispense controlled substances in schedules II through V as a practitioner, at the registered address of 30 Gardner Road #6A, Brookline, Massachusetts 02445. Government's Submission of Evidence and Request for Summary Disposition dated December 4, 2017 (hereinafter, Government Motion), Exh. 01 (Facsimile of Registration No. BP7993290). Respondent's registration expires on March 31, 2020. *Id.*

The Status of Respondent's State License

By Final Decision and Order dated May 11, 2017, the Massachusetts Board indefinitely suspended Respondent's medical license number 209168. According to the Final Decision and Order, ''the record demonstrates that the Respondent has rendered substandard care to two patients, maintained substandard medical records for seven patients, and dispensed controlled substances after his Massachusetts Controlled Substances Registration . . . expired.'' Government Motion, Exh. 02, Attachment A, at 1 [footnotes omitted]. The Massachusetts Board's Final Decision and Order afforded Respondent the opportunity to stay the indefinite suspension by entering into a Board-approved Probation Agreement and complying with its terms. *Id.* at 5–6. There is no evidence in the record that Respondent availed himself of this opportunity. Instead, the DI's Declaration states that Respondent's medical license remained ''suspended'' as of December 1, 2017. Government Motion, Exh. 02, at 2. Further, according to the online records of the Commonwealth of Massachusetts, of which I take official notice, I find that Respondent is still not authorized to practice medicine in Massachusetts, initially due to the suspension and, as of May 5, 2018, due to the expiration of license number 209168.[4]

Commonwealth of Massachusetts Board of Registration in Medicine Physician Profiles website, *http://profiles.ehs.state.ma.us/Profiles/Pages/FindAPhysician.aspx* (last visited July 30, 2018).

Further, according to Massachusetts' online records, of which I also take official notice, Respondent is not listed among those authorized to handle controlled substances in Massachusetts.[5] Massachusetts Controlled Substances Registration Verification website, *https://www.mass.gov/service-details/registration-verification-mcsr* (last visited July 30, 2018). Massachusetts' online records show no active Massachusetts Controlled Substance Registration issued to Respondent. *Id.*

Accordingly, I find that Respondent currently is without authority to engage in the practice of medicine or to handle controlled substances in the Commonwealth of Massachusetts, the State in which he is registered.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA), ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the State in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess State authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the State in which he practices. *See, e.g., Hooper, supra,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988), *Blanton, supra,* 43 FR at 27,617.

According to the Massachusetts Controlled Substances Act, ''every person who . . . dispenses . . . any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations.'' Mass. Gen. Laws ch. 94C, § 7(a) (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session). Further, the automatic issuance of a controlled substances registration to a physician is only required when the physician is ''duly authorized to practice his profession in the commonwealth.'' Mass. Gen. Laws ch. 94C § 7(f) (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session).

Here, the undisputed evidence in the record is that Respondent's medical license has been suspended. In addition, as already noted, Respondent's medical license expired a few months ago. According to Massachusetts law, Respondent is not eligible to be issued a controlled substances registration if he is not authorized to practice medicine. Indeed, as noted above, Respondent is not on the list of those currently authorized to dispense controlled substances. This lack of authorization is consistent with the regulations that implement the Massachusetts Controlled Substances Act: ''A registration is void if the registrant's underlying professional licensure on which the registration is based is suspended or revoked.'' 105 Mass. Code Regs. § 700.120 (Westlaw, current

[4] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration within 20 calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Respondent files a motion, the Government shall have 20 calendar days to file a response.

[5] *See* footnote 4. If Respondent disputes this finding, he may do so according to the terms stated in footnote 4.

through Register No. 1369, dated July 13, 2018).[6]

In sum, Respondent currently lacks authority in Massachusetts to practice medicine and to handle controlled substances. He is not, therefore, eligible for a DEA registration. As such, I will order that Respondent's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority thus vested in me by 21 U.S.C. 824(a), I order that DEA Certificate of Registration No. BP7993290 issued to Bharanidharan Padmanabhan, M.D., Ph.D., be, and it hereby is, revoked. This Order is effective September 10, 2018.

Dated: July 30, 2018.

Uttam Dhillon,

Acting Administrator.

[FR Doc. 2018–17141 Filed 8–9–18; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP) Docket No. 1747]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee; Renewal of Charter

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting and announcement of renewal of charter.

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global* as well as an announcement of the renewal of the GAC charter.

DATES: The meeting will take place on Wednesday, August 29, 2018, from 9:00 a.m. ET to 4:30 p.m. ET.

ADDRESSES: The meeting will take place at the Office of Justice Programs offices (in the Main Conference Room), 810 7th Street, Washington, DC, 20531; Phone: (202) 514–2000 [note: this is not a toll-free number].

FOR FURTHER INFORMATION CONTACT: Tracey Trautman, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 305–1491 [note: this is not a toll-free number]; Email: *tracey.trautman@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Ms. Tracey Trautman at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Ms. Trautman at least seven (7) days in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities. The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFO.

Renewal of Council Charter: In addition to notifying the public about the Coordinating Council meeting, this **Federal Register** Notice notifies the public that the Charter of the Global Advisory Committee (GAC) has been renewed in accordance with the Federal Advisory Committee Act, Section 14(a)(1). The renewal Charter was signed by U.S. Attorney General Jefferson B. Sessions on July 9, 2018. One can obtain a copy of the renewal Charter by accessing the Global website at *www.it.ojp.gov/global.*

Tracey Trautman,

Global DFO Deputy Director, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2018–17196 Filed 8–9–18; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Innovation and Opportunity Act Implementation Evaluation—Site Visit Protocols

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting the information collection request (ICR) proposal titled, ''Workforce Innovation and Opportunity Act Implementation Evaluation—Site Visit Protocols,'' 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 September 10, 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=201802-1290-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OS, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance

[6] Regarding the terms of 105 Mass. Code Regs. § 700.120, I agree with the ALJ's rejection of Respondent's argument concerning the relationship between the Massachusetts Controlled Substances Act and the regulations implementing that law. As the ALJ notes, the ''statute and regulation are not in conflict.'' R.D., at 9. In addition, the Massachusetts Controlled Substances Act explicitly authorizes the Public Health Commissioner to ''promulgate rules and regulations relative to registration and control of the manufacture, distribution, dispensing and possession of controlled substances within the commonwealth.'' Mass. Gen. Laws ch. 94C, § 6 (Westlaw, current through Chapter 122 of the 2018 2nd Annual Session). *See Goldberg* v. *Bd. of Health of Granby,* 444 Mass. 627, 633–34 (2005) (''That the Legislature . . . did not anticipate the exact factual scenario presented here does not make the administrative regulations and rulings that did anticipate such situations invalid.'').

Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks PRA authority for the Workforce Innovation and Opportunity Act (WIOA) Implementation Evaluation—Site Visit Protocols information collection. More specifically, this ICR seeks clearance for two data collection activities conducted as part of the WIOA evaluation's implementation analyses: (1) Site visit interviews with state-level staff; and (2) site visit interviews with local-level staff. WIOA section 169 authorizes this information collection. *See* 29 U.S.C. 3324.

This proposed information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on November 30, 2017 (82 FR 56845).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201802–1290–001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OS.

Title of Collection: Workforce Innovation and Opportunity Act Implementation Evaluation—Site Visit Protocols.

OMB ICR Reference Number: 201802–1290–001.

Affected Public: State, Local, and Tribal governments; Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 262.

Total Estimated Number of Responses: 262.

Total Estimated Annual Time Burden: 320 hours.

Total Estimated Annual Other Costs Burden: $0.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: August 6, 2018.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2018–17146 Filed 8–9–18; 8:45 am]

BILLING CODE 4510–HX–P

NUCLEAR REGULATORY COMMISSION

Notice of Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Plant Operations and Fire Protection

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on August 24, 2018 at U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

The entire meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Friday August 24, 2018—1:00 p.m. Until 5:00 p.m.

The Subcommittee will conduct an information briefing regarding the NRC Office of Nuclear Regulatory Research test plan for Phase 2 of its High Energy Arc Fault Test Program. The Subcommittee will hear presentations by and hold discussions with NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kent Howard (Telephone 301–415–2989 or Email: *Kent.Howard@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6702) to be escorted to the meeting room.

Date: August 2, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–17120 Filed 8–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, and 72–13; NRC–2017–0239]

In the Matter of Entergy Arkansas, Inc. and Entergy Operations, Inc. Arkansas Nuclear One, Units 1 and 2, and Independent Spent Fuel Storage Installation Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct and indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to permit the direct transfer of Renewed Facility Operating License Nos. DPR–51 and NPF–6 for Arkansas Nuclear One, Units 1 and 2, and the general license for the independent spent fuel storage installation facility, to a new limited liability company named Entergy Arkansas, LLC. In addition, the order permits an associated indirect license transfer of membership interest of Entergy Arkansas, LLC to an intermediate company, Entergy Utility Holding Company, LLC. Entergy Corporation will remain as the ultimate parent company, but the intermediate company, Entergy Utility Holding Company, LLC, will be the direct parent company of the newly formed Entergy Arkansas, LLC. The NRC will issue conforming amendments to the renewed facility operating licenses for administrative purposes to reflect the change in the owner licensee.

DATES: The order was issued on August 1, 2018, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2017–0239 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0239. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Margaret W. O'Banion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1233; email: *Margaret.O'Banion@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated at Rockville, Maryland, this 7th day of August, 2018.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Direct and Indirect Transfers of Control of Licenses and Conforming Amendments

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313, 50–368, and 72–13; License Nos. DPR–51 and NPF–6]

In the Matter of Entergy Arkansas, Inc. and Entergy Operations, Inc.

Arkansas Nuclear One, Units 1 and 2

ORDER APPROVING DIRECT AND INDIRECT TRANSFERS OF CONTROL OF LICENSES AND CONFORMING AMENDMENTS

I.

Entergy Arkansas, Inc. (EAI) and Entergy Operations, Inc. (EOI) (together, the licensees) are co-holders of Renewed Facility Operating License (RFOL) Nos. DPR–51 and NPF–6 for Arkansas Nuclear One (ANO), Units 1 and 2, and the general license for the independent spent fuel storage installation (ISFSI). EAI is the owner and EOI is authorized to possess, use, and operate ANO, Units 1 and 2, and the ISFSI, which are located in Pope County, Arkansas.

II.

By application dated September 21, 2017, EOI requested on behalf of itself, EAI, and their parent companies (together, the applicants), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, ''Transfer of licenses,'' that the U.S. Nuclear Regulatory Commission (NRC) consent to the direct transfer of RFOL Nos. DPR–51 and NPF–6 for ANO, Units 1 and 2, and the general license for the ISFSI, from the current owner, EAI, to a new limited liability company, Entergy Arkansas, LLC (EAL). The applicants also requested approval of conforming license amendments that would replace references to EAI in the RFOLs with references to EAL to reflect the transfer of ownership. In addition, the applicants requested the NRC's consent to the indirect transfer of membership interest of EAL to an intermediate company, Entergy Utility Holding Company, LLC (EUHC). Entergy Corporation will remain as the ultimate parent company, but EUHC will be the direct parent company of EAL. Ultimately, EAL will acquire ownership of the facilities and EOI will remain responsible for the operation and maintenance of ANO, Units 1 and 2. The license transfers are necessary to support a corporate restructuring.

The application proposes no physical or operational changes to the facilities. The interconnections that provide offsite power to ANO, Units 1 and 2, do not change as a result of the proposed direct and indirect license transfers.

The applicants requested NRC approval of the transfers of the facility operating and ISFSI general licenses and conforming license amendments in accordance with 10 CFR 50.80 and 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit.'' The NRC published a notice, ''Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station, Unit 1; River Bend Station, Unit 1; and Waterford Steam Electric Station, Unit 3 Consideration of Approval of Transfer of Licenses and Conforming Amendments,'' in the **Federal Register** on December 29, 2017 (82 FR 61800). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that EAL is qualified to hold the license to the extent proposed to permit the transfer of ownership from EAI to EAL and the indirect transfer of membership interest of EAL to an intermediate company, EUHC, as described in the application. The NRC staff has also determined that the proposed license transfers are otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC pursuant thereto, subject to the condition set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I, ''Nuclear Regulatory Commission''; the facilities will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be

conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by an NRC safety evaluation dated August 1, 2018.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Act; Title 42 of the *United States Code* Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed license transfers is approved, subject to the following condition:

1. Before completion of the proposed transaction, EOI shall provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that EAL has obtained the appropriate amount of insurance required of the licensees under 10 CFR part 140 and 10 CFR part 50.

IT IS FURTHER ORDERED that, consistent with 10 CFR 2.1315(b), the license amendments for ANO, Units 1 and 2, that make changes, as indicated in Enclosures 2 and 3 to the cover letter forwarding this order, to conform the licenses to reflect the subject transfers, are approved. The amendments shall be issued and made effective at the time the proposed transfer actions are completed.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed transfer actions, EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing of the transfers, no later than 5 business days before the date of the closing of the transfers. Should the proposed transfers not be completed within 1 year of this order's date of issuance, this order shall become null and void; however, upon written application and for good cause shown, such date may be extended by order.

This order is effective upon issuance.

For further details with respect to this order, see the application dated September 21, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17268A213) and the NRC's safety evaluation dated August 1, 2018 (ADAMS Accession No. ML18177A236), which are available for public inspection at the NRC's Public Document Room located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems accessing the documents in ADAMS, should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of August, 2018.

For the Nuclear Regulatory Commission.
Brian E. Holian,
Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–17168 Filed 8–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–368, 50–334, 50–445, 50–302, 50–348, 50–364, 50–336, 50–338, 50–339, 50–282, 50–306, 50–327, 50–498, 50–499, 50–335, 50–280, 50–395, 50–390; NRC–2017–0188]

Entergy Operations, Inc.; FirstEnergy Nuclear Operating Company; Vistra Operations Company, LLC; Duke Entergy Florida, Southern Nuclear Operating Company, Inc.; Dominion Nuclear Connecticut, Inc.; Virginia Electric and Power Company; Northern States Power Company—Minnesota; South Carolina Electric & Gas Company, Inc.; STP Nuclear Operating Company; Tennessee Valley Authority

AGENCY: Nuclear Regulatory Commission.

ACTION: Director's decision under 10 CFR 2.206; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a director's decision in response to a petition dated January 24, 2017, filed by Mr. Paul Gunter on behalf of Beyond Nuclear, and representing numerous public interest groups (collectively, Beyond Nuclear, *et al.*, or petitioners), requesting that the NRC take action with regard to licensees of plants that currently rely on potentially defective safety-related components and potentially falsified quality assurance documentation supplied by AREVA-Le Creusot Forge and Japan Casting and Forging Corporation. The petitioners' requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

DATES: The director's decision was issued on August 2, 2018.

ADDRESSES: Please refer to Docket ID NRC–2017–0188 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0188. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Perry Buckberg, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1383; email: *Perry.Buckberg@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the director's decision is attached.

Dated at Rockville, Maryland, this 7th day of August 2018.

For the Nuclear Regulatory Commission.

Perry H. Buckberg,

Senior Project Manager, Special Projects and Process Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Director's Decision DD–18–03

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

OFFICE OF NUCLEAR REACTOR REGULATION

Brian E. Holian, Acting Director

In the Matter of Power Reactor Licensees

Docket Nos.: See Attached List

License Nos.: See Attached List

DIRECTOR'S DECISION UNDER 10 CFR 2.206

I. Introduction

On January 24, 2017,[1] Mr. Paul Gunter submitted a petition on behalf of Beyond Nuclear that represents numerous public interest groups (collectively referred to as the Petitioners) under Title 10 of the *Code of Federal Regulations* (10 CFR) 2.206, ''Requests for Action under This Subpart.''

[1] See Agencywide Documents Access and Management System (ADAMS) Accession No. ML17025A180.

The Petitioners supplemented their petition by e-mails dated February 16,[2] March 6,[3,4] June 16,[5] June 22,[6] June 27,[7] June 30,[8] and July 5, 2017.[9] The June 16 and June 22, 2017, supplements added the Crystal River Unit 3 Nuclear Generating Plant (Crystal River Unit 3) to the list of plants subject to the petition and requested slightly different enforcement actions. The rest of the supplements did not expand the scope of the petition or request additional actions that should be considered as a new petition. The Petitioners asked the U.S. Nuclear Regulatory Commission (NRC) to take emergency enforcement action at U.S. nuclear power plants that currently rely on potentially defective safety-related components and potentially falsified quality assurance documentation supplied by AREVA-Le Creusot Forge (ACF) and its subcontractor, Japan Casting and Forging Corporation (JCFC).[10] Table 1 lists potentially affected components and the at-risk reactors identified in the petition.

TABLE 1—LIST OF POTENTIALLY AFFECTED COMPONENTS AND REACTORS

Reactor pressure vessels	Replacement reactor pressure vessel heads	Steam generators	Steam pressurizers
Prairie Island, Units 1 and 2 (MN)	Arkansas Nuclear One, Unit 2 (AR).	Beaver Valley, Unit 1 (PA)	Millstone, Unit 2 (CT).
	Beaver Valley, Unit 1 (PA)	Comanche Peak, Unit 1 (TX)	Saint Lucie, Unit 1 (FL).
	North Anna, Units 1 and 2 (VA) ...	V.C. Summer (SC)	
	Surry, Unit 1 (VA)	Farley, Units 1 and 2 (AL).	
	Crystal River, Unit 3 (FL)	South Texas, Units 1 and 2 (TX).	
		Sequoyah, Unit 1 (TN).	
		Watts Bar, Unit 1 (TN).	

Specifically, the Petitioners asked the NRC to take enforcement actions consistent with the following:

1. Suspend power operations of U.S. nuclear power plants that rely on ACF components and subcontractors pending a full inspection (including nondestructive examination by ultrasonic testing) and material testing. If carbon anomalies (''carbon segregation'' or ''carbon macrosegregation'' (CMAC)) in excess of the design-basis specifications for at-risk component parts are identified, require the licensee to do one of the following:

a. Replace the degraded at-risk component(s) with quality-certified components.

b. For those at-risk degraded components that a licensee seeks to allow to remain in service, apply through the license amendment request process to demonstrate that a revised design basis is achievable and will not render the inservice component unacceptably vulnerable to fast fracture failure at any time and in any credible service condition throughout the current license of the power reactor.

2. Alternatively modify the licensees' operating licenses to require the licensees to perform the requested emergency enforcement actions at the next scheduled outage.

3. Issue a letter to all U.S. light-water reactor operators under 10 CFR 50.54(f) requiring licensees to provide the NRC with information under oath and affirming specifically how U.S. operators are reliably monitoring contractors and subcontractors for the potential carbon segmentation anomaly in the supply chain and the reliability of the quality assurance certification of those components, and publicly release the responses.

The June 16 and June 22, 2017, supplements to the petitions added Crystal River Unit 3, which is currently shut down, and the licensee Duke Energy to the list of facilities for which the Petitioners requested the following fourth NRC action:

a. Confirm the sale, delivery, quality control and quality assurance certification and installation of the replacement reactor pressure vessel head as supplied to Crystal River Unit 3 by then Framatome and now AREVA-Le Creusot Forge industrial facility in Charlon-St. Marcel, France and;

b. With completion and confirmation [of the above Crystal River Unit 3 actions], the modification of Duke Energy's current license for the permanently closed Crystal River Unit 3 nuclear power station in Crystal River, Florida, to inspect and conduct the appropriate material test(s) for carbon macrosegregation on sufficient samples harvested from the installed and now inservice irradiated Le Creusot Forge reactor pressure vessel head [sic]. The Petitioners assert that the appropriate material testing include Optical Emissions Spectrometry (OES).

As the basis of their requests, the Petitioners cited the expert review by Large and Associates Consulting Engineers that identified significant irregularities and anomalies in both the manufacturing process and quality assurance documentation of large reactor components manufactured by the ACF for French reactors and reactors in other countries.[11]

On February 2, 2017,[12] the Office of Nuclear Reactor Regulation (NRR) petition manager acknowledged receipt of the petition and offered an opportunity for the Petitioners to address NRR's 10 CFR 2.206 Petition Review Board (PRB) to discuss the petition. The Petitioners accepted the offer, and the meeting was held on March 8, 2017. The transcript[13] of that meeting is publicly available.

On February 8, 2017, the PRB met internally to discuss the request for immediate actions and informed the Petitioners on February 13, 2017,[14] that no actions were warranted at that time because the NRC has reasonable assurance of public health and safety and protection of the environment. The basis for the PRB's determination included the following:

- ***Extent of Condition.*** Internationally, CMAC has been found only in components produced by ACF using a specific processing route. Based on the staff's knowledge as of February 2017, only a subset of the plants identified in the petition contain components that may have used the processing route that resulted in the excess CMAC found in international plants.
- ***Degree of Condition.*** If CMAC is present in a component, it occurs in a localized region of the forged component. It is not a bulk material phenomenon, does not go through thickness, and is not expected to affect the structural integrity of the component. In addition, based on the staff's knowledge as of February 2017, the highest levels of CMAC observed internationally, if present in the postulated regions of U.S. components, are not expected to alter the mechanical properties of the material enough to affect the structural integrity of the components. Destructive examinations of components containing regions of CMAC have been conducted internationally to determine how CMAC affects mechanical properties and such examinations confirm that structural integrity has not been impacted. A summary of the international investigation is summarized in II.A below, and details of the investigation and its

[2] See ADAMS Accession No. ML17052A032.

[3] See ADAMS Accession No. ML17068A061.

[4] See ADAMS Accession No. ML17067A562.

[5] See ADAMS Accession No. ML17174A087.

[6] See ADAMS Accession No. ML17174A788.

[7] See ADAMS Accession No. ML17179A288.

[8] See ADAMS Accession No. ML17184A058.

[9] See ADAMS Accession No. ML17187A026.

[10] The petition incorrectly states that JCFC is a subcontractor to ACF.

[11] See the report titled ''Irregularities and Anomalies Relating to the Forged Components of Le Creusot Forge,'' dated September 26, 2016, Large and Associates Consulting Engineers, London, England (available at *http://www.largeassociates.com/CZ3233/Note_LargeAndAssociates_EN_26092016.pdf*).

[12] See ADAMS Accession No. ML17039A501.

[13] See ADAMS Accession No. ML17081A418.

[14] See ADAMS Accession No. ML17052A033.

impact on structural integrity are described in the staff's evaluation dated February 22, 2018.[15]

- ***Safety Significance.*** The staff's preliminary safety assessment concluded that the safety significance of CMAC to the U.S. nuclear power reactor fleet appears to be negligible. The staff based its assessment on knowledge of the material processing, qualitative analysis, compliance of U.S. components with the American Society of Mechanical Engineers *Boiler Pressure and Vessel Code* (ASME Code), and the results of preliminary structural evaluations. The NRC subsequently presented the basis for this determination in a technical session, titled ''Carbon Macrosegregation in Large Nuclear Forgings,'' at the NRC-sponsored Regulatory Information Conference on March 15, 2017.[16] [17]

On April 11, 2017, the PRB met to discuss the petition with respect to the criteria for consideration under 10 CFR 2.206. Based on that review, the PRB determined that the petition request meets the criteria for consideration under 10 CFR 2.206. On May 19, 2017, the petition manager informed the Petitioners that the initial recommendation was to accept the petition for review but to refer a portion of the petition (i.e., the concern of potentially falsified quality assurance documentation) to the NRC's allegation process for appropriate action.[18] The petition manager also offered the Petitioners an opportunity to comment on the PRB's recommendations. On July 5, 2017, the petition manager clarified the initial recommendation and asked for a response as to whether the Petitioners wanted to address the PRB a second time to comment on its recommendations. The Petitioners did not request a second opportunity to address the PRB. Therefore, the PRB's initial recommendations to accept part of the petition for review under 10 CFR 2.206 and to refer a part to another NRC process became final. On August 30, 2017, the petition manager issued an acknowledgment letter to the Petitioners.[19]

By a letter to the Petitioners which copied the licensees dated June 6, 2018,[20] the NRC issued the proposed director's decision for comment. The Petitioners were asked to provide comments within 14 days on any part of the proposed director's decision considered to be erroneous or any issues in the petition that were not addressed. The NRC staff did not receive any comments on the proposed director's decision.

The petition and other references related to this petition are available for inspection in the NRC's Public Document Room (PDR), located at O1F21, 11555 Rockville Pike (first floor), Rockville, MD 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by e-mail to *pdr.resource@nrc.gov.*

II. Discussion

Under the 10 CFR 2.206(b) petition review process, the Director of the NRC office with responsibility for the subject matter shall either institute the requested proceeding or shall advise the person who made the request in writing that no proceeding will be instituted, in whole or in part, with respect to the request and the reason for the decision. Accordingly, the decision of the NRR Director is provided below. As further discussed below, the petition is denied.

The NRC's policy is to have an effectively coordinated program to promptly and systematically review relevant domestic and applicable international operational experience (OpE) information. The program supplies the means for assessing the significance of OpE information, offering timely and effective communication to stakeholders, and applying the lessons learned to regulatory decisions and programs affecting nuclear reactors. The NRC Management Directive 8.7, ''Reactor Operating Experience Program,'' dated February 1, 2018, describes the Reactor OpE Program.[21] The NRR Office Instruction (OI) LIC-401, ''NRR-NRO Reactor Operating Experience Program,'' Revision 3, addresses the specific implementation of the Reactor OpE Program.[22]

As reported in internal NRC communications, AREVA notified France's nuclear safety authority, Autorité de Sûreté Nucléaire (ASN), of an anomaly in the composition of the steel in certain zones of the reactor pressure vessel (RPV) upper and lower heads of the Flamanville Nuclear Power Plant (Flamanville), Unit 3, in Manche, France. Both the upper and lower vessel heads were manufactured by ACF. According to ASN, chemical and mechanical property testing performed by AREVA in late 2014 (on a vessel head similar to that of the Flamanville European Pressurized Reactor (EPR)) revealed a zone of high carbon concentration (0.30 percent as opposed to a target value of 0.22 percent), which led to lower than expected mechanical toughness values in that area. Initial measurements confirmed the presence of this anomaly in the Flamanville, Unit 3, RPV upper and bottom heads.

In accordance with the process described in NRR OI LIC-401, the NRC's Reactor OpE Program staff ensured that the appropriate technical experts within the NRC were aware of the issue and were evaluating these issues for relevance to the U.S. industry. In addition, the NRC has strong collaboration with the international community and was separately in contact with ASN to discuss this issue.

A. *Description of the Issue*

The CMAC is a known phenomenon that takes place during the casting of large ingots. The CMAC is a material heterogeneity in the form of a chemical (i.e., carbon) gradient that deviates from the nominal composition and may exceed specification limits. Portions of the ingot containing CMAC that exceed specification limits (positive CMAC) are purposefully removed and discarded as part of the material processing. Regions of positive CMAC that are not appropriately removed result in localized regions near the surface of the final component with higher strength and lower toughness relative to the bulk material.

In April 2015, regions of positive CMAC were discovered in EPR RPV heads that were manufactured for the Flamanville plant. The ACF had produced the forgings for the Flamanville upper and lower RPV heads. The discovery of the CMAC in the heads prompted ASN to ask the operator, Électricité de France S.A. (EDF) (Electricity of France), to review inservice forged components at all of its plants to determine the potential extent of the condition. The review identified steam generator (SG) channel heads (also commonly referred to as SG primary heads) produced by ACF and JCFC as the components most likely to contain a region of CMAC. The ASN requested that nondestructive testing be performed on these SG channel heads to characterize the carbon content and confirm the absence of unacceptable flaws.

On October 18, 2016, ASN ordered the acceleration of the nondestructive testing of the potentially affected ACF and JCFC SG channel heads, which required completion of the remaining nondestructive testing within 3 months. The discovery of higher than expected carbon values measured on an inservice SG channel head produced by JCFC prompted the accelerated schedule. As a result, to perform the required nondestructive tests, EDF had to shut down its plants before their scheduled outages.

AREVA Inc. (AREVA Inc. or AREVA), located in Lynchburg, VA, provides safety-related products and services for U.S. operating nuclear power plants, including replacements for reactor coolant pressure boundary components. On February 3, 2017,[23] AREVA Inc. submitted a list to the NRC of the U.S. reactors that have received components fabricated with forgings from ACF. Operating U.S. plants have no known components from JCFC.

In September 2015, June 2016, and June 2017, ASN convened an Advisory Committee of Experts for Nuclear Pressure Equipment to obtain its technical opinion on the consequences of CMAC for the serviceability of the Flamanville EPR reactor vessel domes. The resulting series of publicly available reports (CODEP–DEP–2015–037971,[24]

[15] See ADAMS Accession No. ML18017A441.

[16] See ADAMS Accession No. ML17171A108.

[17] See ADAMS Accession No. ML17171A106.

[18] See ADAMS Accession No. ML17142A334.

[19] See ADAMS Accession No. ML17198A329.

[20] See ADAMS Accession No. ML18107A402.

[21] See ADAMS Accession No. ML18012A156.

[22] See ADAMS Accession No. ML12192A058.

[23] See ADAMS Accession No. ML17040A100.

[24] See ASN/Institut de Radioprotection et de Sûreté Nucléaire (**IRSN**) (Radioprotection and Nuclear Safety Institute) report CODEP–DEP–2015–037971, ''Analysis of the Procedure Proposed by AREVA to Prove Adequate Toughness of the Dome of the Flamanville 3 EPR Reactor Pressure Vessel Lower Head and Closure Head,'' English translation, dated September 16, 2015. *http://www.french-nuclear-safety.fr/Media/Files/00-Publications/Report-to-the-Advisory-Committee-of-Experts-for-Nuclear-Pressure-Equipment.*

CODEP–DEP–2016–019209,[25] and CODEP–DEP–2017–019368 [26]) justified the continued use of the Flamanville heads. In this effort, AREVA conducted hundreds of mechanical and chemical property experiments on three full-scale replica heads that were manufactured by ACF using the same process as that used for the Flamanville heads. Using these experimental results, AREVA conducted a variety of code-related fracture and strength analyses that demonstrated that the risk of fast fracture from CMAC was extremely low. Through this effort, ASN concluded that the serviceability of the heads is acceptable as long as EDF conducts the required inservice inspections. However, because of its inability to conduct an adequate inservice inspection on the Flamanville upper head, ASN concluded that the upper head long-term serviceability could not be confirmed and that the head should be replaced after a few years of operation.

B. *Initial Actions by the NRC and the U.S. Nuclear Industry*

Beginning in December 2016, the NRC staff conducted a preliminary safety assessment to determine the potential safety significance posed to the U.S. nuclear power reactor fleet by the CMAC observed in reactor coolant system (RCS) components overseas and concluded that the failure of an RPV/SG head component has a very low probability, even if the worst practical degree of CMAC occurs within that component. The NRC staff used a qualitative failure comparison to assess the relative likelihood of failure of an RPV shell (which is not expected to be subject to positive CMAC) with RPV/SG head component types that could be affected by CMAC. Based on this comparison, the NRC determined the following:

- The RPV shell experiences higher stresses under both normal operations and postulated accident scenarios.
- The weld region of an RPV shell has a greater likelihood of having more flaws and larger fabrication flaws. The larger fabrication flaws typically have the higher potential to result in component failure.
- Although the initial toughness of an RPV shell material may be greater than an RPV/SG head with postulated positive CMAC, the shell toughness decreases as the result of radiation embrittlement after several years of operation. As a result, the current as-operated toughness of RPV shell material is expected to be lower than the toughness of RPV/SG head material with postulated CMAC. The RPV shell material is known to have adequate toughness for safe operation.

When combining all these individual attributes, an RPV/SG head component with postulated CMAC is much less likely to fail than an RPV shell. Past research and operating experience has demonstrated that failure of an RPV shell under normal operations or postulated accident scenarios has a very low probability of occurrence.[27] [28] Therefore, the failure of an RPV/SG head component also has a very low probability, even if the worst practical degree of CMAC occurs within that component. The NRC presented the basis for this preliminary determination in a technical session titled ''Carbon Macrosegregation in Large Nuclear Forgings'' (cited above) at the March 15, 2017, NRC-sponsored Regulatory Information Conference.

Concurrent with the NRC analyses, the U.S. industry initiated a research program in early 2017, conducted by the Electric Power Research Institute (EPRI), to address the generic safety significance of elevated carbon levels caused by CMAC in the components of interest. This program was divided into the following four main tasks, each aimed at developing both qualitative and quantitative information to make a safety determination:

1. extension of RPV probabilistic fracture mechanics (PFM) analyses to qualitatively bound other components
2. development of a robust technical basis to support the hypothesis that RPV integrity bounds other components
3. quantitative structural analyses to assess whether the results of the PFM analyses of the RPV beltline (Task 1) bound the other forged components
4. a white paper assessing the effect of CMAC on SG tubesheets based on expert judgment and experience with the fabrication of the tubesheets as large forgings

As of the writing of this document, Task 1 has been completed and has been publicly released as Materials Reliability Program (MRP)-417.[29] The other tasks are still under development with the expected release of the report(s) in 2018.

The MRP-417 addresses the structural significance of the potential presence of CMAC in large, forged pressurized-water reactor pressure-retaining components, including the RPV head, beltline and nozzle shell forgings, and the SG and pressurizer ring and head forgings through the end of an 80-year operating interval. The assessment was made using the NRC risk safety criterion of a 95th percentile through-wall crack frequency (TWCF) of less than 1×10^{-6} per year (yr^{-1}) (10 CFR 50.61a, ''Alternative Fracture Toughness Requirements for Protection against Pressurized Thermal Shock Events'') for pressurized thermal shock (PTS) events and a conditional probability of failure (CPF) of less than 1×10^{-6} for normal operating transients. These analyses used many of the same assumptions and inputs as those used in the basis for the 10 CFR 50.61a alternate PTS rule.[30] [31] In addition, the analysts approximated the effect of carbon content on the fracture toughness of the steel through a review of the available literature.

The MRP-417 describes the analyses and results for bounding values for the RPV shell, RPV upper head, SG channel head, pressurizer shell, and pressurizer head components based on the analyses assumptions from the alternate PTS rule in conjunction with the effect of the CMAC on the material toughness. The report's deterministic results suggest that the RPV vessel behavior bounds the behavior of the pressurizer components. In addition, the probabilistic results suggest that in all cases, assuming the maximum carbon content observed in the field, the calculated TWCF and CPF were below the NRC risk safety criterion of the 95th percentile TWCF of less than 1×10^{-6} yr^{-1} for PTS events and a CPF of less than 1×10^{-6} for normal operating transients. MRP-417 concludes that there is substantial margin against failure through an 80-year operating interval using the assumed CMAC distributions in the RPV, SG, and pressurizer rings and head forgings in pressurized-water reactors.

In March 2017, an NRC inspection team performed a limited-scope vendor inspection at the AREVA facility in Lynchburg, Virginia, to review documentation from ACF and assess AREVA's compliance with the provisions of selected portions of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR Part 50, and 10 CFR Part 21, ''Reporting of Defects and Noncompliance.'' This inspection focused on AREVA's documentation and evaluation of potential carbon macrosegregation issues in forgings supplied by AREVA for U.S. operating nuclear power plants. Specifically, the NRC inspection reviewed documentation to verify that forgings met the ASME Code requirements for carbon content and mechanical properties. The NRC issued the inspection report on May 10, 2017.[32] The limited-scope inspection reviewed policies and procedures that govern implementation of AREVA's 10 CFR Part 21 program, and nonconformance and corrective action policies and procedures under its approved quality assurance program related to the manufacturing processes used by ACF to fabricate inservice U.S. components and the resulting mechanical properties. The NRC inspection team used Inspection Procedure (IP) 43002, ''Routine Inspections of Nuclear Vendors,'' [33] and IP 36100, ''Inspection of 10 CFR Part 21 and Programs for Reporting Defects and Noncompliance.'' [34] The inspection team did not identify any violations or nonconformances during the inspection.

[25] See ASN/IRSN report CODEP–DEP–2016–019209, ''Procedure Proposed by AREVA to Prove Adequate Toughness of the Domes of the Flamanville 3 EPR Reactor Pressure Vessel Bottom Head and Closure Head,'' English translation, dated June 17, 2016. *https://www.asn.fr/content/download/106732/811356/version/6/file/CODEP-DEP-2016-019209-advisorycommitte24june2016-summaryreport.pdf.*

[26] See ASN/IRSN report CODEP–DEP–2017–019368, ''Analysis of the Consequences of the Anomaly in the Flamanville EPR Reactor Pressure Vessel Head Domes on Their Serviceability,'' English translation, dated June 15, 2017. *http://www.irsn.fr/FR/expertise/rapports_gp/Documents/GPESPN/IRSN-ASNDEP_GPESPN-Report_pressure-vessel-FA3_201706.pdf.*

[27] See ADAMS Accession No. ML072830076.

[28] See ADAMS Accession No. ML072820691.

[29] EPRI Report No. 3002010331, ''Materials Reliability Program: Evaluation of Risk from Carbon Macrosegregation in Reactor Pressure Vessels and Other Large Nuclear Forgings (MRP–417),'' issued June 2017 (available at ADAMS Accession No. ML18054A862).

[30] See ADAMS Accession No. ML072830076.

[31] See ADAMS Accession No. ML072820691.

[32] See ADAMS Accession No. ML17124A575.

[33] See ADAMS Accession No. ML13148A361.

[34] See ADAMS Accession No. ML113190538.

The inspection report contains the following primary material processing and property observations:

- A population of the components produced by ACF has a low or no possibility of containing regions of CMAC.
- Carbon levels and mechanical properties for the components reviewed conformed to ASME Code requirements.
- The information reviewed did not challenge the NRC's preliminary determination on the CMAC topic (i.e., that the safety significance to the U.S. nuclear power reactor fleet appears to be negligible).

The NRC staff also documented its risk-informed evaluation of the potential safety significance of CMAC in components produced by ACF, as it relates to the safe operation of U.S. plants, and options for addressing the topic using its risk-informed decision-making process in NRR OI LIC-504, ''Integrated Risk-Informed Decision-Making Process for Emergent Issues,'' Revision 4, dated June 2, 2014,[35] to evaluate this issue.

C. *Applicable NRC Regulatory Requirements and Guidance*

The NRC requires U.S. nuclear reactor components fabricated with forgings from ACF to be manufactured and procured in accordance with all applicable regulations, as well as the ASME Code requirements that are incorporated by reference. The regulations most pertinent to the prevention and identification of CMAC in regions of RCS components are the ASME Code requirements incorporated by reference in 10 CFR 50.55a, ''Codes and Standards,'' and quality assurance requirements in 10 CFR part 50, Appendix B. In addition to the NRC regulations and ASME Code requirements that are focused on the process and quality controls for addressing CMAC, there are also regulations that focus on performance and design criteria that may be impacted by regions of CMAC. These regulations include: 10 CFR 50.60, ''Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation,'' Appendix A to 10 CFR part 50, ''General Design Criteria for Nuclear Power Plants,'' and Appendix G to 10 CFR part 50, ''Fracture Toughness Requirements.'' The applicability of specific NRC regulations and ASME Code requirements will, in part, depend on the dates that the regulations or requirements became effective relative to a component being put into operation. The plant-specific design basis and current licensing basis address the fundamental regulatory requirements pertaining to the integrity of the components of interest.

Appendix B to 10 CFR part 50 establishes quality assurance requirements for the design, manufacture, construction, and operation of the structures, systems, and components (SSCs) for nuclear facilities. Appendix B requirements apply to all activities affecting the safety-related functions of those SSCs. These activities include designing, purchasing, fabricating, handling, installing, inspecting, testing, operating, maintaining, repairing, and modifying SSCs. To accomplish these activities, licensees must contractually pass down the requirements of Appendix B through procurement documentation to suppliers of SSCs, as stated in the Appendix B criteria below.

Criterion IV, ''Procurement Document Control,'' of 10 CFR Part 50, Appendix B, states the following:

> Measures shall be established to assure that applicable regulatory requirements, design bases, and other requirements which are necessary to assure adequate quality are suitably included or referenced in the documents for procurement of material, equipment, and services, whether purchased by the applicant or by its contractors or subcontractors. To the extent necessary, procurement documents shall require contractors or subcontractors to provide a quality assurance program consistent with the pertinent provisions of this appendix.

Criterion VII, ''Control of Purchased Material, Equipment, and Services,'' of 10 CFR Part 50, Appendix B, in part, states, the following:

> Documentary evidence that material and equipment conform to the procurement requirements shall be available at the nuclear power plant or fuel reprocessing plant site prior to installation or use of such material and equipment. This documentary evidence shall be retained at the nuclear power plant or fuel reprocessing plant site and shall be sufficient to identify the specific requirements, such as codes, standards, or specifications, met by the purchased material and equipment.

The licensee is responsible for ensuring that the procurement documentation appropriately identifies the applicable regulatory and technical requirements and for determining whether the purchased items conform to the procurement documentation.

Criterion XV, ''Nonconforming Materials, Parts, or Components,'' of 10 CFR Part 50, Appendix B, states the following:

> Measures shall be established to control materials, parts, or components which do not conform to requirements in order to prevent their inadvertent use or installation. These measures shall include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items shall be reviewed and accepted, rejected, repaired or reworked in accordance with documented procedures.

Nonconformances identified by the supplier during manufacturing must be technically evaluated and dispositioned accordingly. If the supplier identifies a nonconformance, such as the presence of CMAC in the final product, it must perform an engineering evaluation and document the nonconformance on the associated certificate of conformance. The licensee is responsible for reviewing the certificate of conformance during receipt inspection for acceptance of the final product upon delivery.

Under 10 CFR Part 21, the NRC requires both licensees and their suppliers to evaluate any condition or defect in a component that could create a substantial safety hazard. Regions of CMAC in RCS components suspected of having the potential to create a substantial safety hazard would be an example of a condition that licensees and their suppliers must evaluate. In addition, 10 CFR Part 21 requires the entity to notify the NRC if it becomes aware of information that reasonably indicates that a basic component contains defects that could create substantial safety hazard.

D. *Summary of the NRC's Evaluation*

The NRC's evaluation of this issue consisted of conducting preliminary safety analyses as described above, reviewing the testing and analyses performed by the French licensee, meeting with French and Japanese regulators to discuss their evaluation, reviewing the nuclear industry's evaluation of the issue, conducting an onsite inspection of manufacturing and procurement records, and determining the final safety assessment using a risk-informed decision-making process. The staff's evaluation dated February 22, 2018, documents the NRC's full evaluation of the CMAC topics as it relates to plants operating in the United States.

The staff reviewed the publicly available ASN documentation on this issue (CODEP–DEP–2015–037971, CODEP–DEP–2016–019209, and CODEP–DEP–2017–019368) and concluded that, although ASN's decisions and actions are based solely on French nuclear regulations which do not directly correlate to U.S. regulations, the experimental results and the fast fracture analyses can provide direct insight into the expected behavior of postulated CMAC in U.S.-forged components. As concluded by ASN, the analyses demonstrate that the fast fracture of the Flamanville heads from the impacts of CMAC can be ruled out in view of the margins determined by the analyses.

The NRC staff reviewed the technical information in MRP-417 and concluded that it was credible for use in this assessment for the following reasons:

- The risk criteria used for the CPF and 95th percentile TWCF were identical to those used in the development of 10 CFR 50.61a.
- Major probabilistic inputs, such as flaw distribution, standard material properties, transients, and normal operating conditions were identical to those used in the development of 10 CFR 50.61a.
- The CMAC distribution and toughness relationships used were based on historical literature and empirical data.
- The assumptions made using the computational model were consistent with, or were conservative as compared to those used in the analyses for the development of 10 CFR 50.61a.

The NRC assessment of MRP–417 for this report does not constitute a regulatory endorsement of its full contents. The NRC staff will assess the other industry reports on the CMAC topic in the same manner as such reports become available.

Although these evaluations provide useful information to address the impacts of postulated CMAC in forged components in service at U.S. operating reactors, the NRC staff used an analysis approach, leveraging

[35] See ADAMS Accession No. ML14035A143.

existing PFM results and examining them in the context of the NRC's approach to the risk-informed decision-making process described in NRR OI LIC–504.

Consistent with LIC–504, for this review, the NRC staff considered the following five principles of risk-informed decision-making when considering options for addressing this issue:

- ***Principle 1.*** The proposed change must meet the current regulations unless it is explicitly related to a requested exemption or rule change.
- ***Principle 2.*** The proposed change shall be consistent with the defense-in-depth philosophy.
- ***Principle 3.*** The proposed change shall maintain sufficient safety margins.
- ***Principle 4.*** When the proposed change results in an increase in core damage frequency or risk, the increases should be small and consistent with the intent of the Commission's safety goals.
- ***Principle 5.*** Monitoring programs should be in place.

The NRC staff considered the following four options to address the potential impact of the international CMAC OpE on the U.S. nuclear power reactor fleet. Options 2, 3, and 4 align with the Petitioners' requests.

- Option 1: Evaluate and Monitor
- Option 2: Issue a Generic Communication
- Option 3: Issue Orders Requiring Inspections
- Option 4: Issue Orders Suspending Operation

Option 1

This option consists of the NRC staff continuing to monitor all domestic and international information associated with the CMAC topic. The staff will evaluate new information, as it becomes available, to ensure that conservatism in the staff's final safety determination is maintained. Aspects of the staff's safety determination that may be evaluated against new information includes the extent of condition in the U.S., potential degree of CMAC on a generic basis, or data affecting the relationship between CMAC and mechanical performance. This information is to be evaluated to determine if there is reasonable assurance that adequate defense-in-depth, sufficient safety margin, and an acceptable level of risk is maintained with an appropriate degree of conservatism.

If new information becomes available that warrants evaluation and it is concluded that the staff's safety determination remain appropriately conservative, then no additional actions will be taken. Alternatively, if the staff cannot conclude that there is reasonable assurance of structural integrity, additional action(s) will be considered. The NRC will communicate with applicable stakeholders, as appropriate.

Option 2

The second option involves issuing a generic letter (GL) to the licensees operating with components forged by ACF. The objective of the GL would be to confirm that the licensees' 10 CFR Part 50, Appendix B, quality assurance programs have verified that the components produced by ACF comply with the applicable NRC regulations and ASME Code requirements. The GL would request that the licensees (1) provide the documentation necessary to confirm that the components in question meet all applicable NRC regulations and ASME Code requirements and (2) describe how their 10 CFR Part 50, Appendix B, quality assurance programs verified that the components complied with all applicable NRC regulations and ASME Code requirements, specifically, those related to the manufacturing of the components relevant to the CMAC topic. Section II.C of this Director's Decision provides the regulatory requirements and the 10 CFR Part 50, Appendix B, quality assurance program, as they relate to the CMAC topic. A GL can require a written response in accordance with 10 CFR 50.54(f).

Option 3

The third option involves issuing an order to the licensees operating with inservice components produced by ACF. The order would require licensees with components from ACF to conduct nondestructive examinations of these inservice components during the next scheduled outage. The objective of the examination would be to verify the condition of the components (e.g., no unacceptable flaw or indications) and to verify carbon levels. If the nondestructive examinations reveal a condition that is adverse to safety or does not conform to requirements, the plant would not be allowed to restart until the issue is addressed and until the NRC grants its approval.

Option 4

Option 4 is identical to Option 3, except that the NRC orders would require immediate plant shutdowns to perform the inspections. This Option would be preferable in the case of an immediate safety issue posing a clearly demonstrated significant and immediate risk to an operating plant. NRR OI LIC–504 defines a risk significant condition as significant enough to warrant immediate action if the calculated large early release frequency (LERF) is on the order of 1×10^{-4} yr^{-1}.

Assessment of Options

The NRC staff evaluated the relative merits of the four options discussed in the preceding section. The staff has concluded that any of the four options proposed will adequately address the possible safety impact to the U.S. nuclear power reactor fleet posed by potential regions of CMAC in components produced by ACF. However, all four options are not equivalent or warranted, as discussed below.

Option 1: Evaluate and Monitor

To properly assess this option, the NRC assessed each of the five principles of the risk-informed decision-making process within the context of this option.

Principle 1—Compliance with Existing Regulations

A licensee is responsible for ensuring that the applicable regulatory and technical requirements are appropriately identified in the procurement documentation and for evaluating whether the purchased items, upon receipt, conform to the procurement documentation, in accordance with 10 CFR part 50, Appendix B. The NRC expects that licensees and vendors subject to NRC jurisdiction affected by the potential presence of CMAC have verified compliance with applicable NRC requirements and regulations for each potentially affected component or, alternatively, performed an appropriate evaluation that concludes that the condition is not adverse to safety. The NRC has not received a 10 CFR part 21 notification from a component supplier or licensee associated with CMAC. The ongoing evaluations have not yet determined that a deviation exists under 10 CFR part 21. The NRC confirms licensee and vendor compliance with NRC requirements through submitted reports, routine inspections, and continuous oversight provided by the plant resident inspector. For example, the NRC reviews 10 CFR part 21 evaluations and the response to operational experience routinely as part of the Reactor Oversight Process (ROP). Specifically, IP 71152,[36] ''Problem Identification and Resolution,'' provides guidance on reviewing licensee evaluations to ensure that potential supplier deviations are adequately captured to identify and address potential defects. A review of the 10 CFR part 21 process is also part of the vendor inspection program. Any non-compliances identified through NRC oversight activities are addressed through the enforcement program to ensure compliance is restored. In addition, safety concerns identified through NRC's oversight activities may be escalated, such as to conduct a reactive inspection or to issue a Confirmatory Action Letter or Safety Order. Therefore, Principle 1 is satisfied for Option 1.

Principle 2—Consistency with the Defense-in-Depth Philosophy

The aspect of defense-in-depth of relevance to the potential presence of CMAC in regions of RCS components is ''barrier integrity.'' The reactor coolant pressure boundary is one of the three principal fission-product release barriers in a U.S. plant. Under 10 CFR 50.61a, the NRC established a 95th percentile TWCF of less than 1×10^{-6} yr^{-1} and a CDF of less than 1×10^{-6} as acceptable RPV failure probabilities. The conservative assessment performed by the industry and described earlier showed that the probability of compromising the barrier integrity function for the inservice U.S. components of interest are significantly below these acceptance levels. If a design-basis accident were to compromise the pressure boundary, the remaining two independent fission-product release barriers (i.e., fuel cladding and containment) would still provide adequate defense-in-depth. The NRC has reasonable assurance that U.S. plants with components produced by ACF maintain adequate defense-in-depth. Therefore, Principle 2 is satisfied for Option 1.

Principle 3—Maintenance of Adequate Safety Margins

A region of CMAC in a component could reduce the margin against fracture. However, it has been shown that this reduction in

[36] See ADAMS Accession No. ML053490187.

margin does not affect the safe operation of the inservice components being evaluated. The ASN evaluation described earlier determined that the safety margin against fast fracture is maintained in all conditions analyzed. Industry determined in MRP-417 that the CMAC levels necessary to be considered significant to safety are more than 200 percent of those observed in components. Based on its review of these evaluations, the NRC has reasonable assurance that U.S. plants with components produced by ACF maintain sufficient safety margins. Therefore, Principle 3 is satisfied for Option 1.

Principle 4—Demonstration of Acceptable Levels of Risk

If it is conservatively assumed that the TWCF equates to the LERF (neglecting mitigating factors), the calculated 95th percentile TWCF for components with CMAC and thus the LERF is less than 1×10^{-6} yr^{-1}. Because this is below the immediate safety determination limit, there is no immediate safety concern. Therefore, Principle 4 is satisfied for Option 1.

Principle 5—Implementation of Defined Performance Measurement Strategies

Because there is no indication that the U.S. inservice components produced by ACF are noncompliant with the applicable regulations and because the NRC has reasonable assurance that defense-in-depth, safety margins, and risk levels are adequately maintained, the current monitoring programs at the plants are adequate, and additional performance measurement strategies are not warranted. However, the NRC staff would continue to monitor the U.S. nuclear industry and international activities related to the CMAC topic to analyze any new information to determine whether additional performance measurement strategies are necessary. Therefore, Principle 5 is satisfied for Option 1.

Option 2: Issue a Generic Communication

This option reinforces the regulatory determination made in Option 1 by issuing a GL requesting that the documentation and evaluations performed by licensees and their component suppliers conclude that the components produced by ACF do not have defects or deviations that pose a substantial safety hazard. The NRC would not expect the information collected in the response to a GL to change any of the conclusions reached in Option 1, including those related to defense-in-depth, safety margins, or risk-level determinations. Therefore, all five principles of risk-informed decision-making would also be satisfied for Option 2. Additionally, the relevant vendors have informed the affected licensees of the CMAC topic. Vendors and licensees must meet their 10 CFR part 21 evaluation and reporting responsibilities if the condition warrants such action. As part of the ROP and vendor inspection program, the NRC reviews these evaluations for adequacy.

Option 3: Issue Orders Requiring Inspections

This option reinforces the determinations made in Option 1 by performing inspections to confirm that an appropriate degree of conservatism was used in the evaluations of the potential impact of CMAC on U.S. components produced by AFC. The NRC would not expect the information collected by performing nondestructive examinations of the inservice components to significantly affect the defense-in-depth, safety margins, or risk-level determinations made in Option 1. Therefore, all five principles of risk-informed decision-making would also be satisfied for Option 3.

Option 4: Issue Orders Suspending Operation

In evaluating the international, U.S. industry, and NRC safety assessments, the NRC determined that the impact of CMAC on the integrity of the U.S.-forged components in question is small and that the calculated 95th percentile TWCF for PTS and the CPF for normal operating conditions fall below the NRC's safety criteria of 1×10^{-6} yr^{-1} and 1×10^{-6}, respectively. Because the assumption that the TWCF is equivalent to the LERF because of mitigating factors is extremely conservative, the results indicate that the impacts of CMAC would result in a risk of LERF less than 1×10^{-4} yr^{-1}. Therefore, because the NRC's risk criterion to shut down a plant is not met, the agency dismissed Option 4 without an evaluation of the five principles of risk-informed decision-making.

Final Assessment

The staff determined that Option 1 was the most appropriate action based on the material and processing information reviewed by the staff during the vender inspection of AREVA, experimental data and evaluation reported by ASN, PFM analyses conducted by the industry, the staff's review of the open literature on CMAC in steel ingots and its effect on performance, and an evaluation demonstrating that Option 1 satisfies all five key principles of risk-informed decision-making. Additionally, this compilation of information reviewed affirms the staff's preliminary safety assessment that the safety significance of CMAC to U.S. plants appears to be negligible and does not warrant immediate action. If new information becomes available that calls into question the conservatism of the evaluations supporting Option 1 or the regulatory compliance of the plants with inservice components from ACF, the NRC staff will reevaluate the need for additional actions. The staff's evaluation dated February 22, 2018, documents the NRC's full evaluation of the CMAC topics as it relates to plants operating in the United States.

E. *Evaluation of the Petitioners' Requests*

Petitioners' Request 1: **Suspend power operations of U.S. nuclear power plants that rely on ACF components and subcontractors pending a full inspection (including nondestructive examination by ultrasonic testing) and material testing. If carbon anomalies (''carbon segregation'' or ''carbon macrosegregation'') in excess of the design-basis specifications for at-risk component parts are identified, require the licensee to do one of the following:**

a. replace the degraded at-risk component(s) with quality certified components, or

b. for those at-risk degraded components that a licensee seeks to allow to remain in-service, make application through the license amendment request process to demonstrate that a revised design-basis is achievable and will not render the in-service component unacceptably vulnerable to fast fracture failure at any time, and in any credible service condition, throughout the current license of the power reactor.

NRC Response:

This request is essentially identical to Option 4 described above. The NRC has determined, through its PFM analyses, that the expected impact of CMAC on the LERF is less than 1×10^{-6} yr^{-1}. Therefore, the risk criterion to shut down a plant is not met.

Petitioners' Request 2: **Alternatively modify the operating licenses to require the affected operators to perform the requested emergency enforcement actions at the next scheduled outage.**

NRC Response:

This request is essentially identical to Option 3 described above. As discussed above, performing nondestructive examinations of the inservice components is not expected to provide information that would significantly affect the defense-in-depth, safety margins, or risk-level determinations that would be provided by continued monitoring and evaluation of new information.

Petitioners' Request 3: **Issue a letter to all U.S. light-water reactor operators under 10 CFR 50.54(f) requiring licensees to provide the NRC with information under oath and affirming specifically how U.S. operators are reliably monitoring contractors and subcontractors for the potential carbon segmentation anomaly in the supply chain and the reliability of the quality assurance certification of those components, and publicly release the responses.**

NRC Response:

This request is essentially identical to Option 2 described above. As discussed above, the information collected through a 10 CFR 50.54(f) request for information or a GL is not expected to change any of defense-in-depth, safety margins, or risk-level determinations that would be provided by continued monitoring and evaluation of new information. In addition, the relevant vendors and licensees must meet their 10 CFR Part 21 evaluation and reporting responsibilities if the condition warrants such action. As part of the ROP and vendor inspection program, the NRC reviews these evaluations for adequacy.

Petitioners' Request 4: **[The Petitioners added Crystal River Unit 3 to the plants for which they requested actions, which include the following]:**

a. Confirm the sale, delivery, quality control and quality assurance certification and installation of the replacement reactor pressure vessel head as supplied to Crystal River Unit

3 by then Framatome and now AREVA-Le Creusot Forge industrial facility in Charlon-St. Marcel, France and;

b. With completion and confirmation [of the above Crystal River Unit 3 actions], the modification of Duke Energy's current license for the permanently closed Crystal River Unit 3 nuclear power station in Crystal River, Florida, to inspect and conduct the appropriate material test(s) for carbon macrosegregation on sufficient samples harvested from the installed and now in service irradiated Le Creusot Forge reactor pressure vessel head [sic]. The Petitioners assert that the appropriate material testing include OES.

NRC Response:

AREVA did not identify Crystal River Unit 3 as a plant that contained components from ACF,[37] [38] and the staff has not confirmed that this unit contained any forgings manufactured from ingots produced by ACF. In addition, Crystal River Unit 3 is currently shut down and in the process of decommissioning. Therefore, the Petitioners' requests 1, 2, 3, and 4(a) do not apply to this plant. However, the acquisition and subsequent testing of irradiated and aged plant material from decommissioned plants could be a valuable research activity that might offer useful scientific information on the progress of aging mechanisms. The harvesting of reactor vessel material from plants that have been permanently shut down can be a complex and radiation-dose-intensive effort. The NRC's Office of Nuclear Regulatory Research has previously obtained samples appropriate for testing from shutdown plants. In regard to this request, the NRC may, in the future, seek to purchase samples. However, the identified facility has ceased operations, and there is no safety concern at those facilities that justifies enforcement-related action (i.e., to modify, suspend, or revoke the license) to give the NRC reasonable assurance of the adequate protection of public health and safety.

III. Conclusion

Based on the evaluations provided above, and documented in the February 22, 2018, NRC memorandum, the NRR Director has determined that the actions requested by the Petitioners, will not be granted in whole or in part.

As provided for in 10 CFR 2.206(c), a copy of this Director's Decision will be filed with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, MD, this 2nd day of August 2018.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Acting Director, Office of Nuclear Reactor Regulation.

Attachment:

List of Affected Reactors

LIST OF POWER REACTORS AFFECTED BY THE PETITION

Plant	Docket No.	Facility operating license No.
Prairie Island Nuclear Generating Plant, Unit 1	05000282	DPR–42
Prairie Island Nuclear Generating Plant, Unit 2	05000306	DPR–60
Arkansas Nuclear One, Unit 2	05000368	NPF–6
Beaver Valley Power Station, Unit 1	05000334	DPR–66
North Anna Power Station, Unit 1	05000338	NPF–4
North Anna Power Station, Unit 2	05000339	NPF–7
Surry Power Station, Unit 1	05000280	DPR–32
Comanche Peak Nuclear Power Plant, Unit 1	05000445	NPF–87
V.C. Summer Nuclear Station, Unit 1	05000395	NPF–12
Joseph M. Farley Nuclear Plant, Unit 1	05000348	NPF–2
Joseph M. Farley Nuclear Plant, Unit 2	05000364	NPF–8
South Texas Project, Unit 1	05000498	NPF–76
South Texas Project, Unit 2	05000499	NPF–80
Sequoyah Nuclear Plant, Unit 1	05000327	DPR–77
Watts Bar Nuclear Plant, Unit 1	05000390	NPF–90
Millstone Power Station, Unit 2	05000336	NPF–65
Saint Lucie Plant, Unit 1	05000335	DPR–67
Crystal River Unit 3 Nuclear Generating Plant	05000302	DPR–72

[FR Doc. 2018–17131 Filed 8–9–18; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–382 and 72–75; NRC–2017–0239]

In the Matter of Entergy Louisiana, LLC and Entergy Operations, Inc. Waterford Steam Electric Station, Unit 3, and Independent Spent Fuel Storage Installation Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to permit the indirect transfer of membership interests in Entergy Louisiana, LLC (ELL; the owner of Waterford Steam Electric Station, Unit 3, and the independent spent fuel storage installation facility) to the extent ELL is affected by the addition of Entergy Arkansas, LLC; Entergy Mississippi, LLC; and Entergy New Orleans, LLC to Entergy Utility Holding Company, LLC (EUHC). Upon execution of the transfer, these changes will result in additional members of EUHC that may dilute the resources and voting power of its members, including ELL.

DATES: The order was issued on August 1, 2018, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2017–0239 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0239. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For

[37] See ADAMS Accession No. ML17040A100.

[38] See ADAMS Accession No. ML17009A278.

technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Margaret W. O'Banion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1233; email: *Margaret.O'Banion@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated at Rockville, Maryland, this 7th day of August 2018.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Indirect Transfer of Control of License

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–382 and 72–75; License No. NPF–38]

In the Matter of Entergy Louisiana, LLC and Entergy Operations, Inc.

Waterford Steam Electric Station, Unit 3

ORDER APPROVING INDIRECT TRANSFER OF CONTROL OF LICENSE

I.

Entergy Louisiana, LLC (ELL) and Entergy Operations, Inc. (EOI) (together, the licensees) are co-holders of Facility Operating License No. NPF-38 for Waterford Steam Electric Station, Unit 3 (Waterford), and the general license for the independent spent fuel storage installation (ISFSI). ELL is the owner and EOI is authorized to possess, use, and operate Waterford and the ISFSI, which are located in St. Charles Parish, Louisiana.

II.

By application dated September 21, 2017, EOI requested, on behalf of itself, ELL, and their parent companies (together, the applicants), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, ''Transfer of licenses,'' that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of membership interests in ELL to the extent ELL is affected by the addition of Entergy Arkansas, LLC (EAL); Entergy Mississippi, LLC (EML); and Entergy New Orleans, LLC (ENOL) to Entergy Utility Holding Company, LLC (EUHC). These changes will result (upon execution of the transfers) in additional members of EUHC that may dilute the resources and voting power of its members.

The application proposes no physical or operational changes to the facilities. The interconnections that provide offsite power to Waterford do not change as a result of the proposed indirect license transfer.

The applicants requested NRC approval of the indirect transfer of membership interests in ELL. The NRC published a notice, ''Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station, Unit 1; River Bend Station, Unit 1; and Waterford Steam Electric Station, Unit 3 Consideration of Approval of Transfer of Licenses and Conforming Amendments,'' in the **Federal Register** on December 29, 2017 (82 FR 61800). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that the licensees are qualified to hold the license to the extent proposed to permit the indirect transfer of membership interests in ELL to the extent ELL is affected by the addition of EAL, EML, and ENOL to EUHC. The NRC staff has also determined that the proposed license transfer is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC pursuant thereto. The findings set forth above are supported by an NRC safety evaluation dated August 1, 2018.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; Title 42 of the *United States Code* Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed transfer action, EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing of the transfer, no later than 5 business days before the date of the closing of the transfer. Should the proposed indirect transfer not be completed within 1 year of this order's date of issuance, this order shall become null and void; however, upon written application and for good cause shown, such date may be extended by order.

This order is effective upon issuance.

For further details with respect to this order, see the application dated September 21, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17268A213), and the NRC's safety evaluation dated August 1, 2018 (ADAMS Accession No. ML18177A236), which are available for public inspection at the NRC's Public Document Room located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of August, 2018.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,
Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–17166 Filed 8–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–458 and 72–49; NRC–2017–0239]

In the Matter of Entergy Louisiana, LLC and Entergy Operations, Inc., River Bend Station, Unit 1, and Independent Spent Fuel Storage Installation Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Indirect transfer of license; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to permit the indirect transfer of membership interests in Entergy Louisiana, LLC (ELL; the owner of River Bend Station, Unit 1, and the independent spent fuel storage installation facility) to the extent ELL is affected by the addition of Entergy Arkansas, LLC; Entergy Mississippi, LLC; and Entergy New Orleans, LLC to Entergy Utility Holding Company, LLC (EUHC). Upon execution of the transfer, these changes will result in additional members of EUHC that may dilute the resources and voting power of its members, including ELL.

DATES: The Order was issued on August 1, 2018, and is effective for one year.

ADDRESSES: Please refer to Docket ID NRC–2017–0239 when contacting the NRC about the availability of

information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0239. Address questions about NRC dockets to Jennifer Borges; telephone: 301–287–9127; e-mail: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Margaret W. O'Banion, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1233; e-mail: *Margaret.O'Banion@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated at Rockville, Maryland, this 7th day of August 2018.

For the Nuclear Regulatory Commission.

Margaret W. O'Banion,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Order Approving Indirect Transfer of Control of License

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–458 and 72–49; License No. NPF–47]

In the Matter of Entergy Louisiana, LLC and Entergy Operations, Inc.

River Bend Station, Unit 1

ORDER APPROVING INDIRECT TRANSFER OF CONTROL OF LICENSE

I.

Entergy Louisiana, LLC (ELL) and Entergy Operations, Inc. (EOI) (together, the licensees) are co-holders of Facility Operating License No. NPF–47 for River Bend Station, Unit 1 (RBS), and the general license for the independent spent fuel storage installation (ISFSI). ELL is the owner and EOI is authorized to possess, use, and operate RBS and the ISFSI, which are located in West Feliciana Parish, Louisiana.

II.

By application dated September 21, 2017, EOI requested, on behalf of itself, ELL, and their parent companies (together, the applicants), pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.80, ''Transfer of licenses,'' that the U.S. Nuclear Regulatory Commission (NRC) consent to the indirect transfer of membership interests in ELL to the extent ELL is affected by the addition of Entergy Arkansas, LLC (EAL); Entergy Mississippi, LLC (EML); and Entergy New Orleans, LLC (ENOL) to Entergy Utility Holding Company, LLC (EUHC). These changes will result (upon execution of the transfers) in additional members of EUHC that may dilute the resources and voting power of its members.

The application proposes no physical or operational changes to the facilities. The interconnections that provide offsite power to RBS do not change as a result of the proposed indirect license transfer.

The applicants requested NRC approval of the indirect transfer of membership interests in ELL. The NRC published a notice, ''Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station, Unit 1; River Bend Station, Unit 1; and Waterford Steam Electric Station, Unit 3 Consideration of Approval of Transfer of Licenses and Conforming Amendments,'' in the **Federal Register** on December 29, 2017 (82 FR 61800). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the NRC gives its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that the licensees are qualified to hold the license to the extent proposed to permit the indirect transfer of membership interests in ELL to the extent ELL is affected by the addition of EAL, EML, and ENOL to EUHC. The NRC staff has also determined that the proposed license transfer is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC pursuant thereto. The findings set forth above are supported by an NRC safety evaluation dated August 1, 2018.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; Title 42 of the *United States Code* Sections 2201(b), 2201(i), and 2234; and 10 CFR 50.80, IT IS HEREBY ORDERED that the application regarding the proposed indirect license transfer is approved.

IT IS FURTHER ORDERED that, after receipt of all required regulatory approvals of the proposed transfer action, EOI shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt, and of the date of closing of the transfer, no later than 5 business days before the date of the closing of the transfer. Should the proposed indirect transfer not be completed within 1 year of this order's date of issuance, this order shall become null and void; however, upon written application and for good cause shown, such date may be extended by order.

This order is effective upon issuance.

For further details with respect to this order, see the application dated September 21, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17268A213), and the NRC's safety evaluation dated August 1, 2018 (ADAMS Accession No. ML18177A236), which are available for public inspection at the NRC's Public Document Room, located at One White Flint North, Public File Area 01–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS, or who encounter problems accessing the documents located in ADAMS, should contact the NRC Public Document Room reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of August 2018.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2018–17167 Filed 8–9–18; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Meeting of the Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Regulatory Policies & Practices

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on August 22, 2018, at 11545 Rockville Pike, Room T–2B1, Rockville, Maryland 20852.

This meeting will be open to public attendance. The agenda for the subject meeting shall be as follows:

Wednesday, August 22, 2018—1:00 p.m. Until 5:00 p.m.

The Subcommittee will review the Early Site Permit for Clinch River (Section 13.3, ''Emergency Planning'') and will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. The public bridgeline number for the meeting is 866–822–3032, passcode 8272423. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 4, 2017 (82 FR 46312).

Detailed meeting agendas and meeting transcripts are available on the NRC website at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, Maryland 20852. After registering with Security, please contact Mr. Theron Brown (Telephone 301–415–6207) to be escorted to the meeting room.

Dated: August 2, 2018.

Mark L. Banks,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2018–17119 Filed 8–9–18; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83780; File No. SR–NYSEARCA–2018–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

August 6, 2018.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 31, 2018, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective August 1, 2018. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the Fee Schedule, effective August 1, 2018, to modify or eliminate the criteria for achieving various credits.

The Exchange currently provides a number of incentives for OTP Holders and OTP Firms (collectively, ''OTPs'') designed to encourage OTPs to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. Among these incentives are enhanced posted liquidity credits based on achieving certain percentages of NYSE Arca Equity daily activity, also known as ''cross-asset pricing.'' In addition, certain of the qualifications for achieving these incentives are more tailored to specific activity (*i.e.,* posting in Penny Pilot issues only, or cross-asset pricing based only on levels of Retail Orders on the NYSE Arca Equity Market). Similarly, because the Exchange allows Order Flow Providers (''OFPs'') to aggregate their volume executed on NYSE Arca with affiliated or Appointed Market Makers, OFPs may encourage an increased level of activity from these participants to qualify for various incentives, including higher credits for Customer orders.[4] The Exchange proposes to modify certain of the thresholds for achieving posting credits on the Exchange as described below.

Pursuant to the Customer Penny Pilot Posting Tiers (the ''Penny Credit Tiers'', each a ''Penny Tier''), Customer orders

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Per the Fee Schedule, ''[u]nless Professional Customer executions are specifically delineated, such executions will be treated as 'Customer' executions for fee/credit purposes.'' *See* Fee Schedule, NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS.

that post liquidity and are executed on the Exchange earn a base credit of $0.25 per contract, with the ability to earn increased credits (up to $0.50) based on the participant's activity. Currently, there are eight (8) Penny Credit Tiers, with increasing minimum volume thresholds associated with each tier.

The Exchange proposes to eliminate Penny Tier 4, which would remove the $0.46 per contract credit for OTPs that achieve at least 0.60% of TCADV from Customer posted interest in all issues, plus executed Average Daily Volume (''ADV'') of Retail Orders of 0.1% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. Consistent with this change, the Exchange proposed to renumber the remaining higher Tiers (*i.e.,* to re-number current Penny Tiers 5–8 to Penny Tiers 4–7). The Exchange also proposes to modify certain minimum volume thresholds in new Penny Tiers 5 and 6. In new Penny Tier 5, in the alternative qualification, an OTP would earn the $0.48 per contract credit by achieving at least 0.75% (up from 0.50%) of TCADV from Customer posted interest in all issues, plus at least 0.45% of TCADV from Market Maker Total Electronic Volume.[5] As proposed, in the new Penny Tier 6, an OTP would earn the $0.49 per contract credit by achieving at least 0.75% (up from 0.50%) of TCADV from Customer posted interest in all issues, plus at least 0.60% of TCADV from Market Maker Total Electronic Volume.

The Exchange also offers a Customer Incentive Program (the ''Incentive Program''), which offers OTPs the ability to earn one additional credit by achieving the minimum thresholds listed.[6] The Exchange now proposes to eliminate one of the alternatives. Specifically, the Exchange would no longer provide an additional $0.03 per contract credit for achieving executed ADV of retail orders of 0.10% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market.

The Exchange also offers increasing credits to be applied to executions of Customer posted interest in non-Penny Pilot issues based on minimum volume thresholds through the Customer Posting Credit Tiers in Non-Penny Pilot Issues (''Non-Penny Credit Tiers'', each a ''Non-Penny Tier''). The Exchange proposes to eliminate one Non-Penny Tier (the current Tier A), which would remove the $0.83 per contract credit for OTPs that achieve at least 0.70% of TCADV from Customer posted interest in all issues, plus executed ADV of Retail Orders of 0.1% ADV of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market. Consistent with this change, the Exchange proposes to re-title the balance of the Non-Penny Tiers (*i.e.,* to re-title current Non-Penny Tiers B–F to Non-Penny Tiers A through E).

Additionally, the Exchange proposes to modify the minimum volume threshold required to achieve new Tier B, such that an OTP would earn the $0.94 per contract credit by achieving at least 0.75% (up from 0.50%) of TCADV from Customer posted interest in all issues, plus an ADV from Market Maker Total Electronic Volume equal to 0.45% of TCADV. The Exchange also proposes to modify the minimum volume threshold for the new Tier D, such that an OTP would earn the $1.00 per contract credit by achieving at least 0.75% (up from 0.50%) of TCADV from Customer posted interest in all issues, plus an ADV from Market Maker Total Electronic Volume equal to 0.60% of TCADV.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed modifications to the minimum threshold qualification for certain of the Penny, and Non-Penny, Credit Tiers and the Incentive Program are reasonable, equitable, and not unfairly discriminatory because, among other things, the proposed changes would streamline the available means for an OTP to qualify for credits on the Exchange, while still offering OTPs incentives to direct volume to the Exchange. The Exchange notes that it proposes to remove certain tiers from the various posting credit programs because such tiers are underutilized. The proposed changes, therefore, should provide more meaningful criteria for OTPs to qualify for (and seek to achieve higher) credits by posting desired volume on the Exchange. The Exchange believes that the proposed changes would continue to attract Customer (and Professional Customer) orders to the Exchange, which results in increased liquidity to the benefit of all participants by offering greater price discovery, increased transparency, and an increased opportunity to trade on the Exchange.

The Exchange also believes the proposed changes are reasonable, equitable and not unfairly discriminatory because the modified minimum volume thresholds for the Penny, and Non-Penny, Tiers and the Incentive Program would be available to all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes the proposed modifications are reasonable, equitable and not unfairly discriminatory because they encourage participants to enhance their order flow to qualify for the various incentives, including encouraging more participants to have affiliated or appointed order flow directed to the Exchange. Further, encouraging OFPs to send higher volumes of Customer (and Professional Customer) orders to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

The proposed changes to the various posting credit incentives offered on the Exchange are also reasonable as they are consistent with similar such programs offered on other exchanges.[9]

Finally, the Exchange believes the proposed non-substantive changes to the Fee Schedule (*see supra* note 6) are reasonable, equitable, and not unfairly discriminatory because it would add clarity, transparency and internal consistency to the Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, the Exchange believes that the

[5] Per the Fee Schedule, the ''Total Industry Customer equity and ETF option average daily volume ('TCADV') includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options.'' *See* Fee Schedule, endnote 8.

[6] The Exchange proposes to make a non-substantive change to the second alternative basis for the Incentive Program by replacing reference to ''Total Industry Customer equity and ETF option ADV'' with the defined abbreviation of ''TCADV,'' which would add clarity and internal consistency to the Fee Schedule. *See* proposed Fee Schedule, Customer Incentive Program.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] *See e.g.,* NASDAQ Options Market, Chapter XV Options Pricing, Sec. 2, Fees and Rebates, *available here, http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_15&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F* (setting forth various rebates per executed contract, including for adding Customer and Professional Customer volume).

proposed changes would encourage competition, including by attracting additional liquidity to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery. The Exchange does not believe that the proposed change would impair the ability of any market participants or competing order execution venues to maintain their competitive standing in the financial markets. Further, the incentive would be available to all similarly-situated participants, and, as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants and may, in fact, encourage competition. The Exchange notes that the proposed rule change merely modifies existing posting tiers that offer additional credits to OTPs that (opt to) meet certain volume thresholds. The proposed change does not impose any new burden or requirement on OTPs, as achieving the modified tiers is voluntary (*i.e.,* an OTP that does not does not seek to achieve additional credits by meeting the modified volume thresholds has no obligation to do so).

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2018–56 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2018–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2018–56 and should be submitted on or before August 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17124 Filed 8–9–18; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 83 FR 38759, August 7, 2018.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, August 9, 2018 at 2:00 p.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Thursday, August 9, 2018 at 2:00 p.m. has been changed to Thursday, August 9, 2018 at 1:00 p.m.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: August 7, 2018.

Brent J. Fields,

Secretary.

[FR Doc. 2018–17259 Filed 8–8–18; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83781; File No. SR–FINRA–2018–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 9000 Series (Code of Procedure) To Reflect an Internal Reorganization of FINRA's Enforcement Operations

August 6, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2018, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make technical and other non-substantive changes to FINRA Rule 9000 Series (Code of Procedure) (''the Code'') to reflect an internal reorganization of FINRA's enforcement operations to create a single Department of Enforcement.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In March 2017, FINRA launched FINRA360, a comprehensive self-evaluation and organizational improvement initiative to ensure that FINRA is operating as an optimally effective self-regulatory organization, working to protect investors and promote market integrity in a manner that supports strong and vibrant capital markets. In connection with this ongoing initiative, FINRA has sought feedback from its members, as well as investors, investor advocates, regulators, trade associations and FINRA employees. FINRA has analyzed the feedback received from these stakeholders and as a result has made significant changes across the organization.[3]

Until last summer, FINRA had two distinct enforcement teams. One enforcement group that was historically part of the Department of Market Regulation handled disciplinary actions related to trading-based matters found through Market Regulation's surveillance and examination programs; and a separate enforcement group handled cases referred from other regulatory oversight divisions including Member Regulation, Corporate Financing, the Office of Fraud Detection and Market Intelligence, and Advertising Regulation. As part of FINRA360, stakeholders raised concerns that these dual programs sometimes resulted in duplication of effort and inconsistency of results. As a result, in July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. On July 26, 2018, FINRA announced that it had completed the final phase of this consolidation.[4] The unified structure is intended to improve FINRA's ability to streamline investigations, share information, enhance consistency and maximize resources to protect investors and the markets.

The proposed rule change would make technical and other non-substantive changes to the Code to reflect the single Department of Enforcement. The proposed changes would therefore remove references to the Market Regulation department, its head and employees from the Code where those references reflect the previously separate Market Regulation enforcement function.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide clarity to members and the public by reflecting throughout the Code the now unified FINRA Department of Enforcement.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the internal reorganization of FINRA's enforcement operations can immediately be reflected in the Code. Because waiver of the operative delay would increase transparency and accuracy of the Code, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA, Progress Report on FINRA360 (April 2018), *https://www.finra.org/sites/default/files/FINRA360ProgressReport_April2018.pdf.*

[4] *See* News Release, FINRA, FINRA Announces Enforcement Structure, Senior Leadership (July 26, 2018), *http://www.finra.org/newsroom/2018/finra-announces-enforcement-structure-senior-leadership-team.*

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires FINRA to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[8] *Id.*

[9] 17 CFR 240.19b–4(f)(6)(iii).

believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2018–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2018–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2018–027 and should be submitted on or before August 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17123 Filed 8–9–18; 8:45 am]

BILLING CODE 8011–01–P

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83782; File No. SR–CBOE–2018–053]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Silexx Trading Platform Fees Schedule

August 6, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this filing is to amend the Silexx Fees Schedule to introduce a waiver of Login ID fees for the first month for new users of any of the Silexx platforms and eliminate obsolete language.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Silexx Fees Schedule to introduce a waiver of Login ID fees for the first month for new users of any of the Silexx platforms and eliminate obsolete language.

By way of background, Silexx is an order entry and management trading platform for listed stocks and options that support both simple and complex orders.[3] The platform is a software application that is installed locally on a user's desktop. It provides users with the capability to send option orders to U.S. options exchanges and stock orders to U.S. stock exchanges (and other trading centers), and allows users to input parameters to control the size, timing, and other variables of their trades. Silexx includes access to real-time options and stock market data, as well as access to certain historical data. The platform also provides users with the ability to maintain an electronic audit trail and provide detailed trade reporting. In addition, Silexx offers other functionality such as access to crossing orders tickets, equity order reports, and market data feeds (for specific fees). Use of Silexx is completely optional.

Login IDs

Platform Login IDs may be purchased for different versions of the platform, including Basic, Pro, Sell-Side, Pro Plus

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The platform also permits users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users' choice.

Risk, and Buy-Side Manager. The Exchange now proposes to provide that Login ID fees are waived for the first month for any new user firm (*i.e.,* a firm that has never used any Silexx platform before).[4] The proposed fee waivers apply during the calendar month in which Login IDs are first subscribed.[5]

Clean Up Change

The Exchange recently introduced a two-month free-upgrade period for users that are currently on Silexx Basic. The upgrade allowed users of Silexx Basic to use the functionality of Silexx Pro for a period of two months (May 1, 2018 through June 30, 2018) at the current Silexx Basic rate of $200 per month per Login ID. After the two-month period ends, beginning July 1, 2018, the users were to be charged at the Silexx Pro rate of $400 per month until they choose to downgrade. As the free-upgrade period has since ended, the Exchange proposes to delete the obsolete language and eliminate the reference in the Silexx Fees Schedule

These proposed changes to the Silexx Fees Schedule are to take effect on August 1, 2018.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Particularly, the Exchange believes the proposed fee waiver provides for the equitable allocation of reasonable fees because the waiver of Platform Login ID fees for the first month will apply to all new users of new firms, regardless of which version of the platform they subscribe to. Additionally, the Exchange believes the proposed fee waiver is reasonable because new user firms will not have to pay those fees and because it serves as an incentive to market participants to start using the Silexx platform as an additional trading tool on their trading desks. The Exchange also notes that use of the platform is discretionary and not compulsory.

Lastly, the Exchange believes eliminating obsolete language maintains clarity in the Silexx Fees Schedule and alleviates potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Cboe Options does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose any burden on intramarket competition because the proposed rule change applies to all new user firms of Silexx. The Exchange notes that each version of Silexx is available to all market participants, and users have discretion to determine which version of the platform they register for based on functionality.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to Cboe Options. To the extent that the proposed changes make Cboe Options a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become Cboe Options market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2018–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2018–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

[4] For example, if a new firm subscribes to 3 Basic Login IDs and 4 Pro Login IDs in August 2018, all 7 Login IDs will be waived for the month of August 2018. All other applicable Silexx fees would apply.

[5] For example, if a new firm subscribes to a Silexx Login ID on August 15th, the firm's Login ID fee would be waived for the month of August 2018 only.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. All submissions should refer to File Number SR–CBOE–2018–053 and should be submitted on or before August 31, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–17122 Filed 8–9–18; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 10493]

Determination Under Section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 Regarding the Government of Nauru

Pursuant to section 7070(c)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018 (Div. K, Pub. L. 115–141), I hereby determine, by delegation from the Secretary of State, that the Government of Nauru has recognized the independence of, or has established diplomatic relations with, the Georgian territories of Abkhazia and Tskhinvali Region/South Ossetia.

This determination shall be published in the **Federal Register** and on the Department of State website and, along with the accompanying Memorandum of Justification, shall be reported to Congress.

Dated: July 30, 2018.

John J. Sullivan,

Deputy Secretary of State.

[FR Doc. 2018–17109 Filed 8–9–18; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF STATE

[Public Notice: 10495]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: Exhibition of Two Renaissance-Era Italian Paintings

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that two objects to be exhibited in the Italian Renaissance Paintings Gallery of The J. Paul Getty Museum at the Getty Center, imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about December 17, 2018, until on or about August 5, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–11 of July 27, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–17148 Filed 8–9–18; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10497]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Celebrating Tintoretto: Portrait Paintings and Studio Drawings" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Celebrating Tintoretto: Portrait Paintings and Studio Drawings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about October 15, 2018, until on or about January 27, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–11 of July 27, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–17169 Filed 8–9–18; 8:45 am]

BILLING CODE 4710–05–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10494]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Rembrandt: Painter as Printmaker'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Rembrandt: Painter as Printmaker,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Denver Art Museum, Denver, Colorado, from on or about September 16, 2018, until on or about January 6, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 236–11 of July 27, 2018.

Jennifer Z. Galt,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2018–17150 Filed 8–9–18; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at June 15, 2018, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on June 15, 2018, in Baltimore, Maryland, the Commission approved or tabled the applications of certain water resources projects; and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: June 15, 2018.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Gwyn Rowland, Manager, Governmental and Public Affairs, telephone: 717–238–0423, ext. 1316; fax: 717–238–2436; *growland@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also presented or acted upon at the business meeting: (1) Election of the member from the State of New York as Chair of the Commission and the member of the Commonwealth of Pennsylvania as Vice Chair of the Commission for the period of July 1, 2018, to June 30, 2019; (2) adoption of FY2019 Regulatory Program Fee Schedule, effective July 1, 2018; (3) adoption of a current expense budget for the period of July 1, 2019, to June 30, 2020; (4) adoption of a resolution authorizing a purchase approval threshold; (5) approval of an agreement, a grant amendment and a subcontract; (6) adoption of a records retention policy; (7) delegation of authority to the Executive Director to enter into certain settlement agreements to resolve violations of regulations or approval conditions; (8) adoption of the FY2019–2021 Water Resources Program; (9) adoption of amendments to the *Comprehensive Plan for the Water Resources of the Susquehanna River Basin;* and (10) a report on delegated settlements with the following project sponsors, pursuant to Commission Resolution 2014–15: Briarwood Golf Club, in the amount of $4,000; Sugar Hollow Water Services, in the amount of $8,000; SWEPI LP—Cowanesque River, in the amount of $10,000; and Valley Green Golf Course, in the amount of $1,500 with agreement to add a water source.

Project Applications Approved

The Commission approved the following project applications:

1. Project Sponsor and Facility: Brymac, Inc. dba Mountain View Country Club (Pond 3/4), Harris Township, Centre County, PA. Surface water withdrawal of up to 0.240 mgd (peak day).

2. Project Sponsor and Facility: Dillsburg Area Authority, Franklin Township, York County, PA. Modification to increase groundwater withdrawal by an additional 0.099 mgd (30-day average), for a total groundwater withdrawal of up to 0.200 mgd (30-day average) from Well 3 (Docket No. 20081207).

3. Project Sponsor and Facility: Healthy Properties, Inc. (Sugar Creek), North Towanda Township, Bradford County, PA. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140602).

4. Project Sponsor and Facility: LDG Innovation, LLC (Tioga River), Lawrenceville Borough, Tioga County, PA. Renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20140604).

5. Project Sponsor and Facility: Lycoming Engines, a Division of Avco Corporation, City of Williamsport, Lycoming County, PA. Renewal of groundwater withdrawal of up to 1.440 mgd (30-day average) for groundwater remediation system (Docket No. 19880203).

6. Project Sponsor and Facility: Mountain Energy Services, Inc. (Tunkhannock Creek), Tunkhannock Township, Wyoming County, PA. Renewal of surface water withdrawal of up to 1.498 mgd (peak day) (Docket No. 20140606).

7. Project Sponsor and Facility: Niagara H2O Company (Susquehanna River), Towanda Township, Bradford County, PA. Application for surface water withdrawal of up to 1.500 mgd (peak day).

8. Project Sponsor and Facility: Northeast Marcellus Aqua Midstream I, LLC (Susquehanna River), Tunkhannock Township, Wyoming County, PA. Surface water withdrawal of up to 5.000 mgd (peak day).

9. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (Pine Creek), Watson Township, Lycoming County, PA. Renewal of surface water withdrawal of up to 0.918 mgd (peak day) (Docket No. 20140609).

10. Project Sponsor and Facility: Pro-Environmental, LLC (Martins Creek), Lathrop Township, Susquehanna County, PA. Renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20140610).

11. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Fall Brook), Troy Township, Bradford County, PA. Renewal of surface water withdrawal of up to 0.176 mgd (peak day) (Docket No. 20140615).

12. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Unnamed Tributary to North Branch Sugar Creek), Columbia Township, Bradford County, PA. Renewal of surface water withdrawal of up to 0.926 mgd (peak day) (Docket No. 20140616).

13. Project Sponsor and Facility: Sugar Hollow Water Services LLC (Bowman Creek), Eaton Township, Wyoming County, PA. Renewal of surface water withdrawal of up to 0.249 mgd (peak day) (Docket No. 20140612).

14. Project Sponsor and Facility: Susquehanna Gas Field Services, LLC, Meshoppen Borough, Wyoming County, PA. Renewal of groundwater withdrawal of up to 0.216 mgd (30-day average) from the Meshoppen Pizza Well (Docket No. 20140613).

15. Project Sponsor and Facility: Susquehanna Gas Field Services, LLC (Susquehanna River), Meshoppen Township, Wyoming County, PA. Renewal of surface water withdrawal of up to 1.650 mgd (peak day) (Docket No. 20140614).

16. Project Sponsor and Facility: Town of Vestal, Broome County, NY. Renewal of groundwater withdrawal of up to 1.440 mgd (30-day average) from Well 4–4 (Docket No. 19810508).

Project Applications Tabled

The Commission tabled action on the following project applications:

1. Project Sponsor: SUEZ Water Pennsylvania Inc. Project Facility: Center Square Operation, Upper Allen Township, Cumberland County, PA. Application for groundwater withdrawal of up to 0.107 mgd (30-day average) from Well 1.

2. Project Sponsor: SUEZ Water Pennsylvania Inc. Project Facility: Center Square Operation, Upper Allen Township, Cumberland County, PA. Application for renewal of groundwater withdrawal of up to 0.379 mgd (30-day average) from Well 2 (Docket No. 19861104).

3. Project Sponsor and Facility: Togg Mountain LLC, Town of Fabius, Onondaga County, NY. Application for consumptive use of up to 0.485 mgd (peak day).

4. Project Sponsor and Facility: Togg Mountain LLC (West Branch of Tioughnioga Creek), Town of Fabius, Onondaga County, NY. Application for surface water withdrawal of up to 2.200 mgd (peak day).

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: August 6, 2018.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2018–17128 Filed 8–9–18; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and the Federal Railroad Administration (FRA).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans and the FRA, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, State Route 34 (SR–34) between postmile 6.27 to postmile 6.77, in the City of Oxnard, in the County of Ventura, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 7, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Susan Tse Koo, Branch Chief, Division of Environmental Planning, California Department of Transportation. Address: 100 S Main Street, MS 16A, Los Angeles, CA 90012. Regular Office Hours M–F 8:00 a.m .to 5:00 p.m., Phone number (213) 897–1821, Email *Susan.Tse@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans and FRA have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The City of Oxnard (City), in cooperation with the Ventura County Transportation Commission (VCTC) and the California Department of Transportation (Caltrans), is proposing to construct a grade separation (Project) on Rice Avenue where it crosses over State Route 34 (SR–34) and the Union Pacific Railroad (UPRR) track (Project Area). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment with Finding of No Significant Impact (EA, FONSI) for the project, approved on May 16, 2018, and in other documents in the FHWA project records. The EA, FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA, FONSI can be viewed and downloaded from the project website at *http://www.dot.ca.gov/d7/env-docs/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Memorandum of Understanding with FHWA for NEPA assignment dated, December 23, 2016
2. Safe, Accountable, Flexible and Efficient, Transportation Equity Act, A Legacy for Users (SAFETEA–LU Section 6002)
3. Title VI of the Civil Rights Act of 1967
4. MAP–21 (Pub. L. 112–141)
5. Section 4(f), Department of Transportation Act of 1966
6. Clean Air Act
7. Farmland Protection Policy Act
8. National Historic Preservation Act (NHPA)
9. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as Amended

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Matt Schmitz,

Director, Project Delivery, FHWA—CA Division.

[FR Doc. 2018–17113 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–FY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

AGENCY: Texas Department of Transportation (TxDOT), Federal Highway Administration (FHWA), U.S. Department of Transportation.

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT pursuant to statute and a Memorandum of Understanding dated December 16, 2014, and executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. Those actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway project will be barred unless the claim is filed on or before January 21, 2019. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Swonke, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2734; email: *carlos.swonke@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE) or Environmental Assessment (EA) issued in connection with the projects and in other key project documents. The CE or EA, and other key documents for the listed projects are available by contacting TxDOT at the address provided above.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. US 87 from US 54 to 0.19 miles north of US 385 in Dallam County. TxDOT, Amarillo District, proposes to improve the clearance on US 87 under the Union Pacific Railroad (UPRR) bridge in Dalhart. The proposed project would lower the elevation of US 87 under the railroad bridge up to two feet and add a detention facility to improve drainage particularly during flooding situations. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on February 10, 2015, the Finding of No Significant Impact (FONSI) issued on February 10, 2015 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Amarillo District Office at 5715 Canyon Drive, Amarillo, Texas 79110; telephone (806) 356–3200.

2. SL 335 from FM 2590 to SW 9th Avenue in Randall and Potter County. TxDOT, Amarillo District, proposes to upgrade existing roadways and a new location alignment to a controlled access facility including frontage roads, ramps, and bicycle and pedestrian accommodations. The project length is approximately 8 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 21, 2017, the Finding of No Significant Impact (FONSI) issued on July 21, 2017 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Amarillo District Office at 5715 Canyon Drive, Amarillo, Texas 79110; telephone (806) 356–3200.

3. SL 335 from FM 2590 to Bell Street, and IH 27 at SL 335 Interchange in Randall County. TxDOT, Amarillo District, proposes to improve SL 335 in the southwest portion of the City of Amarillo. The improvements would include the conversion of SL 335 from a non-freeway to a freeway section with frontage roads, ramps, grade separations over intersection cross streets, a four main lane section, with a provision for future expansion to an ultimate six main lane section. The purpose of the proposed project is to develop an alternative freight corridor, provide a hazardous cargo route, and to improve traffic operations, mobility, safety, and

connectivity through Amarillo. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on May 1, 2015, the Finding of No Significant Impact (FONSI) issued on May 1, 2015 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Amarillo District Office at 5715 Canyon Drive, Amarillo, Texas 79110; telephone (806) 356–3200.

4. SL 255 from FM 1520 to US 271 in Camp County. TxDOT, Atlanta District, proposes to construct a new location two-lane roadway, State Loop SL 255 (formerly referred to as Farm-to-Market Road FM 3535), near Pittsburg, Texas. The total length of the proposed project is approximately 2.45 miles with a proposed right-of-way (ROW) width of approximately 150 feet (ft.). The purpose of the project is to provide an efficient east-west roadway for the various users of the northern Camp County transportation system. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on June 26, 2017, the Finding of No Significant Impact (FONSI) issued on June 26, 2017 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Atlanta District Office at 701 East Main Street, Atlanta, Texas 75551; telephone (903) 799–1308.

5. I–35 from Rundberg Lane to US 290 East, Travis County. The project would include the addition of three direct connectors, collector-distributors to bypass the St. Johns Avenue signalized intersection, reconstruction of the St. Johns Avenue bridge and bicycle and pedestrian improvements. The project is approximately 1.6 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 1, 2016, the Finding of No Significant Impact (FONSI) issued on August 1, 2016, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone (512) 832–7000.

6. FM 969 from FM 973 to Hunters Bend Road, Travis County. The project would include widening the existing two-lane roadway to four lanes, with a continuous two-way center turn lane, outside shoulders and a continuous sidewalk. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 18, 2017, the Finding of No Significant Impact (FONSI) issued on September 18, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone (512) 832–7000.

7. RM 2222 and RM 620 from RM 620 to Bonaventure Drive and Steiner Ranch Boulevard to RM 2222, Travis County. The project includes the addition of a northbound auxiliary lane on RM 620 from Steiner Ranch Blvd. to a 0.4 mile new arterial connector from RM 620 to RM 2222, improved operations at the RM 620/RM 2222/Bullick Hollow Road intersection, and improvements to RM 2222 from the new arterial connector to the RM 620/RM 2222/Bullick Hollow Road intersection. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on April 4, 2018, the Finding of No Significant Impact (FONSI) issued on April 4, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone (512) 832–7000.

8. US 59/I–69 from Fostoria Road near the Montgomery/Liberty County line to SL 573, Montgomery/Liberty County. This project intends to widen the existing four lane (two lanes in each direction) divided highway with no designated frontage roads to six lanes (three lanes in each direction) and one-way, two lane frontage roads. The project will also include installation of sidewalks on the outside of the southbound frontage road and the construction of 8-foot wide, shared use lanes for bicycles on the northbound and southbound frontage lanes. The project length is approximately 4.475 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 19, 2018, the Finding of No Significant Impact (FONSI) issued on March 23, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Beaumont District Office at 8350 Eastex Freeway, Beaumont, TX 77708; telephone (409) 892–7311.

9. IH 20 from 3.5 miles east of LP 254 to SH 16 in Eastland County. TxDOT, Brownwood District, proposes to realign the interstate approximately 500 feet to the south of the existing alignment to alleviate the existing horizontal and vertical curvature. Two new continuous two-way frontage roads would be constructed on both sides of the new highway. The project length is approximately 3 miles in length. The proposed improvements would alleviate the safety hazards that contribute to the high frequency and severity of traffic incidents at Ranger Hill. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on October 26, 2016, the Finding of No Significant Impact (FONSI) issued on October 26, 2016 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Brownwood District Office at 2495 Highway 183 North, Brownwood, Texas 76802; telephone (325) 646–2591.

10. US 281 at Premont from 0.5 miles north of FM 1538 to 1.0 miles north of CR 431, Jim Wells County. The proposed project includes construction of an access controlled relief route around the city of Premont that meets interstate standards. This 5.17 mile long project would consist of two northbound and southbound 12-foot mainlanes with 10-foot outside shoulders and 4-foot inside shoulders, separated by a 48-foot grassy median. The project purpose is to develop US 281 to an Interstate facility that would meet Interstate design standards and improve safety in a manner that is sensitive to the environment and serves the access and mobility needs of the affected communities. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on October 2, 2015, the Finding of No Significant Impact (FONSI) issued on October 2, 2015, and

other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Corpus Christi District Office at 1701 S. Padre Island Drive, Corpus Christi, TX 78416–1324; telephone (361) 808–2300.

11. Holly Road from SH 286 (Crosstown Expressway) to Greenwood Drive, Nueces County. The project would include constructing two additional travel lanes, providing a four lane curb and gutter facility with a raised median, sidewalks, and bicycle lanes along Holly Road from SH 286 (Crosstown Expressway) to Greenwood Drive in Corpus Christi, Nueces County, Texas, a distance of approximately 3,960 linear feet (0.75 mile). The purpose of the project is to improve mobility and enhance safety. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 15, 2016, the Finding of No Significant Impact (FONSI) issued on July 15, 2016, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Corpus Christi District Office at 1701 S. Padre Island Drive, Corpus Christi, TX 78416–1324; telephone (361) 808–2300.

12. SH 200 from SH 361 to FM 1069 in San Patricio County. SH 200 is proposed to be constructed as a principal arterial roadway to route commercial/industrial traffic around the southwestern portion of the city of Ingleside. The proposed project is approximately 1.98 miles in length, with an initial phase of construction of two 12-foot travel lanes and two 10-foot wide shoulders within a 160-foot wide right-of-way, and an ultimate build-out of four 12-foot wide travel lanes and two 10-foot wide shoulders. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 26, 2016, the Finding of No Significant Impact (FONSI) issued on August 26, 2016, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Corpus Christi District Office at 1701 S. Padre Island Drive, Corpus Christi, TX 78416–1324, telephone (361) 808–2300.

13. FM 2478 from US 380 to North of FM 1461 in Collin County, Texas. The proposed improvements would include the expansion of the existing facility from a two-lane rural to a six-lane urban divided roadway. Approximately 0.54 miles of FM 2478 would be realigned and constructed on new location from Rhea Mills Circle north to FM 1461. The length of the proposed project is approximately 3 miles. The purpose of the proposed project is to improve mobility and bring the roadway up to current design standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 22, 2017, Finding of No Significant Impact (FONSI) issued on September 22, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

14. FM 455 from West of FM 2450 to East of Mario Road, in Denton County. The project would reconstruct and widen FM 455 west of FM 2450 to east of Marion Road for an approximate distance of 5.53 miles. Proposed improvements would involve the expansion of FM455 from a two-lane rural highway to a four-lane. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 15, 2018, the Finding of No Significant Impact (FONSI) issued on March 15, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

15. Loop 9 from Interstate 35 East to Interstate 45 in Dallas and Ellis Counties, Texas. The proposed improvements would include constructing a six-lane new location frontage road system. The project would also construct intersections at major crossroads and grade separations at Interstate Highway 35 East and BNSF Railroad. The length of the proposed project is approximately 10 miles. The purpose of the proposed project is to provide a direct link from Interstate 35 East to Interstate 45 to serve the residents and businesses in the area. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on September 28, 2017, Finding of No Significant Impact (FONSI) issued on November 16, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

16. SH 121 from Collin County Outer Loop to County Road 635 in Collin County, Texas. The proposed improvements would include reconstructing and widening the existing two-lane undivided roadway to a rural four-lane divided highway from Collin County Outer Loop to north of County Road 635. Grade separation intersections are proposed at FM 455 and FM 2862. The length of the proposed project is approximately 9.52 miles. The purpose of the proposed project is to improve mobility, decrease congestion, accommodate population growth, and enhance safety for the traveling public, while upgrading the facility to current design standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on January 19, 2018, Finding of No Significant Impact (FONSI) issued on January 19, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

17. SH 310 and Interstate 45 (S.M. Wright, Phase IIB): SH 310 from Pennsylvania Avenue to north of Al Lipscomb Way; and Interstate 45 from Lenway Street to Good Latimer in Dallas County, Texas. The proposed improvements would include reconstructing the existing freeway-to-freeway connections to achieve greater connectivity with major Interstate 45 cross streets. The proposed project would realign S.M. Wright Parkway to connect exclusively to Cesar Chavez Boulevard between Pennsylvania Avenue and Al Lipscomb Way. The length of the proposed project is approximately .05 mile for SH 310 (S.M. Wright Parkway) and approximately 1.0 mile for IH 45. The purpose of the proposed project is to improve operability, connections, and mobility between Interstate 45 and major cross streets near S.M. Wright Parkway. The actions by TxDOT and Federal agencies and the laws under which such actions

were taken are described in the Final Environmental Assessment (EA) approved on March 30, 2017, Finding of No Significant Impact (FONSI) issued on March 30, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

18. US 77 from south of FM 66 to north of McMillan Street in Ellis County, Texas. The proposed improvements would include the addition of a new two-lane bridge on new alignment west of the existing viaduct, and the conversion of Elm Street and Monroe Street to a one-way couplet system. The length of the proposed project is approximately 1.2 miles. The purpose of the proposed project is to improve the safety of the US 77 viaduct and reduce congestion and improve mobility through downtown Waxahachie, Texas. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 27, 2017, Finding of No Significant Impact (FONSI) issued on March 27, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Dallas District Office at 4777 E. Highway 80, Mesquite, TX 75150; telephone (214) 320–6100.

19. US 377 Relief Route from approximately one mile south of SH 171 to approximately one mile north of SH 171 in Hood and Johnson Counties, Texas. The proposed project would construct a four-lane relief route west of US 377 and the City of Cresson. The length of the proposed project is approximately 3.02 miles. The purpose of the proposed project is to provide a long-term solution to identified traffic issues at the US 377 and SH 171 intersection. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 3, 2017, Finding of No Significant Impact (FONSI) issued on September 20, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Fort Worth District Office at 2501 SW Loop 820, Fort Worth, TX 76133; telephone (817) 370–6500.

20. FM 2218 from IH 69 to SH 36, Fort Bend County. The project widens the existing two-lane undivided roadway to a four-lane divided roadway with a raised grass median. FM 2218 will also be realigned just south of Longleaf Drive, with the former road ending in a cul-de-sac. The length of the project is approximately 3.7 miles. The purpose of the project is to accommodate existing and projected growth, and bring the roadway to current design standards between SH 36 and IH 69. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 9, 2018, Finding of No Significant Impact (FONSI) issued on March 9, 2018, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5000.

21. Crabb River Road (Farm-to-Market Road 2759/Farm-to-Market Road 762), from 0.25 mile south of Sansbury Boulevard to the Lamar Consolidated Independent School District Secondary School Complex, in Fort Bend County. The project widens the existing two-lane undivided roadway to a four-lane divided roadway. The project is approximately 2.9 miles long. The purpose of the project is to improve mobility, alleviate traffic congestion, and improve safety. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 20, 2017, Finding of No Significant Impact (FONSI) issued on March 20, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5000.

22. FM 2854, from Loop 336 to Interstate Highway 45, in Montgomery County. The project will reconstruct the existing two-lane, undivided facility to a four-lane roadway with a curb and gutter and a flush median. The project is approximately two miles long. The purpose of the proposed project is to improve safety and mobility, and reduce congestion for the travelling public by constructing a divided roadway and signalized intersections. The roadway improvements will accommodate anticipated future growth in the region by adding additional capacity needed, while providing accommodations for bicyclists and pedestrians through the construction of shared-use lanes and sidewalks, in accordance with FHWA and TxDOT guidelines and policies. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on August 1, 2016, Finding of No Significant Impact (FONSI) issued on August 1, 2016, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5000.

23. McHard Road Extension, from Cullen Boulevard to Mykawa Road, Brazoria County. The project is an extension of McHard Road from Cullen Boulevard to Mykawa Road. McHard Road Extension will have an urban cross-section consisting of a four-lane divided, curb-and-gutter roadway. The project is approximately 3.45 miles long. The purpose of the project is to improve connectivity between Pearland Parkway and State Highway 288, improve mobility on FM 518/Broadway Street, and provide residents in the project area better access to amenities in the City of Pearland and Harris and Brazoria Counties. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 7, 2017, Finding of No Significant Impact (FONSI) issued on July 7, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5000.

24. SH 105, from Mount Mariah Road to FM 149, Montgomery County. The project will widen SH 105 both to the north and south of the existing highway from an undivided, two-lane highway to a four-lane divided highway. The project length is approximately 6.2 miles. The purpose of the project is to improve traffic flow within the study area and larger region and reduce the number of traffic accidents from Mount Mariah Road to FM 149. The actions by TxDOT and Federal agencies and the laws under which such actions were

taken are described in the Final Environmental Assessment (EA) approved on July 24, 2017, Finding of No Significant Impact (FONSI) issued on July 24, 2017, and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Houston District Office at 7600 Washington Avenue, Houston, Texas 77007; telephone (713) 802–5000.

25. Bulverde Road from Marshall Road to Wilderness Oak in Bexar County. The project would convert the existing two-lane roadway to a four-lane roadway with five-foot shoulders, curb and gutter, sidewalks and turn lanes. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 20, 2016, Finding of No Significant Impact (FONSI) issued on July 20, 2016 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

26. I–10 West from FM 3351 (Ralph Fair Road) to La Cantera Parkway, Bexar County. The project would add one general-purpose lane and one High Occupancy Vehicle (HOV) lane in each direction of IH 10 from approximately 3,800 feet north of FM 3351 (Ralph Fair Rd.) to La Cantera Parkway. The project would transition to the two general-purpose lanes approximately 3,800 feet north of FM 3351 (Ralph Fair Rd.) and would tie into the three general-purpose lanes at La Cantera Parkway. In addition, a 12-ft wide auxiliary lane would be added to the IH 10 westbound main lanes between the westbound on-ramp from Dominion Drive to the westbound exit ramp to FM 3351 (Ralph Fair Rd.). The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on March 30, 2017, Finding of No Significant Impact (FONSI) issued on March 30, 2017 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

27. Loop 1604 from FM 1957 to FM 471 in Bexar County. The project would convert the existing four-lane divided roadway to a four-lane expressway, and would include the construction of the southbound Loop 1604 main lanes and frontage road, entrance and exit ramps, and three grade separations. The length of the proposed project is approximately 4.1 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on May 4, 2016, Finding of No Significant Impact (FONSI) issued on May 4, 2016 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

28. Loop 1604 from US 90 to FM 1957 in Bexar County. The project would convert the existing four-lane divided roadway to a four-lane expressway with continuous frontage roads. The project would also include the construction of grade separations at major intersections located within the project limits as well as a direct connector from southbound LP 1604 to eastbound US 90. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on May 27, 2016, Finding of No Significant Impact (FONSI) issued on May 27, 2016 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

29. Quintana Road from Harmon Avenue to McKenna Avenue in Bexar County. The project includes roadway realignment, median, shared use path, turn lanes and drainage improvements. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on June 22, 2017, Finding of No Significant Impact (FONSI) issued on June 22, 2017 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

30. SH 211 from FM 1957 to FM 471 in Bexar and Medina Counties. The project includes construction of a new 7.6 mile two-lane rural arterial roadway on new location. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) approved on July 14, 2017, Finding of No Significant Impact (FONSI) issued on July 14, 2017 and other documents in the TxDOT project file. The EA, FONSI, and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 6, 2018.

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2018–17144 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2018–0114]

Deepwater Port License Application: Texas Gulf Terminals, Inc.

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments.

SUMMARY: The U.S. Coast Guard (USCG), in coordination with the Maritime Administration (MARAD), will prepare an environmental impact statement (EIS) as part of the environmental review of the Texas Gulf Terminals, Inc. (TGTI) deepwater port license application. The application proposes the ownership, construction, operation and eventual decommissioning of an offshore oil export deepwater port that would be located in Federal waters approximately 12.7 nautical miles off the coast of Corpus Christi, Texas in a water depth of approximately 93 feet. The deepwater port would allow for the loading of Very Large Crude Carriers (VLCCs) via a single point mooring buoy system.

This Notice of Intent (NOI) requests public participation in the scoping process, provides information on how to participate and announces an informational open house and public meeting in Texas. Pursuant to the criteria provided in the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* (the Act), Texas is the designated

Adjacent Coastal State for this application.

DATES: There will be one public scoping meeting held in connection with the TGTI deepwater port application. The meeting will be held in Corpus Christi, Texas on September 12, 2018, from 6:00 p.m. to 8:00 p.m. The public meeting will be preceded by an informational open house from 4:00 p.m. to 5:30 p.m.

The public meeting may end later than the stated time, depending on the number of persons wishing to speak. Additionally, materials submitted in response to this request for comments on the TGTI deepwater port license application must reach the Federal Docket Management Facility as detailed below by September 14, 2018.

ADDRESSES: The open house and public meeting in Corpus Christi, Texas will be held at the Omni Corpus Christi Hotel, 900 North Shoreline Boulevard, Corpus Christi, TX 78401, phone: (361) 887–1600, web address: *https://www.omnihotels.com/hotels/corpus-christi.* Free parking is available at the venue.

The public docket for MARAD–2018–0114 is maintained by the U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

The license application is available for viewing at the *Regulations.gov* website: *http://www.regulations.gov* under docket number MARAD–2018–0114.

We encourage you to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* If you submit your comments electronically, it is not necessary to also submit a hard copy. If you cannot submit material using *http://www.regulations.gov,* please contact either Mr. Roddy Bachman, USCG or Mr. Wade Morefield, MARAD, as listed in the following **FOR FURTHER INFORMATION CONTACT** section of this document, which also provides alternate instructions for submitting written comments. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted. Anonymous comments will be accepted. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. The Federal Docket Management Facility's telephone number is 202–366–9329, the fax number is 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, USCG, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil,* or Mr. Wade Morefield, MARAD, telephone: 202–366–7026, email: *Wade.Morefield@dot.gov.* For questions regarding viewing the Docket, call Docket Operations, telephone: 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Meeting and Open House

We encourage you to attend the informational open house and public meeting to learn about, and comment on, the proposed deepwater port. You will have the opportunity to submit comments on the scope and significance of the issues related to the proposed deepwater port that should be addressed in the EIS.

Speaker registrations will be available at the door. Speakers at the public scoping meeting will be recognized in the following order: Elected officials, public agencies, individuals or groups in the sign-up order and then anyone else who wishes to speak.

In order to allow everyone a chance to speak at a public meeting, we may limit speaker time, extend the meeting hours, or both. You must identify yourself, and any organization you represent by name. Your remarks will be recorded and/or transcribed for inclusion in the public docket.

You may submit written material at a public meeting, either in place of, or in addition to, speaking. Written material must include your name and address and will be included in the public docket.

Public docket materials will be made available to the public on the Federal Docket Management Facility website (see **ADDRESSES**).

Our public meeting location is wheelchair-accessible and compliant with the Americans with Disabilities Act. If you plan to attend an open house or public meeting and need special assistance such as sign language interpretation, non-English language translator services or other reasonable accommodation, please notify the USCG or MARAD (see **FOR FURTHER INFORMATION CONTACT**) at least 5 business days in advance of the public meeting. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comment on this proposal. The comments may relate to, but are not limited to, the environmental impact of the proposed action. All comments will be accepted. The public meeting is not the only opportunity you have to comment on the TGTI deepwater port license application. In addition to, or in place of, attending a meeting, you may submit comments directly to the Federal Docket Management Facility during the public comment period (see **DATES**). We will consider all comments and material received during the 30-day scoping period.

The license application, comments and associated documentation, as well as the draft and final EISs (when published), are available for viewing at the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2018–0114.

Public comment submissions should include:

- Docket number MARAD–2018–0114.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronically (preferred for processing) to the Federal Docket Management System (FDMS) website: *http://www.regulations.gov* under docket number MARAD–2018–0114.
- By mail to the Federal Docket Management Facility (MARAD–2018–0114), U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- By personal delivery to the room and address listed above between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.
- By fax to the Federal Docket Management Facility at 202–493–2251.

Faxed, mailed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches and suitable for copying and electronic scanning. The format of electronic submissions should also be no larger than 8½ by 11 inches. If you mail your submission and want to know when it reaches the Federal Docket Management Facility, please include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments, all submissions will be posted, without change, to the FDMS website (*http://www.regulations.gov*) and will include any personal information you provide. Therefore, submitting this information to the docket makes it public. You may wish to read the Privacy and Use Notice that is available on the FDMS website and the Department of Transportation Privacy Act Notice that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477), see Privacy Act. You may view docket submissions at the Federal

Docket Management Facility or electronically on the FDMS website.

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, including the application review process, and the receipt of the current application for the proposed TGTI deepwater port appears in the TGTI Notice of Application, August 6, 2018 edition of the **Federal Register**. The ''Summary of the Application'' from that publication is reprinted below for your convenience.

Consideration of a deepwater port license application includes review of the proposed deepwater port's impact on the natural and human environment. For the proposed deepwater port, USCG and MARAD are the co-lead Federal agencies for determining the scope of this review, and in this case, it has been determined that review must include preparation of an EIS. This NOI is required by 40 CFR 1501.7. It briefly describes the proposed action, possible alternatives and our proposed scoping process. You can address any questions about the proposed action, the scoping process or the EIS to the USCG or MARAD project managers identified in this notice (see **FOR FURTHER INFORMATION CONTACT**).

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), (2) proposed deepwater port site alternatives or (3) denying the application, which for purposes of environmental review is the ''no-action'' alternative.

Scoping Process

Public scoping is an early and open process for identifying and determining the scope of issues to be addressed in the EIS. Scoping begins with this notice, continues through the public comment period (see **DATES**), and ends when USCG and MARAD have completed the following actions:

- Invites the participation of Federal, state, and local agencies, any affected Indian tribe, the applicant, in this case TGTI, and other interested persons;
- Determines the actions, alternatives and impacts described in 40 CFR 1508.25;
- Identifies and eliminates from detailed study, those issues that are not significant or that have been covered elsewhere;
- Identifies other relevant permitting, environmental review and consultation requirements;
- Indicates the relationship between timing of the environmental review and other aspects of the application process; and
- At its discretion, exercises the options provided in 40 CFR 1501.7(b).

Once the scoping process is complete, USCG and MARAD will prepare a draft EIS. When complete, MARAD will publish a **Federal Register** notice announcing public availability of the Draft EIS. (If you want that notice to be sent to you, please contact the USCG or MARAD project manager identified in **FOR FURTHER INFORMATION CONTACT**). You will have an opportunity to review and comment on the Draft EIS. The USCG, MARAD and other appropriate cooperating agencies will consider the received comments and then prepare the Final EIS. As with the Draft EIS, we will announce the availability of the Final EIS and give you an opportunity for review and comment. The Act requires a final public hearing to be held in the Adjacent Coastal State. Its purpose is to receive comments on matters related to whether or not an operating license should be issued. The final public hearing will be held in Corpus Christi, Texas after the Final EIS is made available for public review and comment.

Summary of the Application

TGTI is proposing to construct, own, and operate a deepwater port terminal in the Gulf of Mexico to export domestically produced crude oil. Use of the DWP would include the loading of various grades of crude oil at flow rates of up to 60,000 barrels per hour (bph). Approximately eight Very Large Crude Carrier (VLCC) vessels (or equivalent volumes) would be loaded per month from the proposed deepwater port. Loading of one VLCC vessel is expected to take 48 hours, including vessel approach, mooring, cargo transfer, and vessel departure.

The overall project would consist of three distinct, but interrelated components: (1) The ''offshore'' component, (2) the ''inshore'' component, and (3) the ''onshore'' component.

The proposed deepwater port (offshore component) would be located approximately 12.7 nautical miles off the coast of North Padre Island (Kleberg County, TX) and consists of 14.71 miles of two new parallel 30-inch diameter crude oil pipelines, which terminate at a single point mooring (SPM) buoy. The SPM buoy system would be positioned in water depths of approximately 93 feet and consist of a pipeline end manifold, catenary anchor leg mooring system, and other associated equipment. The SPM would be located in BOEM lease block number 823 at latitude N 27°28′42.60″ and longitude W 97°00′48.43″.

The inshore components associated with the proposed project include 5.74 miles of two new parallel 30-inch diameter pipelines and onshore valve stations used to connect the onshore project components to offshore project components. The inshore portions of the proposed pipeline infrastructure cross the Laguna Madre Bay complex, the Gulf Intracoastal Waterway, and extend across North Padre Island to the mean high tide line located at the interface of North Padre Island and the Gulf of Mexico. The inshore project components include the installation of an onshore valve station on North Padre Island to allow for the isolation of portions of the proposed pipeline infrastructure for servicing, maintenance, and inspection operations.

Onshore components associated with the proposed project include the construction and operation of an onshore storage terminal facility (OSTF), booster station, and approximately 6.36 miles of two new parallel 30-inch diameter pipelines located within Nueces and Kleberg Counties, TX. The OSTF would occupy approximately 150 acres in Nueces County, TX and would consist of all necessary infrastructure to receive, store, measure and transport crude oil through the proposed inshore and deepwater port pipeline infrastructure. The proposed booster station would occupy approximately 8.25 acres in Kleberg County, TX and would consist of the necessary pumping infrastructure to support the transport of crude oil from the OSTF to the deepwater port. Onshore pipeline infrastructure would extend from the OSTF to the landward side of the mean high tide line located at the interface of the western shoreline of the Laguna Madre.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its administrative and rulemaking processes. DOT posts comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization;

however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 33 U.S.C. 1501, *et seq.;* 49 CFR 1.93(h))

Dated: August 6, 2018.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2018–17108 Filed 8–9–18; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Creating Options for Veterans Expedited Recovery (COVER) Commission; Notice of Meeting

In accordance with the Federal Advisory Committee Act, the Creating Options for Veterans Expedited Recovery (COVER) Commission gives notice that the second meeting will be held on August 21 and August 22, 2018 at the JW Marriott Hotel, 1331 Pennsylvania Avenue NW, Washington, DC 20004–1710. The meeting will convene at 8:00 a.m. and adjourn at 5:00 p.m. EST on both days. The meeting will be open to the public through the entirety of Day One, August 21, and again on Day Two, August 22 through the 2:00 p.m. session. On August 22, the meeting will be closed from 3:00 p.m. to 5:00 p.m. under S.C. 552b(c) under (9)(B) because it would reveal information the disclosure of which would, ''in the case of an agency, be likely to significantly frustrate implementation of a proposed agency action.'' This closed session would include continued discussion and final decisions on ground rules, decision making protocol, and strategy. Any precipitous release of those discussions through an open session will frustrate implementation and potentially our Veterans who we consider our greatest customer/benefactor of the commission.

Day 1 will focus on CARA Legislation (full scope) and integration with COVER, current VHA Mental Health Services and Resources and Current Process, Specialty and Recreational Therapies, Hyper Baric Therapy, Integrative Health, and a Question and Answer Panel by VA leading experts in CARA legislation, Mental Health and Whole Health Practices. Day 2 will include further review and discussion on past surveys of Veterans Mental Health and approach to a way forward. A listening line will be available to the public who prefer to call in rather than attend the open sessions at the JW Marriott. This listening line number will be activated 10 minutes before each of the two open sessions. The listening line number is 800–767–1750; access code 48664#.

The purpose of the COVER Commission is to examine the evidence-based therapy treatment model used by the Department of Veterans Affairs (VA) for treating mental health conditions of Veterans and the potential benefits of incorporating complementary and integrative health approaches as standard practice throughout the Department.

Any member of the public seeking additional information should email *COVERCommission@va.gov.* The Designated Federal Officer for the Commission is Ms. Sheila B. Hickman. She and the staff will be monitoring and responding to questions or comments sent to this email box. The Committee will also accept written comments which may be sent to the same email box. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: August 7, 2018.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2018–17205 Filed 8–9–18; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Veterans Affairs

38 CFR Parts 3, 8, 14, et al.
VA Claims and Appeals Modernization; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 8, 14, 19, 20, and 21

RIN 2900–AQ26

VA Claims and Appeals Modernization

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its claims adjudication, appeals, and Rules of Practice of the Board of Veterans' Appeals (Board) regulations. In addition, VA proposes to revise its regulations with respect to accreditation of attorneys, agents, and Veterans Service Organization (VSO) representatives; the standards of conduct for persons practicing before VA; and the rules governing fees for representation. This rulemaking is needed to implement the Veterans Appeals Improvement and Modernization Act. That law amended the procedures applicable to administrative review and appeal of VA decisions denying claims for benefits, creating a new, modernized review system.

Unless otherwise specified, VA intends to make the proposed regulatory changes applicable to claims processed under the new review system, which generally applies where an initial VA decision on a claim is provided on or after the effective date or where a claimant has elected to opt into the new review system under established procedures.

DATES: Comments must be received by VA on or before October 9, 2018 to be considered in the formulation of the final rule.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov*; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AQ26—VA Claims and Appeals Modernization.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Veterans Benefits Administration information: Jennifer Williams, Senior Management and Program Analyst, Appeals Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 530–9124 (this is not a toll-free number). Board of Veterans' Appeals information: Rachel Sauter, Counsel for Legislation, Regulations, and Policy, Board of Veterans' Appeals. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Modernizing the appeals process is a top priority for VA. In fiscal year (FY) 2017, claimants generally waited less than 125 days for an initial decision on VA disability compensation claims; however, they waited an average of 3 years for a final decision if they chose to appeal. Moreover, in FY2017 those claimants who chose to continue their appeal to the Board waited an average of 7 years for a decision from the date that they initiated their appeal, and the Board decision may not have resolved the appeal.

Public Law (Pub. L.) 115–55, the Veterans Appeals Improvement and Modernization Act of 2017 (hereinafter ''Pub. L. 115–55'') provides much-needed comprehensive reform for the legacy appeals process, to help ensure that claimants receive a timely decision on review where they disagree with a VA claims adjudication. It replaces the current VA appeals process with a new review process that makes sense for veterans, their advocates, VA, and stakeholders.

In the current VA appeal process, which is set in law, appeals are non-linear and may require VA staff to engage in gathering and receiving evidence and re-adjudicating appeals based on new evidence. This process of gathering evidence and readjudication can add years to the appeals process, as appeals churn between the Board and the agency of original jurisdiction. Additionally, jurisdiction of appeals processing is shared between the Board and the agency of original jurisdiction, which, for purposes of the changes made by this proposed rule, is typically the Veterans Benefits Administration (VBA).

The new statutory appeals framework features three differentiated lanes from which a claimant may choose in seeking review of a VA denial (or partial denial) of a claim. One lane is for review of the same evidence by a higher-level claims adjudicator in the agency of original jurisdiction (higher-level review); one lane is for submitting new and relevant evidence with a supplemental claim to the agency of original jurisdiction (supplemental claim); and one lane is the appeals lane for seeking review by a Veterans Law Judge at the Board by filing a Notice of Disagreement (appeal to the Board). In an appeal to the Board, Public Law 115–55 eliminates intermediate and duplicative steps previously required, such as the Statement of the Case (SOC) and the substantive appeal. Furthermore, the new law will allow the Board to maintain three separate dockets for handling the following categories of appeals: (1) Appeals where the claimant has requested a hearing, (2) appeals with no request for a hearing but where the claimant elects to submit other forms of evidence, and (3) appeals where the claimant requests Board review on the same evidence that was before the agency of original jurisdiction. These separate dockets will allow the Board to more efficiently and effectively manage distinctly different types of work. As a result of the new lane options, claimants will have increased choice for resolving disagreements with a VA decision on a claim.

In addition, the differentiated lanes will allow the agency of original jurisdiction to be the claim development entity within VA and the Board to be the appeals entity. This design is intended to reduce the uncertainty caused by the current process, in which a claimant initiates an appeal in the agency of original jurisdiction and the appeal is often a years-long continuation of the claim development process. It ensures that all claim development by the agency of original jurisdiction occurs in the context of either an initial or supplemental claim filed with the agency of original jurisdiction, rather than in an appeal.

The agency of original jurisdiction's duty to assist in developing evidence will continue to apply when a claimant initiates a new or supplemental claim. However, where a claimant seeks review of an agency of original jurisdiction decision, the duty to assist generally no longer applies, unless and until the claimant elects to file a supplemental claim, at which point the duty to assist applies to the supplemental claim. The proposed regulations also contain a mechanism to correct any duty to assist errors occurring before the agency of original jurisdiction, if such errors are discovered on review or appeal, by requiring that the claim be returned to

the agency of original jurisdiction for correction of the error, unless the maximum benefit is granted. The proposed regulations require claim decision notices to be clearer and more detailed. The improved notices will help claimants and their advocates make informed choices as to which review option makes the most sense.

The statutory requirements, which we propose to codify in these proposed regulations, provide a claimant who is not fully satisfied with the result of any review lane one year to seek further review while preserving an effective date for benefits based upon the original filing date of the claim. For example, a claimant could go straight from an initial agency of original jurisdiction decision on a claim to an appeal to the Board. If the Board decision was not favorable, but it helped the claimant understand what evidence was needed to support the claim, then the claimant would have one year to submit new and relevant evidence to the agency of original jurisdiction in a supplemental claim without fearing loss of the effective date for choosing to go to the Board first.

The differentiated lane framework required by statute and proposed to be codified in these regulations has many advantages. It provides a streamlined process that allows for early resolution of a claimant's appeal and the lane options allow claimants to tailor the process to meet their individual needs and control their VA experience. It also enhances claimants' rights by preserving the earliest possible effective date for an award of benefits, regardless of the option(s) they choose, as long as the claimant pursues review of a claim in any of the lanes within the established timeframes. By having a higher-level review lane within the claims process and a lane at the Board providing for review on only the record considered by the initial claims adjudicator, the new process provides a feedback mechanism for targeted training and improved quality in the VBA or other claims adjudication agency.

To ensure that as many claimants as possible benefit from the streamlined features of the new process, Public Law 115–55 and the proposed regulations provide opportunities for claimants and appellants in the legacy system to take advantage of the new system. Some claimants who receive a decision prior to the effective date of the law will be able to participate in the new system. Other claimants who receive an SOC or Supplemental Statement of the Case (SSOC) in a legacy appeal after the effective date of the law will also have an opportunity to opt-in to the new system.

VA initially met in March 2016 with Veterans Service Organizations (VSOs), congressional staff, and other stakeholders to develop a plan to reform the current appeals process. The result of this collaborative work was a new appeals framework, with the same fundamental features as the process described in section 2 of Public Law 115–55. This new process will provide veterans with timely, fair, and high quality decisions. The engagement of those organizations that participated in the March 2016 ''Appeals Summit'' ultimately led to a stronger proposal, as VA was able to incorporate stakeholder feedback and benefit from the perspective of those with extensive experience in helping veterans navigate the complex VA appeals process.

In November 2017, VA again met with stakeholders to highlight important changes required by the new law, answered questions, and discussed specific concerns. VA is grateful to all of the stakeholders for their contributions of time, energy, and expertise in this effort.

The majority of amendments addressed in this proposed rule are mandatory to comply with the law. Through careful collaboration with VA, VSOs, and other stakeholders, in enacting Public Law 115–55, Congress provided a highly detailed statutory framework for claims and appeals processing. VA is unable to alter proposed amendments that directly implement mandatory statutory provisions. In addition to implementing mandatory requirements, VA proposes a few interpretive or gap-filling amendments to the regulations which are not specifically mandated by Public Law 115–55, but that VA believes are in line with the law's goals to streamline and modernize the claims and appeals process. These amendments fill gaps in the new law left by Congress, reduce unnecessary regulations, streamline and modernize processes, and improve services for Veterans.

This proposed rule contains amendments to parts 3, 8, 14, 19, 20, and 21, as described in detail below.

Part 3—Adjudication

VA proposes to amend the regulations in 38 CFR part 3 as described in the section-by-section supplementary information below. These regulations govern the adjudication of claims for monetary benefits (*e.g.,* compensation, pension, dependency and indemnity compensation, and burial benefits), which are administered by the VBA. Other VA agencies of original jurisdiction may have adopted portions of these regulations, or their content, with respect to their adjudication and review processes.

§ 3.1 Definitions.

VA proposes to amend the definition of ''claim'' in § 3.1(p), to add definitions of the terms ''initial claim'' and ''supplemental claim,'' as the distinction between those terms is significant under the changes made by Public Law 115–55, which provides for the filing and adjudication of supplemental claims and adds a definition of supplemental claim at 38 U.S.C. 101(36). VA proposes to define an ''initial claim'' as a claim for a benefit other than a supplemental claim, including the first filing by a claimant (original claim) and a subsequent claim filed by a claimant for an increase in a disability evaluation, a new benefit, or a new disability. The definition of a claim for increase is moved into this section from § 3.160 and is expanded to more accurately reflect the nature of such claims.

Public Law 115–55, section 2(a), defines ''supplemental claim'' as ''a claim for benefits under laws administered by the Secretary filed by a claimant who had previously filed a claim for the same or similar benefits on the same or similar basis.'' The Secretary is required to readjudicate the claim if new and relevant evidence is presented or secured with respect to a supplemental claim. VA proposes to clarify in the regulatory definition of supplemental claim that VA must have issued a decision with respect to the previously filed claim before a supplemental claim can be filed. The inclusion of this requirement for a supplemental claim is consistent with the language of revised 38 U.S.C. 5108, which requires the Secretary to ''readjudicate'' a claim where ''new and relevant evidence is presented or secured with respect to a supplemental claim.'' This language presupposes that VA has already adjudicated the claim and issued a notice of decision before a supplemental claim is filed.

With the inclusion of additional definitions under § 3.1(p), VA proposes to amend the cross references to include a reference to supplemental claims under the new § 3.2501.

§ 3.103 Procedural Due Process and Other Rights

Under 38 U.S.C. 5104(a), when VA makes a decision affecting the provision of benefits to a claimant, VA must provide the claimant and his or her representative with notice of the decision. Under current 38 U.S.C.

5104(b), in any case where VA denies the benefit sought, that notice must include a statement of the reasons for the decision and a summary of the evidence considered by VA.

Public Law 115–55 revised 38 U.S.C. 5104(b) to specify that each notice provided under section 5104(a) must include all of the following: Identification of the issues adjudicated; a summary of the evidence considered by VA; a summary of applicable laws and regulations; identification of findings favorable to the claimant; in the case of a denial, identification of elements not satisfied leading to the denial; an explanation of how to obtain or access evidence used in making the decision; and, if applicable, identification of the criteria that must be satisfied to grant service connection or the next higher-level of compensation.

VA proposes to amend its procedures for issuing decisions to conform with the amendments to 38 U.S.C. 5104(b). Enhanced decision notices will allow claimants and their representatives to make more informed choices about whether to seek further review and, if so, which of the new review lanes best fits the claimant's needs: Filing a supplemental claim with the agency of original jurisdiction, requesting a higher-level review of the initial decision within the agency of original jurisdiction, or appealing to the Board.

In addition, to comply with 38 U.S.C. 5104B(d), VA proposes to amend § 3.103 to explain that the evidentiary record for a claim before the agency of original jurisdiction closes when VA issues notice of a decision on said claim. A claimant may reopen the evidentiary record by submitting a supplemental claim or claim for an increase on the prescribed application form. Consistent with its discretionary authority under 38 U.S.C. 501(a), VA proposes to require a prescribed application form for submitting a supplemental claim consistent with current regulations applicable to claims. Submission of a substantially complete initial or supplemental claim also triggers VA's duty to assist in the gathering of evidence under § 3.159. The evidentiary record also reopens when a claim must be readjudicated due to identification of a duty to assist error on higher-level review or by the Board. Whenever the record reopens, evidence submitted to the agency of original jurisdiction while the record was closed will become part of the record to be considered for a subsequent adjudication.

VA also proposes to make several nomenclature changes within § 3.103 to update language and clarify that a hearing before VA may be conducted in person or through videoconferencing tools available at a regional office closest to the claimant. The changes also clarify that a hearing will not be provided in connection with a request for higher-level review. Claimants will have the opportunity to request an informal conference in connection with a request for higher-level review as provided in proposed § 3.2601.

Finally, VA proposes to delete the last sentence of § 3.103(c)(2), allowing a claimant to request visual examination during a hearing by a physician designated by VA. Due to the complex considerations involved in making determinations on the nature, origin, or degree of disability, a physician's visual assessment during a hearing has significant limitations. Disability assessments typically involve a comprehensive clinical evaluation with appropriate standardized testing to establish the diagnosis or origin, or characterize the severity of impairment. For some conditions, this could include specialized equipment, tests, or training that would not be available by a physician during a visual examination; examples of specialized testing could include neuropsychological evaluations for traumatic brain injury (TBI) claimants. Accordingly, VA proposes to remove the reference that claimants may request visual examination by a physician at the hearing. Although VA does not currently have data on the number of examinations requested by veterans during hearings, these types of examinations are obsolete as Veterans and VA can now utilize several other methods to add visual examination findings into the record. These include Disability Benefits Questionnaires (DBQs) that a claimant may ask any physician to complete to document visual findings and contract examinations which support VA's disability evaluation process and make obtaining examinations easier and more efficient by bypassing the requirement to formally schedule one with a VA provider.

§ 3.104 Finality and Binding Nature of Decisions

VA proposes to amend § 3.104(a), concerning the binding nature of decisions, to conform with other regulatory changes implementing Public Law 115–55. In addition, VA proposes to remove the word ''final'' from this section for consistency with the definition of finally adjudicated claim in § 3.160(d). Decisions issued by an agency of original jurisdiction are binding on VA field offices under § 3.104 when issued, even though the decision is not finally adjudicated because the period for a claimant to seek review of the decision is still open. The current wording of § 3.104 refers to such decisions as ''final'' and binding when they are issued. The definition of ''finally adjudicated'' in § 3.160(d) will be maintained and a decision on a claim is final when the claim is finally adjudicated.

In addition, Public Law 115–55 added a new section, 38 U.S.C. 5104A, providing that any findings favorable to the claimant will be binding on all subsequent adjudicators within VA, unless clear and convincing evidence is shown to the contrary to rebut the favorable findings. VA proposes to amend § 3.104 to include a new paragraph implementing this provision. VA further proposes to define a finding as a conclusion on either a question of fact or on an application of law to facts.

§ 3.105 Revision of Decisions

VA proposes to amend § 3.105(a) to incorporate existing legal standards recognized in judicial decisions applicable to revision of final decisions under 38 U.S.C. 5109A. This statute allows for revision or reversal of final decisions by the Secretary based on clear and unmistakable error (CUE). These rules are set forth in proposed § 3.105(a)(1). Proposed § 3.105(a)(2) contains standards applicable to revision of decisions that are not yet final.

Proposed § 3.105(a)(1) incorporates judicial standards applicable to revision of final decisions based on CUE under 38 U.S.C. 5109A. No substantive changes are intended to the existing law governing revision of final agency of original jurisdiction decisions based on CUE. The proposed amendments conform regulations with respect to revision of final decisions by the agency of original jurisdiction with similar regulatory changes previously promulgated with respect to revision of final Board decisions based on CUE under 38 U.S.C. 7111. *See* 38 CFR 20.1400—20.1411; 64 FR 2134 (January 13, 1999). Those changes similarly incorporated judicially recognized CUE principles and were upheld in *Disabled American Veterans* v. *Gober,* 234 F.3d 682 (Fed. Cir. 2000). The Court in *Disabled American Veterans* found that the enactment of statutory sections 5109A and 7111 '' 'codified . . . the Court of Appeals for Veterans Claims' long standing interpretation of CUE.' '' *Id.* at 687 (quoting *Bustos* v. *West,* 179 F.3d 1378, 1380 (Fed. Cir. 1999)).

Judicial decisions have recognized that CUE applies only to final administrative decisions. *See, e.g., Richardson* v. *Nicholson,* 20 Vet.App.

64, 70–71 (2006) (stating that ''CUE must be based on a *final* adjudication'' and citing the definition of ''finally adjudicated claim'' in 38 CFR 3.160(d)); *see also Cook* v. *Principi,* 318 F.3d 1334, 1342 (Fed. Cir. 2002).

Further, CUE is a specific and rare kind of error, requiring the claimant to demonstrate three elements: (1) The error must be of a specific type—''either the correct facts, as they were known at the time, were not before the adjudicator or the statutory or regulatory provisions extant at the time were incorrectly applied;'' (2) the error must be ''undebatable;'' and (3) the error must undebatably be outcome-determinative, meaning that the error would have ''manifestly changed the outcome'' at the time it was made. *Willsey* v. *Peake,* 535 F.3d 1368, 1371 (Fed. Cir. 2008) (citing *Cook,* 318 F.3d at 1344 and *Russell* v. *Principi,* 3 Vet.App. 310, 313–14 (1992)); *see also Cushman* v. *Shinseki,* 576 F.3d 1290, 1301–02 (Fed. Cir. 2009) (error must be outcome determinative); *Bustos* v. *West,* 179 F.3d 1378, 1381 (Fed. Cir. 1999) (affirming ''manifestly changed outcome'' requirement).

An error is undebatable if ''no reasonable adjudicator could weigh the evidence in the way that the adjudicator did.'' *Willsey,* 535 F.3d at 1372; *Russell,* 3 Vet.App. at 313–14 (CUE errors must be undebatable, such that ''reasonable minds could only conclude that the original decision was fatally flawed at the time it was made''). Accordingly, CUE cannot be based on a ''disagreement as to how the facts were weighed or evaluated.'' Id. at 313.

The error must be shown based solely on the evidentiary record as it existed at the time of the disputed regional office (RO) adjudication and the law that existed at the time of subject adjudication. *Cook,* 318 F.3d at 1343–45; *Russell,* 3 Vet. App. at 314 (''New or recently developed facts or changes in the law subsequent to the original adjudication . . . do not provide grounds for revising a finally decided case''); *Jordan* v. *Nicholson,* 401 F.3d 1296, 1299 (Fed. Cir. 2005) (subsequent change in interpretation of statute not applicable to CUE request as to final VA decisions).

The caselaw also addresses burden of proof issues. As the Court stated in *Andre* v. *Principi,* '' 'the party bringing a CUE challenge to a final RO decision bears the burden of proving that the decision was based on a clear and unmistakable error.' '' 301 F.3d. 1354, 1361 (Fed. Cir. 2002) (quoting *Pierce* v. *Principi,* 240 F.3d 1348,1355 (Fed. Cir. 2001)). '' 'This burden is not satisfied by the mere assertion that the decision contained CUE; instead, the party must describe the alleged error ''with some degree of specificity'' and must provide persuasive reasons 'as to why the result would have been manifestly different but for the alleged error.' '' *Id.* (citation omitted). Mere allegations of failure to follow regulations or failure to give due process, or any other general, non-specific claims of error, are insufficient to raise a claim of CUE. *Fugo* v. *Brown,* 6 Vet. App. 40, 44 (1993). An allegation that the Secretary did not fulfill the duty to assist is insufficient to raise the issue of CUE. *See, e.g., Crippen* v. *Brown,* 9 Vet. App. 412, 418 (1996).

Proposed § 3.105(a)(2) applies to decisions that are not finally adjudicated at the agency of original jurisdiction. The proposed language reflects current policy and practice with respect to matters adjudicated under part 3 of VA's regulations that the outcome of a decision will not be revised by another adjudicator in the agency of original jurisdiction on his or her own initiative, based on the same evidentiary record, unless a determination is made that the outcome of the decision is clearly erroneous. This reflects a policy decision by VA to restrict the discretion of subsequent adjudicators to reverse prior determinations in the absence of new evidence. In accordance with new 38 U.S.C. 5104A, the adjudicator may, in determining whether the result was clearly erroneous, take into account any favorable findings subject to reversal based on clear and convincing evidence to the contrary. Determinations under § 3.105(a)(2) are therefore legally distinct from determinations under § 3.105(a)(1) as to whether a final decision should be revised based on CUE.

In addition, VA proposes to amend paragraph (b) to clarify that difference of opinion authority is given to VA employees designated to complete higher-level reviews to implement the requirement in new 38 U.S.C. 5104B that a higher-level review is de novo, subject to the rule protecting favorable findings. A new paragraph is also added at the end of § 3.105 to reflect that VA decisions may now be revised through resolution of a timely-filed supplemental claim under 38 U.S.C. 5108 or higher-level review under 38 U.S.C. 5104B.

No changes are necessary to §§ 3.105(c) through (h), which govern severance of service connection and reduction in evaluations, such as reductions in pension payments and reductions in evaluations of a service-connected disability. The standards and procedures set forth in these paragraphs will continue to apply and an adjudicator considering whether to reduce or discontinue an evaluation under § 3.105 is not bound under the ''favorable finding'' rule in new section 5104A of the statute that protects findings relating to a disability evaluation for a particular period of time but does not preclude a subsequent finding that the disability thereafter improved.

Rating evaluations and pension awards are running awards, resulting in recurring payments being made subsequent to an initial award. *See, e.g., Dent* v. *McDonald,* 27 Vet.App. 362, 372 (2015) (pension is a ''running award,'' meaning ''recurring payments made subsequent to an initial award''). Changes in the underlying facts that led to the original award may warrant a discontinuance or reduction of a running award. *See, e.g.,* 38 U.S.C § 5112 (governing effective dates of reductions and discontinuances); 38 CFR 3.273 (describing monthly pension as a ''running award'' and requiring adjustment when there is a change in income); § 3.105 (noting that the provisions regarding the date of discontinuance of awards are applicable to running awards such as monthly pension and those based on disability evaluations); § 3.344 (governing disability evaluation reductions on the basis of medical reports showing improvement in a service-connected condition). Determinations of whether a running award should be adjusted are based on different facts for a different time period than that for which the initial award was made. Accordingly, a determination of the appropriate level of a running award made in an initial decision is a finding different than a later finding as to whether the previously assigned level should be reduced or discontinued. Therefore, an adjudicator considering whether to reduce or discontinue an evaluation under § 3.105 is not assessing prior entitlement under the initial award of disability evaluation and is not bound by prior ''favorable findings'' under section 5104A of the statute. No change to the standards and procedures in §§ 3.105(c) through (h) is therefore required.

§ 3.151 Claims for Disability Benefits

Public Law 115–55 added 38 U.S.C. 5104C, which outlines the available review options following a decision by the agency of original jurisdiction. VA proposes to amend §§ 3.2500 and 3.151 consistent with the statute to provide that a claimant may request one of the three review options under § 3.2500 (higher-level review, supplemental

claim, appeal to the Board) for each issue decided by VA, consistent with new 38 U.S.C 5104C. A claimant would not be limited to choosing the same review option for a decision that adjudicated multiple issues.

Proposed § 3.151(c) defines an issue for this purpose as an adjudication of a specific entitlement. For example, with respect to service-connected disability compensation, an issue would be entitlement to compensation for a particular disability (and any ancillary benefits). This definition of ''issue'' is consistent with the definition of issue in § 20.1401(a), as interpreted by the U.S. Court of Appeals for Veterans Claims. *See Hillyard* v. *Shinseki,* 24 Vet. App. at 353 (equating the term issue with a ''claim'' and ''not a theory or an element of a claim,'' citing *Disabled American Veterans,* 234 F.3d at 693). The option to select different review lanes would not extend to specific components of the same entitlement claim, because allowing a claim to be splintered into several pieces for review, each potentially subject to different evidentiary rules and timelines, would render the new review system unworkable, risk self-contradictory decision-making by VA, and defeat Congressional intent to streamline the review process and reduce processing times.

A simple hypothetical serves to illustrate VA's intent. Suppose a claimant seeks disability compensation for a knee disability, and for a mental disorder. Once the claimant receives an initial decision on both, it is permissible for the claimant to elect to place the knee issue and the mental disorder issue in separate lanes under the new appeals system. The claimant may not, however, challenge the effective date assigned for the knee in one lane, and simultaneously challenge the assigned degree of disability for the knee in another lane.

In addition, VA proposes to include a new paragraph, § 3.151(d), providing that the evidentiary record for a claim closes upon issuance of notice of a decision on the claim. This provision is similar to proposed § 3.103(c).

§ 3.155 How To File a Claim

VA proposes to amend § 3.155, regarding the procedures for filing a claim, to make those procedures applicable to supplemental claims under Public Law 115–55, except for the ''intent to file'' provisions found in § 3.155(b). For example, this amendment would apply existing procedures in § 3.155(c) regarding the filing of incomplete claim forms to supplemental claims. Accordingly, incomplete supplemental claim forms would be considered filed on the date of receipt if a complete supplemental claim is submitted within one year of the filing date of the incomplete claim.

However, the ''intent to file'' provisions in § 3.155(b), would not be applied to supplemental claims. The new statutory framework provides that a claimant can maintain the effective date of a potential benefits award by submitting a request for review under any of the three new lanes within one year of the date of the decision denying benefits. Consistent with this requirement, the intent to file provisions of § 3.155(b) would not apply to supplemental claims as this provision would allow for the submission of a supplemental claim beyond the one-year period provided by statute for protection of effective dates.

§ 3.156 Receipt of New Evidence

VA proposes to amend § 3.156 to include reference to supplemental claims based on new and relevant evidence as provided in Public Law 115–55 and to clarify when a supplemental claim may be filed. For supplemental claims received after the effective date, VA proposes new § 3.156(d) to replace the ''new and material'' evidence element, which is currently required under § 3.156(a) for requests for VA to reopen a finally adjudicated claim, with the more liberal ''new and relevant'' evidence standard in section 2(i) of Public Law 115–55. As noted in the House of Representatives Committee Report (H. Rept.115–135, May 19, 2017, page 3), Congress's intent ''behind the change is to lower the current burden'' to have a claim readjudicated based on new evidence. Public Law 115–55 defines ''relevant evidence'' under 38 U.S.C. 101(35) as ''evidence that tends to prove or disprove a matter in issue.'' This new standard reduces a claimant's threshold in identifying or submitting evidence as part of a supplemental claim. Proposed § 3.156(d), regarding supplemental claims, includes a reference to new § 3.2501 which provides further details regarding the filing and adjudication of supplemental claims and the ''new and relevant'' evidence standard.

VA proposes to maintain the ''new and material'' evidence standard, found in 38 U.S.C. 5108 prior to the enactment of Public Law 115–55, in subsection (a) as the standard for requests to reopen finally adjudicated legacy claims where the request to reopen was decided prior to the applicability date of the new law. Claims to reopen that were filed, but not initially adjudicated, prior to the effective date will be adjudicated under the more favorable ''new and relevant'' standard applicable to supplemental claims. In addition, a supplemental claim subject to the more favorable standard may be filed after the effective date of the modernized review system, even with respect to legacy claims finally adjudicated prior to the effective date of the new system.

Under the new framework, the agency of original jurisdiction will take action on new evidence that is received with an application for a supplemental claim, or received or obtained prior to issuance of a decision on the supplemental claim. As indicated in the explanation of proposed § 3.103, the record closes upon issuance of a notice of decision on the claim, subject to reopening upon certain later events. Therefore, VA proposes to limit the applicability of the current rule under paragraph (b), allowing for the submission of new and material evidence during the appeal period, to pending legacy claims that are not subject to the modernized review system.

§ 3.159 Department of Veterans Affairs Assistance in Developing Claims

38 U.S.C. 5103(a) requires VA to provide notice to a claimant of the information or evidence necessary to substantiate the individual's claim for benefits. Public Law 115–55 revised section 5103 to state that this notice requirement applies to initial and supplemental claims; however, VA is not required under the statute to provide that notice with respect to a supplemental claim filed within one year of an agency of original jurisdiction or Board decision on an issue. VA proposes to amend § 3.159 to include this exception.

VA also proposes to require VA to assist a claimant who reasonably identifies existing records in connection with a supplemental claim, as required under 38 U.S.C. 5108(b). VA proposes to further amend § 3.159 to clarify that VA's duty to assist in the gathering of evidence begins upon receipt of a substantially complete application for an initial or supplemental claim and ends once VA issues a decision on the claim. The definition of a substantially complete application in 3.159 has been amended to add the requirement that a supplemental claim application include or identify potentially new evidence and that a higher-level review request identify the date of the decision for which review is sought. VA's duty to assist is reinstated when a substantially complete initial claim or supplemental claim is filed or when a claim is returned to correct a ''duty to assist'' error in a prior decision as required by

38 U.S.C 5103A(f) as amended by Public Law 115–55.

§ 3.160 Status of Claims

Public Law 115–55 deleted the reference in 38 U.S.C 5103(a) to a claim for reopening or a claim for increase and replaced it with reference to a ''supplemental claim.'' Based on this change in terminology, VA proposes to update several sections in part 3 to replace the term ''reopened claim'' with ''supplemental claim.'' Claimants may request review of VA's decision by submitting a supplemental claim after a decision by the VBA, the Board, or the Court of Appeals for Veterans Claims. VA proposes to update paragraph (e) to reflect the requirement that as of the applicability date of the new law, VA will no longer accept requests to ''reopen'' claims and a claimant must file a supplemental claim under § 3.2501 to seek review of a finally adjudicated claim for a previously disallowed benefit.

VA proposes to clarify the definition of ''finally adjudicated claim'' for decision notices issued on or after the effective date, to be consistent with 38 U.S.C. 5104C, added by Public Law 115–55. With the new claims and appeals system, a claim is considered finally adjudicated at the expiration of the period to file a review option following notice of a decision by the agency of original jurisdiction, the Board, or the Court of Appeals for Veterans Claims. If an appeal is timely filed from a decision of the Court of Appeals for Veterans Claims, a claim is finally adjudicated upon its disposition on judicial review. During the time period for seeking review, a claimant may elect one of the three new review options depending on the type of decision issued as outlined in 38 U.S.C. 5104C. Once the period to seek review expires, an issue is considered finally adjudicated and a claimant loses the effective date protections associated with continuous pursuit of an issue. At that point, the claimant may seek review of the decision by filing a supplemental claim or a request to revise the final decision based on clear and unmistakable error under § 3.105(a)(1).

VA proposes to amend the definition of complete claim to add a requirement applicable to supplemental claims, in part to implement the duty to assist requirements under 38 U.S.C. 5108(b). In order for a supplemental claim to be considered complete and filed, it must identify or include potentially new evidence. Identification of potentially new evidence would trigger VA's duty to assist under §§ 3.2501 and 3.159(a)(3). Without that baseline level of information, the complete claim standard will not have been met for purposes of claim initiation of a supplemental claim. VA believes this baseline level of substantive specificity is necessary in order to minimize the possibility that claimants can effectively keep a claim stream alive indefinitely by repeatedly asserting that they will submit or identify new and relevant evidence at some future date, never doing so, and then repeating the process once VA issues a decision. However, we emphasize that the claim would be considered ''complete'' for claim initiation purposes, and VA's duty to assist accordingly triggered, when the claimant identifies evidence within the scope of VA's duty to assist to obtain. It would not be required that VA actually obtain the evidence, or make a finding that new and relevant in fact has been secured, prior to recognizing that a supplemental claim has in fact been filed.

§ 3.161 Expedited Claims Adjudication Initiative—Pilot Program

VA proposes to remove and reserve § 3.161, which addresses the Expedited Claims Adjudication (ECA) Initiative Pilot Program as this program is no longer in use and will not continue based on changes to the claims and appeals processes under Public Law 115–55. VA launched the ECA Initiative Program on February 2, 2009. The two-year pilot program was designed to accelerate claims and appeals processing. Participation in the ECA Initiative was strictly voluntary and limited to claimants who resided within the jurisdiction of the Nashville, Lincoln, Seattle, or Philadelphia Regional Offices (ROs). VA concluded the ECA pilot program in 2013.

§ 3.328 Independent Medical Opinions

Public Law 115–55 repealed 38 U.S.C. 7109, which authorized the Board to obtain independent medical opinions (IMOs). This repeal removed the ability for the Board to request IMOs. Under 38 U.S.C. 5103A(f)(2) and 5109(d), as added by Public Law 115–55, the Board will, when deemed necessary, direct the agency of original jurisdiction to obtain an IMO. VA proposes to amend § 3.328 to include a requirement that VBA process IMO instructions received from the Board.

§ 3.400 General

VA proposes to amend § 3.400 to incorporate the new rule that a claimant may protect their initial filing date for effective date purposes if they continuously pursue a claim as outlined in 38 U.S.C. 5110(a), as amended by Public Law 115–55. VA will consider the date of receipt of the initial claim when determining the effective date for any benefits that VA may award under a continuously pursued claim. VA provides a reference to § 3.2500 where this is further defined.

VA proposes to limit the applicability of the rules regarding new and material evidence and reopened claims as VA will no longer accept or process claims to reopen claims received after the effective date of the new law.

§ 3.2400 Applicability of Modernized Review System

Proposed § 3.2400 defines which claims are processed under the new review system and which clams are processed under the legacy appeals system. Public Law 115–55, section 2(x), provides generally that the new review system will apply to all claims for which a notice of decision is provided by the agency of original jurisdiction on or after the later of (a) 540 days from the date of enactment, which falls on February 14, 2019, or (b) 30 days after the date on which the Secretary certifies to Congress that VA is ready to carry out the new appeals system. Proposed § 19.2(a) refers to this date as the ''effective date'' of the new review system. Proposed § 3.2400(a)(1) implements the statutory definition and clarifies that the new review system applies when an ''initial'' decision is provided after the effective date. The term ''initial decision'' in this context refers to the initial decision on each claim for entitlement to a particular benefit, not the first decision that was ever issued by VA for a claimant.

Proposed § 3.2400 also clarifies that the new review system will generally apply to initial decisions provided on or after the effective date denying requests to revise a decision by the agency of original jurisdiction based on clear and unmistakable error (CUE). Such requests are not ''claims'' subject to Public Law 115–55, because the requester is not pursuing a claim for benefits pursuant to part II or III of Title 38 of the U.S. Code. *Livesay* v. *Principi,* 15 Vet. App. 165, 178–179 (2001). Nevertheless, VA will, as a matter of discretion, allow the requestor to elect review of such decisions in the higher-level review lane in addition to the option to appeal to the Board. A supplemental claim may not be filed with respect to a CUE request since revision of a decision for CUE cannot be based on new evidence.

The proposed regulation also recognizes, in subsection (c), that some claimants who received a notice of decision prior to the effective date, defined as legacy claimants, may have

opted-in to the new review system prior to the effective date and that some may do so after the effective date. Prior to the effective date, some claimants are able to opt-in to the new review system under a VA test program known as the Rapid Appeals Modernization Program (RAMP), which is being carried out pursuant to section 4(a) of Public Law 115–55. Qualifying claimants can choose either the higher-level review lane or the supplemental claim lane to pursue review of their claims. Those claimants who opt-in under RAMP have received, or will receive, a notice of decision conforming with the enhanced decision notice requirements of Public Law 115–55 and advising the claimant regarding the review options available under the new system. Upon the effective date, those claims will continue to be processed under the new framework as implemented by final regulations.

Proposed subsection (c) provides, in accordance with section 2(x)(5) of Public Law 115–55, that, after the effective date, legacy claimants may opt-in to the new review system after VA issues a Statement of the Case or Supplemental Statement of the Case. Claimants may do so by filing for one of the review options under the new system on a form prescribed by VA within the time allowed to file a substantive appeal to the Board under the legacy appeals system. A claimant may not elect to pursue review under both the legacy and modernized review systems with respect to a particular claim.

§ 3.2500 Review of Decisions

In the legacy appeals process, claimants who are dissatisfied with the initial decision on their claim are given only one avenue to seek review of that decision. Public Law 115–55 created a new claims and appeals process with several different review options for pursuing VA benefits. Congress added 38 U.S.C. 5104C to provide claimants with streamlined choices within the agency of original jurisdiction and through an appeal to the Board. VA proposes to add § 3.2500 to part 3, subpart D, to implement the new review options and set forth the rules that apply to those options under new 38 U.S.C. 5104C. In line with the statutory requirements, VA proposes to allow a claimant to file for one of the three review options upon receipt of a decision by the agency of original jurisdiction on an initial claim. Under proposed § 3.2500(b), a claimant would be able to elect a different review option for each different issue adjudicated in the decision. The term ''issue'' is defined in § 3.151(c) as a distinct determination of entitlement to a benefit, such as a determination of entitlement to service-connected disability compensation for a particular disability.

Proposed § 3.2500(b) provides that a claimant may not elect to have the same issue reviewed concurrently under different review options, consistent with new 38 U.S.C. 5104C(a)(2)(A). Proposed § 3.2500(d) implements new 38 U.S.C. 5104C(a)(2), providing that claimants may switch between the different review options. A claimant or the claimant's duly appointed representative may, for example, withdraw a request for higher-level review or a supplemental claim at any time prior to VA issuing notice of decision. If the withdrawal takes place within the one year period following notice of the decision being reviewed, a claimant may timely elect another review option to continuously pursue the claim and preserve potential entitlement to benefits effective as of the date of the initial claim.

Under new 38 U.S.C. 5104C, after receiving notice of a decision on an issue, claimants generally have up to one year to submit new and relevant evidence with a supplemental claim, request a higher-level review, or file an appeal to the Board to preserve the effective date associated with their initial claim. If a claimant remains dissatisfied with the decision on review, depending on the type of review requested, he or she would still have the option to file another review request. The review options available to a claimant after a decision on each type of review are set forth in § 3.2500(c). Paragraph (g) contains effective date protections for continuously pursued claims and the effective date rule for supplemental claims filed more than one year after notice of a decision (*i.e.,* where the underlying claim is finally adjudicated). For example, a claimant who receives an unfavorable decision on a higher-level review request may submit a supplemental claim with new and relevant evidence or appeal to the Board within one year of the decision notice date to protect the effective date. If, following a further denial, the claimant elects to file a supplemental claim with new and relevant evidence within one year of the decision notice date and VA grants the benefit sought, VA will consider this to be a continuously pursued claim and continue to base the effective date of an award on the filing date of the initial claim.

VA proposes to include a paragraph in § 3.2500 that limits the review option available to parties to a simultaneously contested claim (contested claim) to the filing of a Notice of Disagreement with the Board. A contested claim is defined in VA regulations as a situation in which the allowance of one claim results in the disallowance of another claim involving the same benefit or the payment of a lesser benefit to another claimant. 38 CFR 20.3(p). For example, two people may claim entitlement to the same benefit, such as in the situation where two people claim entitlement to a death benefit as the surviving spouse.

In this situation, Congress has provided for different adjudication rules aimed at speeding resolution of the dispute. Prior to Public Law 115–55, the statutory time frame to appeal a decision by the agency of original jurisdiction in such cases was 60 days rather than the normal one year period. 38 U.S.C. 7105A. This required review to be initiated for all contested claims within 60 days and clearly reflected an intent that contested claims be resolved more quickly than ordinary claims.

In Public Law 115–55, Congress maintained the 60 day time period for filing a Notice of Disagreement to appeal a decision of the agency of original jurisdiction, but did not address how contested claims should be handled with respect to the newly available review lanes at the agency of original jurisdiction, for which the filing deadline is one year. This is problematic for the following reasons: (1) While the new system provides claimants with the right to select from three different review lanes, it is literally impossible to provide this right to each claimant in a contested claim, because the claimants' choice of review lanes may conflict (we note that both claimants may disagree with a particular determination in a contested claim, such as the amount of an apportionment under § 3.450); (2) while the new system protects favorable findings from being overturned in the absence of clear and convincing evidence to the contrary, a finding may be favorable to one claimant but unfavorable to the other, thus making it literally impossible to afford each claimant this right; (3) the review period for choosing the Board review lane (through filing a Notice of Disagreement) would be 60 days for a contested claim, but the review period for choosing higher-lever review or filing a supplemental claim would be one year, thereby significantly undermining the impact of the 60 day time period for filing a Notice of Disagreement on achieving a faster resolution of the claim. As a result, it appears that Congress either did not envision that contested claims would be

governed by the three-lane review system or simply neglected to address this issue, leaving a gap for VA to fill. *See, e.g., Ramsey* v. *Nicholson,* 20 Vet.App. 16, 30 (2006) (refusing to literally apply the statutory requirement that appeals at the Board be considered and decided in docket order because, despite the arguably plain meaning of the statute, literal application would produce an absurd result, or at least a result at odds with the intention of the drafters, ''when considering the statute's overall structure and concepts relating to effective review of appeals'').

VA proposes to fill the gap left by the statute by limiting the review option available to a contested claimant to filing a Notice of Disagreement with the Board within 60 days of issuance of the decision of the agency of original jurisdiction. Simultaneously contested claims thus would be excepted from the general one year review period in § 3.2500. VA believes that this is a reasonable way to effectuate congressional intent that the review process for a contested claim be designed to achieve faster resolution of the claim. It also reduces the opportunity for one claimant to prevent the payment of benefits to another claimant by delaying action on filing for review of a decision favorable to the other claimant or by filing successive supplemental claims based on marginally relevant evidence. If either claimant discovers new evidence, the claimant may, under the new system, file such evidence in connection with an appeal to the Board. In addition, under the new system, initial decisions by the agency of original jurisdiction are required to contain more detailed information regarding the basis of the decision, reducing the need for further decisions by the agency of original jurisdiction to provide more information.

§ 3.2501 Supplemental Claims

VA proposes to add a new section to part 3, subpart D, to explain the rules that govern the supplemental claim review option required by 38 U.S.C. 5108 as amended by Public Law 115–55. Claimants may request review of VA's decision by submitting a supplemental claim after a decision by the VBA, the Board, or the Court of Appeals for Veterans Claims. Public Law 115–55 amended 38 US.C. 5108(a) to prescribe that VA will re-adjudicate a claim when new and relevant evidence is presented or secured with respect to a supplemental claim. VA proposes to include in § 3.2501 the requirement that new and relevant evidence must accompany a supplemental claim or be submitted or secured while a supplemental claim is pending for VA to take action on the evidence and readjudicate the claim.

VA proposes to include a requirement that a claimant file a supplemental claim on a form prescribed by the Secretary and that the duty to assist in gathering new and relevant evidence will be triggered upon the filing of a substantially complete application. As provided in proposed amendments to § 3.159(a)(3) and § 3.160(a), a substantially complete or complete supplemental claim application must identify or include potentially new evidence. An incomplete claim will be considered filed on the date of receipt if the complete application is filed within a year, consistent with § 3.155. The new statutory framework provides one year for submission of a request for review under any of the three new lanes. Consistent with this requirement, the intent to file provisions of § 3.155(b) would not apply to supplemental claims. This new section will also address the evidentiary record for supplemental claims, consistent with proposed § 3.151(d).

§ 3.2502 Returns by Higher-Level Adjudicator or Remand by the Board of Veterans' Appeals

VA proposes to add § 3.2502 to part 3, subpart D, to implement the requirement in new 38 U.S.C. 5109B for expedited processing of claims returned from a higher-level adjudicator and remands from the Board. Upon receipt of a returned claim or remand by the Board, the agency of original jurisdiction will take immediate action to expedite readjudication of the claim in accordance with new 38 U.S.C. 5109B. The agency of original jurisdiction will retain jurisdiction of the claim. In readjudicating the claim, the adjudication activity will correct all identified duty to assist errors, complete a new decision and issue notice to the claimant and or his or her legal representative in accordance with § 3.103(f). For all issues readjudicated, the effective date of any evaluation and award of pension, compensation, or dependency and indemnity compensation will be determined in accordance with the date of receipt of the initial claim as prescribed under proposed § 3.2500(g).

§ 3.2600 Legacy Review of Benefit Claims Decisions

Current § 3.2600 governs certain aspects of review under the legacy system, for claims in which a Notice of Disagreement is filed on or after June 1, 2001. VA proposes to amend § 3.2600 to make clear that this section only applies to legacy claims as defined in § 3.2400 and not to claims that are processed under the new review system. VA plans to implement the new claims and appeals system on February 14, 2019. Claimants who receive decisions prior to the effective date of the new system will have the option to file an appeal under the legacy process, in which case § 3.2600 will apply. In general, the agency of original jurisdiction will stop accepting Notices of Disagreement for legacy claims one year after the effective date of the final rule implementing the new claims and appeals system, subject to extension of the filing period for good cause in individual cases.

§ 3.2601 Higher-Level Review

VA proposes to add a new section to part 3, subpart D, to implement the rules that govern the higher-level review option required by 38 U.S.C. 5104B. This new section explains the requirements for electing a higher-level review, describes the type of agency of original jurisdiction employees who will conduct the review, and addresses the review process.

Under 38 U.S.C. 5104B, a claimant in the modernized review system may request a higher-level review of a decision on a claim by the agency of original jurisdiction during the one year period to seek review following issuance of the notice of decision. The higher-level review option gives claimants a second look at their claims, but that review is based solely on the same evidence that was before the initial adjudicator. The higher-level review is conducted by a different experienced VA employee with the ability to change the initial decision based on difference of opinion authority, subject to the rule that favorable findings are binding absent clear and convincing evidence to the contrary. The higher-level review provides the opportunity for resolution of the issue(s) in dispute at the agency of original jurisdiction without having to file an appeal to the Board, or having to submit a supplemental claim with new and relevant evidence.

The higher-level review consists of a closed evidentiary record and does not allow for the submission of new evidence or a hearing. While the closed evidentiary record does not allow for submission of new evidence, VA proposes to provide claimants and/or their representatives with an opportunity to speak with the higher-level adjudicator and point out any specific errors in the case as part of the higher-level review. VA has utilized an informal conference as part of the

Decision Review Officer review in the current legacy appeals process. VA has received positive feedback on providing claimants and/or their representatives an opportunity to speak directly with the decisionmaker for the claim. To further support this level of engagement, VA proposes to include the availability of an informal conference with a higher-level adjudicator in the new § 3.2601. The sole purpose of an informal conference is to provide a claimant or his or her representative with an opportunity to talk with the higher-level adjudicator so that the claimant and/or his or her representative can identify errors of fact or law in the prior decision. To comply with the statutory requirement of a closed evidentiary record, VA would not allow claimants or representatives to supplement the evidentiary record during the informal conference through the submission of new evidence or introduction of facts not present at the time of the prior decision. VA proposes to make efforts to contact a claimant or his or her representative, when requested, telephonically and to honor all requests for informal conferences unless determined not feasible in an individual case, such as when VA, after reasonable efforts, is unable to make contact with the claimant or his or her representative.

VA proposes to include a paragraph that explains the requirement for expedited processing of all identified duty to assist errors. VA has a statutory duty to assist claimants in gathering evidence in support of a claim for benefits. Under 38 U.S.C. 5103A(f), if the higher-level adjudicator discovers a duty to assist error, the claim returns to the adjudication activity for correction unless the higher-level adjudicator determines that it would be appropriate for VA to grant the maximum benefit for the claim. In accordance with 38 U.S.C. 5109B, VA proposes to include a rule requiring expedited processing to correct these types of errors and to define ''maximum benefit'' for disability compensation as the maximum scheduler evaluation for the issue, and for other types of benefits, the granting of the benefit sought.

Because the filing date of a request for higher-level review is relevant to maintaining the effective date of any award, VA proposes to include provisions for determining the filing date that are similar to the provisions in § 3.155 that apply to applications for benefits.

Part 8—National Service Life Insurance

To comply with Public Law 115–55, VA proposes to amend 38 CFR 8.30 to allow applicants for insurance coverage and/or claimants for insurance proceeds (both hereafter referred to as claimants) who disagree with (1) denials of applications for insurance, total disability income provision, or reinstatement; (2) disallowances of claims for insurance benefits; and/or (3) decisions holding fraud or imposing forfeiture to receive either a higher-level review, supplemental claim review, or Board review.

VA has consolidated all life insurance activity at a single office located in Philadelphia, PA. This office has original jurisdiction over all life insurance applications and claims for proceeds received in conjunction with life insurance programs administered by VA. Because insurance expertise and processing is consolidated at the Philadelphia office, higher level reviews and supplemental claims will be processed by employees at the Philadelphia office. Selection of an employee to conduct a higher-level review is at VA's discretion. The VA Insurance Service will assign higher-level reviews to employees who are experienced decision-makers who did not participate in the prior decision. The VA Insurance activity would make reasonable efforts to honor requests for informal conferences as part of a higher-level review, consistent with proposed 3.2601(h). As noted in proposed § 3.2601(h), claimants are responsible for any costs they incur in conjunction with an informal conference. This proposed rule would not limit the option of pursuing actions under 38 U.S.C. 1984.

Part 14—Legal Services, General Counsel, and Miscellaneous Claims

Under 38 U.S.C. chapter 59, the Secretary of Veterans Affairs has authority to recognize VSOs and their representatives as well as attorneys and agents for the preparation, presentation, and prosecution of benefit claims, prescribe the rules of conduct applicable while providing claims assistance, and regulate fees charged by accredited attorneys and agents.

VA proposes to make several revisions to the regulations contained in part 14, Title 38 of the Code of Federal Regulations, regarding: Accreditation of attorneys, agents, and VSO representatives; representation of claimants before VA; and fees charged by attorneys and agents for representation. The proposed revisions will address the recent changes in law enacted by Public Law 115–55, address a few discrepancies relating to the appellate process in the current regulations, and further clarify the rules.

While Public Law 115–55 sets out ''to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs,'' the accreditation and fee regulations contained in part 14 are focused exclusively on accreditation of attorneys, agents, and VSO representatives; representation of claimants before VA; and fees charged by attorneys and agents for representation. Although VA recognizes that certain changes to part 14 are needed to reflect the new law, which changes the starting point at which fees for representation may be charged and changes in the appellate structure for deciding benefit claims, VA does not believe that the provisions of the appeals reform law prescribing processes for ''claims for benefits'' directly apply to adjudications of VA accreditation and attorney/agent fee matters. *See* 38 U.S.C. 5904; 38 CFR 14.626–14.637.

Section 14.629—Requirements for Accreditation of Service Organization Representatives; Agents; and Attorneys

Current § 14.629 contains an introductory paragraph describing the process within the Office of General Counsel for evaluating whether an applicant for accreditation meets the qualifications for becoming accredited by VA and for appealing decisions denying accreditation. VA proposes to move that paragraph from the beginning of 14.629 to a new paragraph, proposed paragraph (d), to improve the readability of the section.

In addition, VA proposes to modify the substance of the current introductory paragraph when relocating it in paragraph (d) to state that a denial of accreditation by the Chief Counsel is a final adjudicative determination of an agency of original jurisdiction that may only be appealed to the Board. The provision currently states that decisions denying accreditation may be appealed to the General Counsel and denials by the General Counsel are ultimately appealable to the district courts under the Administrative Procedures Act (APA). This provision reflects VA's prior position that a decision denying accreditation is not a ''decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans,'' 38 U.S.C. 511(a), and, therefore, is not appealable under the system enacted by the Veterans Judicial Review Act (VJRA). *See* 38 U.S.C. 7104(a). While recognizing that the United States Court of Appeals for the Federal Circuit (Federal Circuit) had

concluded that decisions suspending or cancelling accreditation are appealable under the VJRA, VA had previously distinguished decisions denying accreditation. Accreditation of Agents and Attorneys; Agent and Attorney Fees, 73 FR 29852, 29853–54 (May 22, 2008).

However, upon further reflection in light of decisions by the Federal Circuit and other Federal courts broadly construing the VJRA's exclusive jurisdictional scheme, VA now concludes that decisions denying accreditation also fall within the scope of that exclusive review scheme. This conclusion ensures consistency with respect to the applicable law and other decisions relating to accreditation, and thus comports with a central purpose of the VJRA's exclusive review scheme, *i.e.,* to promote a uniform body of jurisprudence on matters related to VA benefits. Therefore, proposed § 14.629(d)(2)(ii) would shift the authority to issue the decision on appeal from the General Counsel to the Board.

The basis for permitting an appeal to the Board is grounded in 38 U.S.C. 511, which applies to decisions ''under a law that affects the provision of benefits by [VA] to veterans or the dependents or survivors of veterans.'' 38 U.S.C. 511(a). The Federal Circuit has construed section 511 to extend beyond matters relating to claims for benefits, including to accreditation-related decisions. *Cox* v. *West,* 149 F.3d 1360, 1365 (Fed. Cir. 1998) (That ''the decision of the regional office did not affect a veteran's benefits is not the point. The relevant issue under section 511(a) is whether the decision necessarily interpreted a law that affects veterans' benefits.''); see also *Bates* v. *Nicholson,* 398 F.3d 1355, 1359–61 (Fed. Cir. 2005). But the Federal Circuit has also held that simply because a decision is appealable to the Board does not mean the decision is subject to all the same statutory procedures applicable to claims for veterans benefits. *See DAV* v. *Gober,* 234 F.3d 682, 694–95 (Fed. Cir. 2000) (demonstrating that certain appealable matters are not governed by all of the same provisions that apply to regular claims for veterans benefits).

Notably, in Public Law 115–55, Congress specifically identified ''decisions *regarding claims for benefits,*'' and did not include all decisions that are appealable to the Board, as being subject to the new appellate system. The provisions of Public Law 115–55 pertaining to the ''supplemental claim'' and ''higher-level review'' options specify that they apply to ''claims for benefits'' and to ''claimants,'' which is defined in 38 U.S.C. 5100 to refer to a person applying for a ''benefit'' under laws administered by VA. *Id.,* § 2(a) (defining ''supplemental claim'' as ''a claim for benefits . . .''), § 2(g) and (h) (authorizing a ''claimant'' to elect higher-level review or submit a supplemental claim following a decision). VA does not view decisions to grant, deny, or otherwise affect accreditation status to be decisions ''*regarding claims for benefits*'' within the meaning of Public Law 115–55. VA's interpretation of the statute is consistent with the Federal Circuit's interpretation that the statutory provision governing removal of accreditation is not itself a law affecting benefits. *Bates,* 398 F.3d at 1360 (''The argument that 38 U.S.C. 5904(b) is itself a 'law that affects the provision of benefits' is unpersuasive.''). Accordingly, VA concludes that Public Law 115–55 does not require that the full range of modernized review procedures available for benefit decisions be extended to decisions regarding accreditation of representatives.

Moreover, revising the current adjudication process for accreditation matters simply to mirror the choice and flexibility required under Public Law 115–55 for benefits claims is unwarranted. Public Law 115–55 is designed to allow claimants for benefits to switch between the lanes of review, while still having an option to submit new evidence regarding their claims, all while preserving potential entitlement to benefits retroactive to the date of the benefits claim as long as the matter is pursued continuously. *See* Public Law 115–55, §§ 2(h)(1), (2)(l). In contrast, decisions on accreditation matters are effective on the date of the decision; therefore, the adjudication of these matters does not implicate the same issues as for claims for benefits regarding preservation of effective dates. Although flexibility and choice are key objectives of the new statutory framework with regard to claims for benefits, the paramount concern for matters regarding accreditation is ensuring that claimants for benefits have competent representation. Therefore, we propose that denials of accreditation will only be appealable to the Board.

Consistent with the proposal in new paragraph (d) to have the Chief Counsel make the final decision on an accreditation determination, VA proposes to transfer from the General Counsel level to the Chief Counsel level the authority under § 14.629(b)(5) to grant or reinstate accreditation for an individual who remains suspended in a jurisdiction on grounds solely derivative of suspension or disbarment in another jurisdiction to which he or she has been subsequently reinstated.

Section 14.631—Powers of Attorney; Disclosure of Claimant Information

In current § 14.631(c), the regulation refers to 38 CFR 20.608. However, VA proposes to change that to 38 CFR 20.6 to reflect the revisions being proposed by the Board in this rulemaking.

Section 14.632—Standards of Conduct for Persons Providing Representation Before the Department

In current § 14.632, the regulation lists standards of conduct by which accredited attorneys, agents, and representatives must abide in preparing, presenting, and prosecuting VA benefit claims. VA proposes to revise current 14.632(c)(6) to eliminate the specific reference to the Notice of Disagreement and to clarify that gifts from a VA claimant to a VA-accredited individual are not permitted in any situation when a fee could not be lawfully charged. VA proposes to change the word ''representation'' to ''services,'' in order to be clear that this provision applies to all aspects of claims preparation, presentation, and prosecution.

Section 14.633—Termination of Accreditation or Authority To Provide Representation Under § 14.630

VA proposes changes to current § 14.633(e)(2) to clarify that when the Chief Counsel closes the record with regard to a suspension or cancellation of accreditation, that this is the record before the Office of the General Counsel. The rationale for this change is to clarify procedures for closure of the record in suspending or cancelling an individual's accreditation to ensure that the regulation does not contradict changes under the modernized system. Under existing law, the record is closed prior to the General Counsel's decision and on appeal to the Board, no expansion of the record is permitted unless a Board hearing is requested. Under the modernized system, evidence may be submitted for the Board to consider in the first instance with or without a hearing request. VA proposes this change twice in § 14.633(e)(2) in order to maintain consistency.

VA also proposes new language in § 14.633(h)(1) and (2) to clarify the procedures for decisions issued before the effective date of the modernized review system and on or after that date. In addition, in proposed § 14.633(h)(1), VA proposes replacing the reference to 38 CFR 19.9 with 38 CFR 20.904, to reflect the redesignation in the Board's proposed regulations.

VA further proposes moving the second sentence in 14.633(h) to a new subsection 14.633(j) and adding ''suspension'' to clarify that the General Counsel can in fact provide notice of both suspensions and cancellations of accreditation. The overall move is intended to provide clarity, as the paragraph in which this is currently located otherwise addresses appellate rights. The proposed addition fills in a gap in the existing regulations. In the preamble to the May 2007 proposed rule on Part 14, VA stated that the General Counsel could notify all agencies, courts, and bars to which the agent or attorney is admitted to practice of suspensions or cancellations, 72 FR 25930, 25933 (May 7, 2007), but, in the regulation text, VA only specified cancellation. *Id.* at 25940; *see also* 73 FR at 29875 (final rule text).

As discussed above with denials of accreditation, it is neither required nor prudent to provide all the same options and safeguards that apply to the new appellate system under Public Law 115–55 to decisions regarding the suspension or cancellation of accreditation.

Section 14.636—Payment of Fees for Representation by Agents and Attorneys in Proceedings Before Agencies of Original Jurisdiction and Before the Board of Veterans' Appeals

Currently, 38 U.S.C. 5904(c)(1) directs that agents and attorneys may be paid for services provided after a Notice of Disagreement is filed in a case. This is also reflected in current 38 CFR 14.636(c). VA proposes language in § 14.636(c)(1)(i) to implement the change in section 2(n) of Public Law 115–55 that fees may be charged by an accredited agent or attorney upon VA's issuance of notice of an initial decision on a claim. In the same subsection of § 14.636, VA proposes additional language, based on the effective date provisions in section 2(l) of Public Law 115–55, to clarify the relationship between section 2(n) of Public Law 115–55 and the new adjudication procedures. Specifically, this clarifies whether a decision on a supplemental claim is considered a new initial decision, or whether it is part of the original adjudication string based on the effective date. The language VA proposes makes clear that a decision by an agency of original jurisdiction adjudicating a supplemental claim will be considered an initial decision on a claim unless the decision is made while the claimant continuously pursued the claim by choosing one of the three procedural options available under Public Law 115–55.

In addition, VA proposes to add § 14.636(c)(1)(ii), to clarify the effective dates emanating from Public Law 115–55 for attorney fee matters based on clear and unmistakable error. The language in proposed § 14.636(c)(1)(ii) mirrors the already existing regulatory text at current § 14.636(c)(1).

Next, proposed § 14.636(c)(2)(i) contains minor language edits to accommodate for the implementation of the Public Law 115–55. Note that, although not specified in the proposed modified subsection, a Notice of Disagreement which has been withdrawn to opt in to the appeals modernization program will still satisfy the Notice of Disagreement requirement under paragraph (c)(2).

Proposed § 14.636(i)(3) contains language to clarify that when the Chief Counsel closes the record in proceedings to review fee agreements, this is the record before the Office of the General Counsel. VA proposes this minor change in both § 14.636(i)(3) and (k) in order to maintain consistency. VA proposes to remove the instruction for filing a Notice of Disagreement with the Office of the General Counsel because, although that is correct under the legacy system, under the modernized appeals system the Notice of Disagreement should be filed directly with the Board. The Office of General Counsel form with the appellate rights will specify where the Notice of Disagreement should be filed. In addition, proposed § 14.636(k) contains language similar to that in proposed § 14.633(h), for the reasons stated in those sections above, to clarify the procedures for decisions issued before the effective date of the modernized review system, and on or after that date, the date that Public Law 115–55 is scheduled to take effect. As required by Public Law 115–55, VA proposes to replace the term ''reopened'' with ''readjudicated'' in several places in the proposed § 14.636.

Finally, because fee matters are simultaneously contested matters they are processed under the appellate procedures applicable to simultaneously contested claims. *See Mason* v. *Shinseki,* 743 F.3d 1370, 1374 (2014) (holding that disputes regarding eligibility for attorney's fees withheld from past-due disability benefits are subject to the appeal deadlines for simultaneously contested claims). As explained elsewhere in this rulemaking, the additional options provided under Public Law 115–55 are not appropriate to simultaneously contested matters.

Moreover, it is clear that decisions on fee matters differ from decisions on claims for VA benefits because they ultimately concern whether the terms of the private contract should be altered for public policy reasons. *See Scates* v. *Principi,* 282 F.3d 1362, 1366–66 (finding that a contingency percentage agreed upon in a fee contract contains an ''implicit . . . understanding'' that the representative may not be entitled to the full percentage if the claimant terminates the representative's services during the case). *Compare* Public Law 115–55, 2(h)(1) (providing for three options for review), *with* 38 U.S.C. 5904(c)(3) (specifying that a fee reasonableness decision may be reviewed by the Board pursuant to section 7104 to determine whether it is excessive or unreasonable); *and* 38 U.S.C. 7263(d) (explaining that the Court of Appeals for Veterans Claim's decision with regard to the reasonableness of the fee is a final determination that may not be reviewed by any other court).

Section 14.637—Payment of the Expenses of Agents and Attorneys in Proceedings Before Agencies of Original Jurisdiction and Before the Board of Veterans' Appeals

Proposed § 14.637(d)(3) contains language to clarify that when the Chief Counsel closes the record in proceedings to review fee agreements, this is the record before the Office of the General Counsel. Also, in proposed § 14.637(f), language similar to that in proposed §§ 14.633(h) and 14.636(k) is proposed to comply with Public Law 115–55 and for the reasons stated with respect to those sections above. In addition, in § 14.637(d)(3), VA proposes to remove the instruction for filing a Notice of Disagreement with the Office of the General Counsel for the same reasons as stated in § 14.636(i)(3).

Part 19—Board of Veterans' Appeals: Appeals Regulations

VA proposes to restructure and revise 38 CFR part 19. As noted, Public Law 115–55 applies to all claims for which notice of decision was provided on or after the effective date and to certain claims where a notice of decision was provided prior to that date, but the appellant opted to subject the claim to the new system. While Public Law 115–55 is primarily aimed at creating a new claims and appeals adjudication system, VA must also provide timely and quality decisions on legacy appeals. A legacy appeal is any appeal where the agency of original jurisdiction provided notice of a decision prior to the effective date and the appellant has not opted to have review of his or her appeal completed in the new system. When the new system becomes effective, VA will have approximately 500,000 pending

legacy appeals, and many of these legacy appellants will still be at a stage in their appeals where regulations concerning filing forms, motions, or other actions will be relevant. Thus, VA proposes to preserve and consolidate regulations concerning legacy appeals.

This proposed rule would make part 19 applicable only to legacy appeals; specifically, the processing of legacy appeals by the agency of original jurisdiction. Subparts F, G, and J of part 20 would apply only to the processing and adjudication of legacy appeals by the Board. Except as otherwise provided in specific sections, subparts A, B, H, K, L, M, N, and O of part 20 would apply to the processing and adjudication of both appeals in the new system and legacy appeals. Subparts C, D, E, and I of part 20 would apply only to the processing and adjudication of appeals in the new system.

VA proposes to revise the authority citations for individual sections in part 19 and for certain sections in part 20 applicable only to legacy appeals to identify the versions of statutes existing prior to the effective date of the modernized appeals system, as those statutes will continue to apply to legacy appeals.

Finally, VA proposes minor updates to addresses. This minor change is not substantive. Currently, provisions containing the Board's address for mail related to appeals direct that mail should be addressed to a particular office within the Board. In practice, all mail is processed in a central location at the Board and routed to the appropriate office internally. Therefore, VA proposes to strike all references to specific offices or personnel at the Board in references to the Board's address.

The following distribution table shows where each section of current part 19 is proposed to be moved.

Old section	New section
19.1	20.100.
19.2	20.101.
19.3	20.106.
19.4	20.103.
19.5	20.105.
19.7	20.903; similar in 20.802.
19.8	20.905; similar in 20.804.
19.9	20.904; similar in 20.803.
19.11	20.1004.
19.12	20.107.
19.13	20.108.
19.14	20.109.
19.27	Removed.
19.33	Removed.
19.50	Removed.
19.51	Removed.
19.52	Removed.
19.53	Removed.
19.75	20.603.
19.76	20.602.

Subpart A—Applicability

VA proposes to amend subpart A—Operation of the Board of Veterans' Appeals, by moving all sections into part 20. Generally applicable provisions are proposed to be moved into subpart B of part 20, while provisions applicable to adjudication of legacy appeals are proposed to be moved to subpart J of part 20.

VA proposes to add new provisions to subpart A of part 19 that explain the applicability of part 19.

§ 19.1 Provisions Applicable to Legacy Appeals

New § 19.1 is proposed to help claimants understand which appeals system applies to their claim, and to provide specific instructions for legacy claimants to locate the regulations applicable to their appeal.

§ 19.2 Appellant's Election for Review of a Legacy Appeal in the Modernized System

New § 19.2 is proposed to explain options that may be available for legacy claimants to have their claim or appeal considered in the new system. This includes electing the modernized review system pursuant to 38 CFR 3.2400(c)(1), following issuance of a Statement of the Case or Supplemental Statement of the Case on or after the effective date, or pursuant to any test program implemented by the Board.

Subpart B—Legacy Appeals Processing by Agency of Original Jurisdiction

VA proposes to restructure subpart B of part 19 in order to consolidate procedures relating to legacy appeal processing by the agency of original jurisdiction. Subpart C of part 20 deals with commencement and perfection of appeals. As these procedures require action by the agency of original jurisdiction rather than the Board, and are only applicable to appeals in the legacy system, VA proposes to move these provisions to subpart B of part 19.

§ 19.20 What Constitutes an Appeal

VA proposes to redesignate § 20.200 as § 19.20, and update citations.

§ 19.21 Notice of Disagreement

VA proposes to redesignate § 20.201 as § 19.21, and update citations.

§ 19.22 Substantive Appeal

VA proposes to redesignate § 20.202 as § 19.22, and update citations.

§ 19.23 Applicability of Provisions Concerning Notice of Disagreement

VA proposes to update the citations in § 19.23.

§ 19.24 Action by Agency of Original Jurisdiction on Notice of Disagreement Required To Be Filed on a Standardized Form

VA proposes to update the citations in § 19.24.

§ 19.25 Notification by Agency of Original Jurisdiction of Right To Appeal

VA does not propose any changes to § 19.25.

§ 19.26 Action by Agency of Original Jurisdiction on Notice of Disagreement

VA does not propose any changes to § 19.26.

§ 19.27 [Reserved]

Section 2, paragraph (s) of Public Law 115–55 repeals procedures for administrative appeals by striking section 7106 of title 38 of the United States Code. Therefore, VA proposes to remove § 19.27, relating to administrative appeals.

§ 19.28 Determination That a Notice of Disagreement Is Inadequate Protested by Claimant or Representative

VA does not propose any changes to § 19.28.

§ 19.29 Statement of the Case

VA does not propose any changes to § 19.29.

§ 19.30 Furnishing the Statement of the Case and Instructions for Filing a Substantive Appeal

Section 2, paragraph (x)(5) of Public Law 115–55 provides that a legacy appellant may elect to subject his or her appeal to the new system upon receipt of a Statement of the Case (SOC) or Supplemental Statement of the Case (SSOC). Therefore, VA proposes to amend § 19.30 by requiring that all SOCs contain information on how to opt into the new system.

§ 19.31 Supplemental Statement of the Case

VA proposes to amend § 19.31 by requiring that all SSOCs contain information on how to opt into the new system.

§ 19.32 Closing of Appeal for Failure To Respond to Statement of the Case

VA does not propose any changes to § 19.32.

§ 19.33 [Reserved]

Section 2, paragraph (s) of Public Law 115–55 repeals procedures for

administrative appeals by striking section 7106 of title 38 of the United States Code. Therefore, VA proposes to remove § 19.33, relating to administrative appeals.

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal Was Not Timely Filed Protested by Claimant or Representative

VA does not propose any changes to § 19.34.

§ 19.35 Certification of Appeals

Currently, certification to the Board may only be accomplished by completion of a VA Form 8. This requirement creates cumbersome administrative and technological processes which often delay certification of appeals, but do not serve Veterans in any way. Therefore, VA proposes to amend § 19.35 to eliminate the requirement for a Form 8, and will accomplish certification through other means.

§ 19.36 Notification of Certification of Appeal and Transfer of Appellate Record

VA proposes to update the citations in § 19.36.

§ 19.37 Consideration of Additional Evidence Received by the Agency of Original Jurisdiction After an Appeal Has Been Initiated

VA does not propose any changes to § 19.37.

§ 19.38 Action by Agency of Original Jurisdiction When Remand Received

VA proposes to update the citations in § 19.38.

Subpart C—Claimant Action in a Legacy Appeal

As noted, section 2, paragraph (s) of Public Law 115–55 repeals procedures for administrative appeals by striking section 7106 of title 38 of the United States Code. As this amendment is applicable to all appeals, VA proposes to remove subpart C of part 19, dealing with administrative appeals.

VA proposes to restructure subpart C of part 19 in order to consolidate procedures relating to commencement and filing of legacy appeals. Subpart D of part 20 deals with commencement and filing of appeals, including procedures for Statements of the Case. As these procedures require action by the agency of original jurisdiction rather than the Board, and are only applicable to appeals in the legacy system, VA proposes to move these provisions to subpart C of part 19.

§ 19.50 Who Can File an Appeal

VA proposes to redesignate § 20.301 as § 19.50.

§ 19.51 Place of Filing Notice of Disagreement and Substantive Appeal

VA proposes to redesignate § 20.300 as § 19.51.

§ 19.52 Time Limit for Filing Notice of Disagreement, Substantive Appeal, and Response to Supplemental Statement of the Case

VA proposes to redesignate § 20.302 as § 19.52.

§ 19.53 Extension of Time for Filing Substantive Appeal and Response to Supplemental Statement of the Case

VA proposes to redesignate § 20.303 as § 19.53.

§ 19.54 Filing Additional Evidence Does Not Extend Time Limit for Appeal

VA proposes to redesignate § 20.304 as § 19.54.

§ 19.55 Withdrawal of Appeal

VA proposes to redesignate § 20.204 as § 19.55, add an address update, and add an internal reference.

Subpart D—[Reserved]

VA proposes to remove and reserve the two provisions of subpart D, dealing with field hearings. These provisions will be incorporated into subpart G of part 20, in order to streamline regulations concerning Board hearing procedures.

Subpart E—Simultaneously Contested Claims

VA does not propose any substantive changes to the procedures for simultaneously contested legacy claims, consisting of §§ 19.100–19.102.

Appendix A to Part 19—Cross-References

VA proposes to remove Appendix A to part 19, as it has outlived its usefulness. Cross-references currently located in the table are outdated or incorrect. Whereas a user may have previously used the appendix to search for other sections pertinent to a particular regulation, such research may be accomplished much more efficiently via a search of the electronic document.

Part 20—Board of Veterans' Appeals: Rules of Practice

As noted, VA proposes to restructure subparts A and B of part 20 by adding generally applicable provisions from part 19 and new provisions explaining applicability and new definitions. The following distribution table shows where each section of current part 20 is proposed to be moved.

Old section	New section
20.100	20.102.
20.101	20.104.
20.102	20.110.
20.200	19.20; similar in 20.201.
20.201	19.21; similar in 20.202.
20.202	19.22.
20.204	19.55; similar in 20.205.
20.300	19.51; similar in 20.203.
20.301	19.50; similar in 20.204.
20.302	19.52; similar in 20.203.
20.303	19.53.
20.304	19.54.
20.305	20.110.
20.306	20.111.
20.400	Removed.
20.401	Removed.
20.500	20.501.
20.501	20.502.
20.502	20.503.
20.503	20.504.
20.504	20.505.
20.600	20.5.
20.608	20.6.
20.702	20.704; similar in 20.603.
20.703	20.602.
20.704	20.603.
20.705	20.601; similar in 20.702.
20.706	20.705.
20.707	20.604; similar in 20.706.
20.708	20.707.
20.709	20.605.
20.710	20.708.
20.711	20.709.
20.712	20.710.
20.713	20.711.
20.714	20.712.
20.715	20.713.
20.716	20.714.
20.717	20.715.
20.800	20.901.
20.900	20.902; similar in 20.801.
20.901	20.906; similar in 20.805.
20.902	20.907.
20.903	20.908.
20.904	20.1000.
20.1000	20.1001.
20.1001	20.1002.
20.1003	20.1003.
20.1502	Removed.
20.1504	Removed.
20.1505	Removed.
20.1506	Removed.
20.1507	Removed.
20.1508	Removed.
20.1509	Removed.

Subpart A—General

§ 20.1 Rule 1. Purpose and Construction of Rules of Practice

VA proposes a minor edit to § 20.1, to provide the common name for the Board of Veterans' Appeals.

§ 20.2 Rule 2. Procedure in Absence of Specific Rule of Practice

VA proposes no changes.

§ 20.3 Rule 3. Definitions

VA proposes minor edits to § 20.3 Definitions, to remove terms that are no longer used in part 20, or are defined elsewhere in the part. VA also proposes to adopt the definition of ''claim'' used in part 3 of this title.

§ 20.4 Rule 4. Appeal Systems Definitions and Applicability Provisions

VA proposes to add new § 20.4, appeal systems definitions and applicability provisions, to provide definitions and an explanation of the applicability of the new system. Proposed § 20.4 assists appellants in understanding which system applies to their appeal. It provides specific instructions for appellants to locate the regulations applicable to their appeal, and explains options that may be available for legacy claimants to take advantage of the new system.

§ 20.5 Rule 5. Right to Representation

VA proposes to redesignate § 20.600 as § 20.5.

§ 20.6 Rule 6. Withdrawal of Services by a Representative

VA proposes to redesignate § 20.608 as § 20.6, and make minor changes to reflect the different procedures for withdrawal of representatives in legacy appeals and appeals in the new system. Specifically, current § 20.608 draws a distinction between withdrawal of services by a representative prior to certification to the Board, and withdrawal after certification. In the new appeals system, Notices of Disagreement are filed directly to the Board, and thus the certification process will not be applicable to new appeals. Proposed § 20.6 clarifies that the rules governing withdrawal of representation after certification apply to both appeals in the legacy system that have been certified, and all appeals in the new system. The rules governing withdrawal of representation prior to certification apply only to legacy appeals that have not yet been certified.

Subpart B—The Board

§ 20.100 Rule 100. Establishment of the Board

VA proposes to redesignate § 19.1 as § 20.100.

§ 20.101 Rule 101. Composition of the Board; Titles

VA proposes to redesignate § 19.2 as § 20.101.

§ 20.102 Rule 102. Name, Business Hours, and Mailing Address of the Board

VA proposes to redesignate § 20.100 as § 20.102 and update the mailing address.

§ 20.103 Rule 103. Principal Functions of the Board

VA proposes to redesignate § 19.4 as § 20.103.

§ 20.104 Rule 104. Jurisdiction of the Board

VA proposes to redesignate § 20.101 as § 20.104, and make minor changes. Specifically, VA proposes to reverse paragraphs (c) and (d) to condense information applicable only to legacy appeals. VA also proposes to redesignate § 19.5 as § 20.105. This move would make the third sentence of § 20.104(a) redundant. Thus, VA proposes to remove that sentence from § 20.104, and incorporate it with § 20.105. Citations are also updated.

§ 20.105 Rule 105. Criteria Governing Disposition of Appeals

As noted above, VA proposes to redesignate § 19.5 as § 20.105 and clarify that the criteria governing the disposition of appeals also applies to decisions of the Board. Proposed § 20.105 includes the rules governing precedent opinions of the General Counsel of the Department of Veterans Affairs which are currently duplicated in § 20.104(a) and § 19.5. This nonsubstantive change reduces redundant paragraphs and simplifies the rule.

§ 20.106 Rule 106. Assignment of Proceedings

VA proposes to redesignate § 19.3 as § 20.106.

§ 20.107 Rule 107. Disqualification of Members

VA proposes to redesignate § 19.12 as § 20.107 and remove paragraph (b), dealing with administrative appeals.

§ 20.108 Rule 108. Delegation of Authority to Chairman and Vice Chairman, Board of Veterans' Appeals

VA proposes to redesignate § 19.13 as § 20.108.

§ 20.109 Rule 109. Delegation of Authority to Vice Chairman, Deputy Vice Chairman, or Members of the Board

VA proposes to combine current § 19.14 with § 20.102 and redesignate the section as § 20.109, and update citations. This nonsubstantive change reduces redundant paragraphs and simplifies the rule.

§ 20.110 Rule 110. Computation of Time Limit for Filing

VA proposes to redesignate § 20.305 as § 20.110.

§ 20.111 Rule 111. Legal Holidays

VA proposes to redesignate § 20.306 as § 20.111 and update the citations.

Subpart C—Commencement and Filing of Appeals

VA proposes to add a new subpart C, applicable only to appeals in the new system. Provisions in current subpart C applicable to legacy appeals would be redesignated and moved to part 19 as described elsewhere in this document. Proposed subpart C contains provisions dealing with the filing of a Notice of Disagreement. Although Public Law 115–55 makes some changes to Notice of Disagreement filing procedures, many of these procedures will remain the same; therefore, the proposed regulations contained in subpart C are similar to the Notice of Disagreement regulations currently in place.

§ 20.200 Rule 200. Notification by Agency of Original Jurisdiction of Right To Appeal

VA proposes to add new § 20.200, similar to current § 19.25.

§ 20.201 Rule 201. What Constitutes an Appeal

VA proposes to add new § 20.201, similar to current § 20.200. The amendments made to 38 U.S.C. 7105 direct that an appeal to the Board is accomplished by filing a Notice of Disagreement directly to the Board. Therefore, proposed § 20.201 reflects this change in procedure.

§ 20.202 Rule 202. Notice of Disagreement

VA proposes to add new § 20.202, similar to current § 20.201. Public Law 115–55 requires that appellants indicate on their Notice of Disagreement the specific determination with which they disagree, and whether they request a Board hearing (which includes the opportunity to submit additional evidence within 90 days following the Board hearing), an opportunity to submit additional evidence within 90 days following submission of the Notice of Disagreement, or direct review of the evidence that was before the agency of original jurisdiction by the Board. Thus, paragraphs (a) and (b) of proposed § 20.202 reflect these changes to the information that must be indicated on the Notice of Disagreement.

Public Law 115–55 requires that VA create a policy allowing appellants to change the information indicated on the Notice of Disagreement, meaning that an appellant may request to change the evidentiary record before the Board. In crafting this policy, VA sought to provide appellants with an opportunity to change their initial election if their circumstances or preference changed. However, VA also wanted to prevent an appellant from unfairly gaining the advantage of two dockets. For example, an appellant should not be permitted to take advantage of the faster direct review docket if he or she has already submitted evidence or testified at a Board hearing.

Additionally, VA sought to limit the time period in which appellants may request to modify the Notice of Disagreement. VA has established a 365-day timeliness goal for appeals in the direct review docket. VA also intends to provide wait time predictions for the evidence and hearing dockets. If appellants are able to modify their Notices of Disagreement, and thereby change dockets at any time prior to the Board's decision on the issue or issues, VA will not be able to provide accurate wait time information. This would diminish the ability of other Veterans to make informed choices as to which of the Board's dockets best suits their individual needs.

Proposed § 20.202(c)(1) provides that the appellant's election of an evidentiary record on the Notice of Disagreement determines the docket on which the appeal is placed, and that the Board will not consider additional evidence or schedule a hearing unless the appellant indicated one of those options on the Notice of Disagreement. Paragraph (c)(2) provides that an appellant may modify the Notice of Disagreement for the purpose of selecting a different evidentiary record option. The request to modify must be made within one year of the agency of original jurisdiction decision on appeal, or 30 days after the Notice of Disagreement is received by the Board, whichever is later. The request will be denied if the appellant has already submitted evidence or testimony.

Additionally, nothing in the regulations prevent an appellant from filing multiple Notices of Disagreement within the one-year period. Therefore, if an appellant wants to add additional issues not initially included on the Notice of Disagreement, the appellant is free to submit an additional Notice of Disagreement identifying these issues, as long as this additional Notice of Disagreement is timely submitted.

Paragraphs (f) and (g) of proposed § 20.202 provide procedures for how the Board will handle unclear or deficient Notices of Disagreement. The new framework shifts jurisdiction to the Board for any question as to the adequacy of Notices of Disagreement. Veterans Law Judges will retain their discretion to interpret some unclear statements on Notices of Disagreements in the light most favorable to the Veteran. However, proposed paragraphs (f) and (g) are necessary to outline the procedures the Board will take when an inadequate Notice of Disagreement is received at the Board. Specifically, the proposed rule addresses the problem created when the Board receives a Notice of Disagreement electing more than one evidentiary option, no evidentiary option, or when it is otherwise unclear how the appeal should be docketed.

The proposed rule is closely aligned with the process for clarifying Notices of Disagreement in the legacy appeals system. When the Board receives an unclear or deficient Notice of Disagreement, the Board will notify the claimant and request clarification. The claimant must respond with the requested clarification within one year after the agency of original jurisdiction decision, or 60 days after the date of the Board's clarification request, whichever is later. If the claimant does not provide a timely response, the previous statement from the claimant will not be considered a Notice of Disagreement.

Paragraph (h) of proposed § 20.202 provides that, when an unclear Notice of Disagreement is properly clarified, the Notice of Disagreement will be considered to have been properly filed on the date of clarification. This means that the docket date will be based upon the date of the clarification, and if the appellant requests to submit evidence, the 90-day window for evidence submission will begin on the date of clarification.

§ 20.203 Rule 203. Place and Time of Filing Notice of Disagreement

VA proposes to add new § 20.203, similar to the provisions of current §§ 20.300 and 20.302. Proposed § 20.203 differs from current §§ 20.300 and 20.302 in that Public Law 115–55 requires that Notices of Disagreement are filed with the Board. In contrast, current §§ 20.300 and 20.302 provide that Notices of Disagreement are filed with the agency of original jurisdiction.

§ 20.204 Rule 204. Who Can File a Notice of Disagreement

VA proposes to add new § 20.204, similar to current § 20.301. Proposed § 20.204 differs from current § 20.301 in that the provisions of § 20.301 also apply to the filing of a Substantive Appeal. Public Law 115–55 eliminates procedures relating to Substantive Appeals; therefore, proposed § 20.204 does not discuss Substantive Appeals.

§ 20.205 Rule 205. Withdrawal of Appeal

VA proposes to add new § 20.205, similar to current § 20.204. Proposed § 20.205 differs from the rules for withdrawal of a legacy appeal in that paragraph (c) of proposed § 20.205 provides that, in addition to filing a new Notice of Disagreement, a claimant may request a higher-level review or file a supplemental claim following the withdrawal of the Notice of Disagreement, provided such filing would be timely.

Subpart D—Evidentiary Record

VA proposes to add new subpart D, Evidentiary Record, in place of current subpart D, Filing, which VA proposes to move to part 19. New subpart D is proposed to implement 38 U.S.C. 7113, a new section added by Public Law 115–55 to establish the evidentiary record before the Board. The evidentiary record before the Board is determined by the appellant's election on his or her Notice of Disagreement. The appellant's election will determine whether the Board considers (1) only the evidence that was of record at the time of the prior agency of original jurisdiction decision; (2) the evidence that was of record before at the time of the prior agency of original jurisdiction decision and any additional evidence submitted within 90 days of submission of the Notice of Disagreement; or (3) the evidence that was of record at the time of the prior agency of original jurisdiction decision and any evidence submitting during, or within 90 days thereafter, the Board hearing.

§ 20.300 Rule 300. General

Proposed § 20.300 provides that decisions of the Board will be based on a de novo review of the evidence, as provided in § 20.801.

§ 20.301 Rule 301. Appeals With No Request for a Board Hearing and No Additional Evidence

Proposed § 20.301 provides that, for appeals with no request to appear at a hearing or submit additional evidence, the Board will consider only the evidence that was before the agency of original jurisdiction in the decision on appeal.

§ 20.302 Rule 302. Appeals With a Request for a Board Hearing

Proposed § 20.302 provides that, for appeals with a request for a Board hearing, the Board will consider the evidence that was before the agency of original jurisdiction in the decision on appeal, testimony presented at a Board hearing, and any additional evidence submitted within 90 days of the Board hearing.

Public Law 115–55 does not describe the evidentiary record in the event that a hearing request is withdrawn or the appellant does not appear for a scheduled hearing. Thus, the Board proposes paragraphs (b) and (c) of § 20.302 to specify that appellants who requested a hearing on the Notice of Disagreement, but ultimately do not appear for a hearing will retain the opportunity to submit additional evidence within a 90-day window.

§ 20.303 Rule 303. Appeals With No Request for a Board Hearing, But With a Request for Submission of Additional Evidence

Proposed § 20.303 provides that, for appeals with no request for a Board hearing, but with a request to submit additional evidence, the Board will consider the evidence that was before the agency of original jurisdiction in the decision on appeal, and any additional evidence submitted with the Notice of Disagreement or within 90 days following receipt of the Notice of Disagreement. As noted above, when an appellant requests to modify the Notice of Disagreement for the purpose of requesting an opportunity to submit additional evidence, the Board will notify the appellant whether the request has been granted, and if so, that the appeal has been moved to the docket for appeals described in this section. The 90-day window for submission of additional evidence will begin on the date of such notice.

Public Law 115–55 requires that VA create at least two new dockets—a docket for appeals with a request for a Board hearing and a docket for appeals with no request for a Board hearing—but affords VA discretion to create additional dockets. VA proposes to establish three dockets for appeals adjudicated under the modernized appeals system. The first docket is for Veterans who do not want a hearing and do not wish to submit additional evidence, as provided by proposed § 20.301. The second docket is for Veterans who wish to have a hearing, as provided by proposed § 20.302. Finally, the third docket is for Veterans who wish to submit additional evidence, but do not want a hearing before a Veterans Law Judge.

Creation of these three separate dockets has multiple benefits. Most importantly, this docket structure provides greater opportunity for Veterans to tailor their appeals experience to best suit their individual needs. The first docket, described in proposed § 20.301, captures quality feedback from appeals in which no additional evidence is added to the record. This allows VA to identify areas in which the claims process can be improved and will allow VA to develop targeted training. Allowing additional evidence submission for appeals in the docket described in proposed § 20.301 would break this quality feedback loop. Veterans with a strong preference to appear at a Board hearing before a Veterans Law Judge may choose the docket described in proposed § 20.302.

The docket described in proposed § 20.303 allows Veterans to submit additional evidence that may assist in establishing entitlement to benefits, without the wait time that is associated with Board hearings. Public Law 115–55 does not permit appeals with no request for a hearing to be placed on the same docket as appeals with a request for a hearing. *See* Public Law 115–55, section 2(t), amending 38 U.S.C. 7107(a)(3). Therefore, creation of the third docket described in proposed § 20.303 is necessary to provide Veterans with the option to submit additional evidence without a hearing.

There is no cost associated with establishing the docket described in proposed § 20.303. The technological system required to track and manage appeals at the Board is designed to maintain multiple dockets in both the legacy and modernized appeals systems, as required by law. Adding a third docket to process appeals with no request for a Board hearing, but with a request to submit additional evidence does not result in any additional cost from an information technology development perspective. Moreover, there is no additional cost associated with the adjudication of such appeals, as the Board will apply the same substantive law regarding entitlement to benefits to all appeals. There is no additional administrative or adjudicative burden caused by maintaining a separate docket for evidence submission.

Subpart E—Appeal in Simultaneously Contested Claims

VA proposes to add new subpart E, Appeal in Simultaneously Contested Claims, in place of current subpart E, Administrative Appeals, which Public Law 115–55 repeals. Proposed subpart E would largely mirror subpart F, which VA proposes to make applicable only to legacy appeals. Subpart E would differ from subpart F insofar as the procedures for filing an appeal in the new system differ from those in the legacy system. For example, subpart F continues to describe notice and filing requirements for formal appeals and Statements of the Case. As Public Law 115–55 repeals procedures for formal appeals and Statements of the Case, subpart E does not have provisions related to these procedures. As discussed above, under the proposed new framework, simultaneously contested claims may only be appealed to the Board. Additionally, proposed subpart E addresses the circumstances—unique to the new framework, in which contesting parties request different evidentiary options.

§ 20.400 Rule 400. Notification of the Right To Appeal in a Simultaneously Contested Claim

Proposed § 20.401, similar to current § 19.100, describes the notification procedures when the agency of original jurisdiction takes an action in a simultaneously contested claim.

§ 20.401 Rule 401. Who Can File an Appeal in Simultaneously Contested Claims

Proposed § 20.401, similar to current § 20.500, describes who can file an appeal in simultaneously contested claims.

§ 20.402 Rule 402. Time Limits for Filing Notice of Disagreement in Simultaneously Contested Claims

Proposed § 20.402, similar to current § 20.501, describes the time limits for filing a Notice of Disagreement in a simultaneously contested claim.

§ 20.403 Rule 403. Notice to Contesting Parties on Receipt of Notice of Disagreement in Simultaneously Contested Claims

Proposed § 20.403, similar to current § 20.502, also specifies that the notice to contesting parties upon receipt of a Notice of Disagreement must indicate the type of review requested by the appellant who initially filed the Notice of Disagreement, including whether a hearing was requested.

§ 20.404 Rule 404. Time Limit for Response to Appeal by Another Contesting Party in a Simultaneously Contested Claim

Proposed § 20.404 provides that a party to a simultaneously contested claim may file a brief, argument, or

request for a different type of review under § 20.202(b) in answer to a Notice of Disagreement filed by another contesting party.

§ 20.405 Rule 405. Docketing of Simultaneously Contested Claims at the Board

Proposed § 20.405 resolves any conflict between two parties who request different evidentiary options under § 20.202(b). The proposed rule provides that, if any party requests a hearing before the Board, the appeal will be placed on the hearing docket and a hearing will be scheduled. If neither party requests a hearing, but any party requests an opportunity to submit additional evidence, the appeal will be placed on the evidence docket. VA will notify both parties when an appeal is placed on any docket. If the appeal is placed on the evidence docket, the parties will have 90 days from the date of such notice in which to submit additional evidence.

§ 20.406 Rule 406. Notices Sent to Last Addresses of Record in Simultaneously Contested Claims

Proposed § 20.406, similar to current § 20.504, describes the procedures for sending notice to parties in contested claims.

§ 20.407 Rule 407. Favorable Findings Are Not Binding in Contested Claims

The favorable finding rule is impossible to apply in the context of contested claims, because a particular factual finding might be favorable to one appellant but unfavorable to another. Because the application of this rule in the context of simultaneously contested claims would produce absurd results, proposed § 20.407 clearly provides that favorable findings are not binding in the context of simultaneously contested appeals.

Subpart F—Legacy Appeal in Simultaneously Contested Claims

VA proposes to add new ''§ 20.500 Rule 500. Applicability.'' in order to better inform appellants as to which subpart is applicable to their appeal. Aside from renumbering to accommodate the new applicability section and necessary citation updates, VA does not propose additional changes to subpart F.

Subpart G—Legacy Hearings on Appeal

As noted above, VA proposes to redesignate § 20.600 and § 20.608, dealing with representation, to subpart B, as these provisions are generally applicable to both appeals systems. Proposed new subpart G would contain special provisions for hearings in legacy appeals, while amendments to subpart H are proposed to make that subpart applicable to hearings on appeals in both systems.

Amendments to hearing regulations for legacy and new system appeals are necessary in light of the Jeff Miller and Richard Blumenthal Veterans Health Care and Benefits Improvement Act of 2016, Public Law 114–315. In relevant part, Public Law 114–315, by amending 38 U.S.C. 7107, establishes the Board's authority, upon request for a hearing, to determine what type of hearing it will provide an appellant, while affording the appellant the opportunity to request an alternative type of hearing once the Board makes its initial determination. Notably, field hearings will only be available in the legacy system. Therefore, provisions applicable to field hearings, currently contained in subpart D of part 19, and subpart H of part 20, are proposed to be moved into subpart G.

§ 20.600 Rule 600. Applicability

VA proposes new § 20.600 to assist appellants in determining the hearing regulations applicable to their appeal.

§ 20.601 Rule 601. Methods by Which Hearings in Legacy Appeals Are Conducted; Scheduling and Notice Provisions for Such Hearings

VA proposes to redesignate § 20.705 as § 20.601, and amend to reflect the procedures applicable only to legacy appeals. Proposed § 20.601 would clarify that a hearing before the Board may be conducted via an in-person hearing held at the Board's principal location in Washington, DC, via electronic means, or at a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings. Further, proposed § 20.601 informs the reader that procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at the Board's principal location or via electronic means are contained in § 20.704, while procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at field facilities are contained in § 20.603.

§ 20.602 Rule 602. When a Hearing Before the Board of Veterans' Appeals May Be Requested in a Legacy Appeal; Procedure for Requesting a Change in Method of Hearing

VA proposes to retitle, revise, and expand § 20.703, redesignated as § 20.602, to clarify when and how legacy appellants may request hearings before the Board. These revisions implement the changes to 38 U.S.C. 7107 that require the Board to determine the method of a hearing and notify the appellant of its decision. As noted, although the Board will now be making the initial determinations regarding the method by which hearings will be conducted, appellants' rights to request a different type of hearing are preserved. Also, the Board alone will provide notification of the method and scheduling of hearings.

§ 20.603 Rule 603. Scheduling and Notice of Hearings Conducted by the Board of Veterans' Appeals at Department of Veterans Affairs Field Facilities in a Legacy Appeal

VA proposes to combine § 19.75 and § 20.704, and to redesignate as § 20.603. Proposed § 20.603 will clarify the procedures for the scheduling of hearings at VA field facilities. Field hearings for legacy appeals are scheduled in relationship to the need for the entire docket. Field hearing requests for legacy appeals are now handled by the Board alone and timing for requests is clarified. Citations and address are updated.

§ 20.604 Rule 604. Designation of Member or Members To Conduct the Hearing in a Legacy Appeal

VA proposes to redesignate § 20.707 as § 20.604, and amend the section to differentiate the procedures for legacy appeals. Citations are also updated.

§ 20.605 Rule 605. Procurement of Additional Evidence Following a Hearing in a Legacy Appeal

VA proposes to redesignate § 20.709 as § 20.605, and amend the section title to reflect that the provision is only applicable to legacy appeals. As notice, the evidentiary record in the new system is governed by subpart D.

Subpart H—Hearings on Appeal

No changes are proposed to § 20.701.

§ 20.700 Rule 700. General

VA proposes to amend § 20.700 by removing outdated procedures for representatives to present oral arguments on an audio cassette. It is the Board's practice to accept written arguments from a representative in the form of informal hearing presentations. Additionally, the presiding member may accept oral argument from a representative. This amendment will not disrupt those practices.

VA also proposes to remove paragraph (e), regarding electronic hearings, as these procedures are described in § 20.702(b).

§ 20.702 Rule 702. Methods by Which Hearings Are Conducted

VA proposes new § 20.702, describing the types of hearings available to appellants in the new system. Similar to current § 20.705 (proposed here to be redesignated as § 20.601), this section will provide appellants and other readers with a clear understanding of the different methods by which Board hearings are conducted. Proposed § 20.702 would clarify that a hearing before the Board may be conducted via electronic means or via an in-person hearing held at the Board's principal location in Washington, DC.

§ 20.703 Rule 703. When a Hearing Before the Board of Veterans' Appeals May Be Requested; Procedure for Requesting a Change in Method of Hearing

VA proposes new § 20.703 to clarify when and how appellants may request hearings before the Board. These revisions implement the changes to 38 U.S.C. 7107 that require the Board to determine the method of a hearing and notify the appellant of its decision. As noted, although the Board will now be making the initial determinations regarding the method by which hearings will be conducted, appellants' rights to request a different type of hearing are preserved.

§ 20.704 Rule 704. Scheduling and Notice of Hearings Conducted by the Board of Veterans' Appeals

VA proposes to redesignate § 20.702 as § 20.704, and amend to reflect scheduling and notice procedures applicable to appeals in the new system, similar to § 20.603, applicable only to hearings in the legacy system.

§ 20.705 Rule 705. Functions of the Presiding Member

VA proposes to redesignate § 20.706 as § 20.705, and amend the section to provide a more comprehensive list of functions of the presiding Member conducting the Board hearing.

§ 20.706 Rule 706. Designation of Member or Members To Conduct the Hearing

VA proposes to add new § 20.706 to differentiate the procedures for appeals in the new system, similar to proposed § 20.604, applicable to legacy appeals.

§ 20.707 Rule 707. Prehearing Conference

Currently, § 20.708 requires different procedures for requesting a prehearing conference, depending on the method of hearing. It is the Board's practice not to require formal requests for prehearing conferences. VA proposes to eliminate regulations describing procedures that are confusing and burdensome for appellants, and instead provide a streamlined approach that is in line with current practices. Thus, VA proposes to redesignate § 20.708 as § 20.707 and amend the section.

§ 20.708 Rule 708. Witnesses at Hearings

VA proposes to redesignate § 20.710 as § 20.708.

§ 2.709 Rule 709. Subpoenas

VA proposes to redesignate § 20.711 as § 20.709. Addresses are updated.

§ 20.710 Rule 710. Expenses of Appellants, Representatives, and Witnesses Incident to Hearings Not Reimbursable by the Government

VA proposes to redesignate § 20.712 as § 20.710.

§ 20.711 Rule 711. Hearings in Simultaneously Contested Claims

As noted above, VA proposes to streamline the timelines for requesting a change in hearing date. For simultaneously contested claims, however, it is necessary to provide time limits in order to preserve the rights of all appellants. Therefore, VA proposes to redesignate § 20.713 as § 20.711 and amend the section by clarifying the procedures for hearings in simultaneously contested claims, in particular hearing date change requests.

§ 20.712 Rule 712. Record of Hearing

VA proposes to redesignate § 20.714 as § 20.712 and amend the section to reflect current practices. Current § 20.714 contains lengthy and confusing rules dictating when a hearing transcript is prepared. However, it is the Board's practice to create hearing transcripts for all appeals, and to provide a copy of a transcript when requested.

§ 20.713 Rule 713. Recording of Hearing by Appellant or Representative

VA proposes to redesignate § 20.715 as § 20.713 and amend the section to streamline the process for an appellant or representative to record a hearing with his or her own equipment. Currently, different procedures are applicable depending on where the hearing was held.

§ 20.714 Rule 714. Correction of Hearing Transcripts

VA proposes to redesignate § 20.716 as § 20.714 and amend the section to remove outdated references to tape recordings, and streamline the process for requesting correction of hearing transcripts. Currently, different procedures are applicable depending on where the hearing was held. The address is also updated.

§ 20.715 Rule 715. Loss of Hearing Recordings or Transcripts—Motion for New Hearing

Current § 20.717 contemplates the loss or partial loss of a hearing recording or transcript, and requires that the appellant file a motion for a new hearing if desired, specifying why prejudice would result from the failure to provide a new hearing. It has been VA's practice to waive this motion requirement in the event that the Board discovers a loss of recordings or transcripts of hearings. VA proposes to redesignate § 20.717 as § 20.715 and amend the section to reflect the current, more appellant-friendly practice. Revised § 20.715 would require the Board to notify the appellant and his or her representative when such loss has occurred, and provide the appellant a choice of appearing at a new Board hearing, or having the Board proceed to appellate review of the appeal based on the evidence of record.

Subpart I—Appeals Processing

VA proposes to add new subpart I, Appeals Processing. Currently, subpart I contains only one section, which VA proposes to move into subpart J. New subpart I would describe processing of appeals in the new system at the Board.

§ 20.800 Rule 800. Order of Consideration of Appeals

VA proposes to add new § 20.800, to describe the docketing of appeals. While this new section is similar to current § 20.900, it follows Public Law 115–55's direction in creating separate dockets, and docketing appeals in the order in which they are received on their respective dockets.

Public Law 115–55 requires that VA create at least two new dockets—a docket for appeals with a request for a Board hearing, and a docket for appeals with no request for a Board hearing—but affords VA discretion to create additional dockets. VA proposes to establish three dockets to handle appeals adjudicated under the new system. The ''direct'' docket will be for Veterans who do not want a hearing and do not wish to submit additional evidence. The ''evidence'' docket will be for Veterans who wish to submit additional evidence, but do not want a Board hearing. Finally, the ''hearing'' docket will be for Veterans who wish to have a hearing before a Veterans Law Judge. Creation of these three separate dockets will have multiple benefits.

Most importantly, it provides greater opportunity for Veterans to tailor their appeals experience to best suit their individual needs. Additionally, the direct docket will capture quality feedback from appeals in which no additional evidence is added to the record. This will allow VA to identify areas in which the claims process can be improved.

Public Law 115–55 requires that VA develop a policy allowing appellants to move their appeal from one docket to another. As noted, VA developed a policy allowing appellants to modify the information identified in the Notice of Disagreement. By requesting a different evidentiary option under the procedures described above, appellants are essentially requesting to change dockets as well. When a request to modify a Notice of Disagreement includes a request to change the hearing or evidence submission request, the Board will move the appeal to the appropriate docket, retaining the original docket date.

Proposed § 20.800(e) is added to explain that a case will not be returned to the Board following the agency of original jurisdiction's readjudication of an appeal previously remanded by the Board. Pursuant to amended 38 U.S.C. 5104C, a claimant's options for further review of the agency of original jurisdiction's decision include filing a new Notice of Disagreement. Where a new Notice of Disagreement is filed following readjudication by the agency of original jurisdiction, the case will be docketed in the order in which the most recent Notice of Disagreement was received. There is no statutory provision requiring that a case be returned to the Board following readjudication by the agency of original jurisdiction or that the Board provide expeditious treatment when a new appeal is filed following such readjudication.

§ 20.801 Rule 801. The Decision

Proposed § 20.801 describes general rules regarding Board decisions in the new system, similar to current § 19.7. Proposed § 20.801 differs from current § 19.7 in that it reflects Public Law 115–55's provisions regarding the evidentiary record, prior favorable findings, and notice requirements. As noted, Public Law 115–55 creates new section 7113 outlining the evidentiary record before the Board. Proposed § 20.801(a) explains that the Board's decision will be based on a de novo review of the evidence of record before the agency of original jurisdiction, as well as any additional evidence submitted pursuant to section 7113. Additionally, Public Law 115–55 creates a new requirement that VA provide a general statement as to whether any evidence was received at a time not permitted by section 7113. This statement must also inform the appellant that any such evidence was not considered by the Board, and explain the options available to have that evidence reviewed. Thus, § 20.801(b)(3) reflects this notice requirement. Finally, Public Law 115–55 amends chapter 51 by adding a new section, 5104A, requiring that any finding favorable to the claimant will be binding on subsequent adjudicators. Thus, proposed § 20.801(a) reflects that any findings favorable to the claimant with regard to the issue or issues on appeal, as identified by the agency of original jurisdiction, are binding on the Board's decision, unless rebutted by clear and convincing evidence. In practice, the Board would rarely disturb such findings prior to enactment of the Appeals Modernization Act. This regulation is largely serving to codify a longstanding practice of the Board not to disturb favorable findings or elements of the claim made by the agency of original jurisdiction.

§ 20.802 Rule 802. Remand for Correction of Error

Proposed § 20.802 describes general rules regarding Board remands in the new system, similar to current § 19.9. Proposed § 20.802 differs from current § 19.9 in that it reflects Public Law 115–55's provisions regarding the duty to assist. Amended section 5103A(e)(2) specifies that the Secretary's duty to assist does not apply to review on appeal by the Board. Thus, under the amendments made by Public Law 115–55, the Board may no longer remand an appeal for the purposes of developing additional evidence. Rather, under amended 38 U.S.C. 5103A(f)(2)(A), the Board shall remand an appeal to correct an error on the part of the agency of original jurisdiction to satisfy its duties under section 5103A, if that error occurred prior to the agency of original jurisdiction decision on appeal. A remand is not required if the Secretary is able to grant the issue or issues in full. Thus, proposed § 20.802(a) closely follows the amended statutory authority in describing the circumstances under which the Board must remand an appeal.

Amended 38 U.S.C. 5103A(f)(2)(B) further notes that the Board's remand for correction of a pre-decisional duty to assist error may include directing the agency of original jurisdiction to obtain an advisory medical opinion under amended section 5109. Public Law 115–55 adds new paragraph (d)(1) to section 5109, noting that the Board ''shall remand a claim to direct the agency of original jurisdiction to obtain an advisory medical option from an independent medical expert under the section if the Board finds that the Veterans Benefits Administration should have exercised its discretion to obtain such an opinion.'' Thus, proposed § 20.802(b) closely follows the amended statutory authority in describing the circumstances under which the Board must remand an appeal to obtain an advisory medical opinion.

Additionally, the Board may remand for the correction of any other error by the agency of original jurisdiction in satisfying a regulatory or statutory duty where there is a reasonable possibility that correction of the error would aid in substantiating the claim, but need not remand solely for correction of a procedural defect as this would be inconsistent with the statutory framework of Public Law 115–55.

Finally, proposed § 20.802(c) reflects that, under Public Law 115–55, the agency of original jurisdiction must correct any error identified by a Board remand, readjudicate the claim, and provide notice of the decision, including notice of the claimant's options for further review. Notably, cases remanded by the Board will not be automatically returned to the Board after the agency of original jurisdiction has taken the appropriate action. Instead, a claimant who remains dissatisfied with an agency of original jurisdiction decision after adjudication and wants review by the Board must file a new Notice of Disagreement with the Board as to the issue or issues. Proposed § 20.802(c) also reflects the amendment to 38 U.S.C. 5109B, which directs that the agency of original jurisdiction must provide for the expeditious treatment of any claim that is remanded by the Board.

§ 20.803 Rule 803. Content of Board Decision, Remand, or Order in Simultaneously Contested Claims

Proposed § 20.803 mirrors the language of current § 19.8 in describing the content of a Board decision, remand, or order in simultaneously contested claims.

§ 20.804 Rule 804. Opinions of the General Counsel

Proposed § 20.804 describes the circumstances under which the Board will obtain an opinion from the General Counsel, similar to provisions contained in current §§ 20.901–20.903. Proposed § 20.804 differs from current § 20.901 in that it reflects Public Law 115–55's provisions repealing the authority for

independent medical opinions contained in 38 U.S.C. 7109. As noted above, medical opinions will only be ordered by the Board when a remand is required to correct a pre-decisional duty to assist error by the agency of original jurisdiction. Thus, proposed § 20.804 only contains provisions relating to opinions of the General Counsel.

Subpart J—Action by the Board in Legacy Appeals

VA proposes to amend subpart J to apply only to legacy appeals. Proposed § 20.900 would explain that the subpart is applicable to legacy appeals. As noted, VA also proposes to consolidate provisions related to Board decisions in legacy appeals into subpart J. This reorganization will clarify the distinction between agency of original jurisdiction action on appeals, which is proposed to be consolidated into part 19, and Board action on appeals, which is proposed to be consolidated to part 20. Thus, VA proposes to move § 19.7, describing Board decisions, to § 20.903. VA proposes to move § 19.9, describing Board remands, to § 20.904. Finally, VA proposes to move § 19.8, describing Board decisions in simultaneously contested claims, to § 20.905. This reorganization will assist appellants by providing a clear delineation between Board and agency of original jurisdiction action, and by laying out relevant regulations in chronological order. VA also proposes to redesignate § 20.800, regarding submission of additional evidence after the initiation of the appeal to § 20.901. This provision is only applicable to legacy appeals, as evidence submission for appeals in the new system is governed by 7113. Other provisions currently in subpart J would remain largely unchanged.

§ 20.900 Rule 900. Applicability

VA proposes to add new § 20.900, to explain that provisions of this subpart only apply to legacy appeals.

§ 20.901 Submission of Additional Evidence After Initiation of Appeal

VA proposes to redesignate § 20.800 as § 20.901.

§ 20.902 Rule 902. Order of Consideration of Appeals

VA proposes to redesignate § 20.900 as § 20.902 and update the Board's address.

§ 20.903 Rule 903. The Decision

VA proposes to redesignate § 19.7 as § 20.903.

§ 20.904 Rule 904. Remand or Referral for Further Action

VA proposes to redesignate § 19.9 as § 20.904 and update citations.

§ 20.905 Rule 905. Content of Board Decision, Remand, or Order in Simultaneously Contested Claims

VA proposes to redesignate § 19.8 as § 20.905.

§ 20.906 Rule 906. Medical Opinions and Opinions of the General Counsel

VA proposes to redesignate § 20.901 as § 20.906 and update the current name of the military institution that reviews pathologic material.

§ 20.907 Rule 907. Filing of Requests for the Procurement of Opinions

VA proposes to redesignate § 20.902 as § 20.907 and update citations.

§ 20.908 Rule 908. Notification of Evidence To Be Considered by the Board and Opportunity for Response

VA proposes to redesignate § 20.903 as § 20.908 and update citations.

Subpart K—Vacatur and Reconsideration

§ 20.1000 Rule 1000. Vacating a Decision

VA proposes to redesignate § 20.904, regarding vacatur of a Board decision, to § 20.1000. Current § 20.904 is generally applicable to both legacy and new system appeals. Moving this provision into subpart K allows VA to avoid duplicating the provision in subpart I, for new system appeals. Moreover, vacatur and reconsideration both describe actions that take place after a Board decision has been issued. Thus, this move is in line with VA's efforts to reorganize appeals regulations into a more common-sense, Veteran-centric order. VA proposes a minor change to proposed 20.1000 to reflect that Statements of the Case are no longer required in the new system. VA proposes to reverse paragraphs (a)(2) and (a)(3), and note that failure to provide a Statement of the Case or Supplemental Statement of the Case is considered a denial of due process only in legacy appeals.

§ 20.1001 Rule 1001. When Reconsideration Is Accorded

VA proposes to redesignate and amend § 20.1000(b), by striking the words ''and material''. Public Law 115–55 replaces the new and material standard with a requirement for new and relevant evidence. Although the new and material standard is still applicable to legacy appeals, in this context, VA notes that inclusion of the word ''material'' is redundant, as paragraph (b) describes discovery of ''relevant'' service department records. Any relevant service department records would be considered ''material'' under the legacy standard. Thus, the proposed change would make the paragraph applicable to both systems, while retaining the intended result.

§ 20.1002 Rule 1002. Filing and Disposition of Motion for Reconsideration

VA proposed to redesignate § 20.1001 as § 20.1002. Citations and address are also updated.

§ 20.1003 Rule 1003. Hearings on Reconsideration

VA proposes minor changes to § 20.1003, to reflect that a hearing on reconsideration would only be provided in legacy appeals, and in new system appeals where the appellant had requested a Board hearing on the Notice of Disagreement. This change is necessary to comply with amended section 7107(c), which states that a hearing before the Board may be scheduled only if a hearing was requested on the Notice of Disagreement.

§ 20.1004 Rule 1004. Reconsideration Panel

VA proposes to redesignate § 19.11 as § 20.1004, and make a minor change as required by Public Law 115–55. Public Law 115–55 amends 7103(b)(1) by striking the word ''heard'' and replacing it with ''decided''. Thus, VA proposes to make the same change to proposed § 20.1004, regarding reconsideration panels. This change will have no substantive impact on legacy appeals.

Subpart L—Finality

No changes are proposed to §§ 20.1102, 20.1104, and 20.1106.

§ 20.1103 Rule 1103. Finality of Determinations of the Agency of Original Jurisdiction Where Issue Is Not Appealed

VA proposes to amend § 20.1103, regarding finality of agency of original jurisdiction decisions, in order to make the rule applicable to both legacy and new appeals. The proposed rule clarifies that the agency of original jurisdiction decision may be readjudicated if, within one year, the claimant files a supplemental claim, request for higher-level review, or Notice of Disagreement. A citation is also updated.

§ 20.1105 Rule 1105. Supplemental Claim After Promulgation of Appellate Decision

VA proposes to amend § 20.1105, regarding a new claim after promulgation of an appellate decision. In the new system, a claimant may file a supplemental claim with the agency of original jurisdiction by submitting new and relevant evidence related to the previously adjudicated issue. This includes issues in which the final appellate decision was issued in a legacy appeal, but the new claim was filed on or after the effective date. In the current system, new and material evidence is required to reopen a claim after an appellate decision. VA proposes paragraph (b) to address any legacy appeals pending on the effective date which are based upon a claim to reopen. The requirement that an appellant submit new and material evidence to reopen a claim only applies to legacy appeals that are pending on the effective date. A citation is also updated.

Subpart M—Privacy Act

No changes are proposed to § 20.1200.

§ 20.1201 Rule 1201. Amendment of Appellate Decisions

Citations are updated.

Subpart N—Miscellaneous

No changes are proposed to § 20.1303.

§ 20.1301 Rule 1301. Disclosure of Information

VA proposes to amend § 20.1301, regarding the Board's policy to disclose adjudicative documents to appellants, to reflect the difference in procedure for legacy and new appeals. As noted, supplemental Statements of the Case are not required in the new system, but continue to be a requirement in the legacy system. Thus, VA proposes to strike references to Statements of the Case in paragraph (a), and add new paragraph (b) to note that, for legacy appeals, the policy described in paragraph (a) is also applicable to Statements of the Case. The address is also updated.

§ 20.1302 Rule 1302. Death of Appellant During Pendency of Appeal Before the Board

Citations and cross-references are updated.

§ 20.1304 Rule 1304. Request for a Change in Representation

VA proposes to redesignate § 20.1304 as § 20.1305, and add new § 20.1304, to delineate the different procedures for appellants in the legacy and new system to request a change in representation, personal hearing, or submission of additional evidence. In the new system, hearings and evidence submission will only be permitted as described in section 7113. Requests to modify a Notice of Disagreement, for the purpose of selecting a different option for evidence submission or hearing request, is governed by § 20.202(c). Thus, proposed § 20.1304 describes the procedures for requesting a change in representation only. Requests for changes in representation are collections of information under the Paperwork Reduction Act, and are currently approved under OMB Control Number 2900–0085. VA intends to submit this collection of information under OMB Control Number 2900–0674 in the future.

§ 20.1305 Rule 1305. Procedures for Legacy Appellants To Request a Change in Representation, Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans' Appeals

VA proposes to amend § 20.1304, redesignated as § 20.1305, to apply only to legacy appeals. Thus, minor changes are proposed to reflect that the provisions of § 20.1305 are applicable only to legacy appeals. The address and citations are also updated.

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

VA proposes minor changes to subpart O. Specifically, a reference to administrative appeals under § 19.51 is struck in § 20.1401(b) since Public Law 115–55 repeals procedures for administrative appeals by striking section 7106 of title 38 of the United States Code. VA proposes to clarify that the provisions of §§ 20.1403(b)(2) and 20.1411(b) are only applicable in the legacy system. Additionally, VA proposes to strike § 20.1405(d), as section 2, paragraph (v) of Public Law 115–55 repealed the authority for that provision. Addresses and citations are also updated. No changes are proposed to §§ 20.1400, 20.1402, 20.1406, 20.1407, and 20.1410.

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

VA proposes to remove and reserve subpart P, which addresses the Expedited Claims Adjudication (ECA) Initiative Pilot Program as this program is no longer in use and will not continue based on changes to the claims and appeals processes under Public Law 115–55. VA launched the ECA Initiative Program on February 2, 2009. The two-year pilot program was designed to accelerate claims and appeals processing. Participation in the ECA Initiative was strictly voluntary and limited to claimants who resided within the jurisdiction of the Nashville, Lincoln, Seattle, or Philadelphia Regional Offices (ROs). VA concluded the ECA pilot program in 2013. As the program is no longer operational, VA proposes to remove subpart P.

Appendix A to Part 20—Cross-References

VA proposes to remove Appendix A to part 20, as it has outlived its usefulness. Cross-references currently located in the table are outdated or incorrect. Whereas a user may have previously used the appendix to search for other sections pertinent to a particular regulation, such research may be accomplished much more efficiently via a search of the electronic document.

Part 21—Vocational Rehabilitation and Education

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

VA proposes to amend part 21 to align current regulations with new review and appeals processes outlined in Public Law 115–55. To accomplish this goal, VA proposes to update Subpart A by deleting 38 CFR 21.59 and 21.98; adding one new section, 38 CFR 21.416; amending 38 CFR 21.414 and 21.420; and updating cross references in several additional regulations (in subparts A and I).

VA's Vocational Rehabilitation and Employment (VR&E) program, under the authority of title 38 of the United States Code (U.S.C.) Chapter 31, serves an important function: To assist Servicemembers and Veterans who have service connected disabilities and barriers to employment in obtaining and maintaining suitable employment and achieving maximum independence in daily living. There are several points in this process where program participants may disagree with a decision made by VR&E field staff regarding benefits and/or services. Although VR&E's current practices with regard to reviews and appeals are well established in policy and procedural guidance, current regulations on the review and appeal processes focus only on three very specific points in the rehabilitation process (eligibility; entitlement; and the development of, or change in, the rehabilitation plan). Therefore, VA proposes to remove those current regulations, 38 CFR 21.59 and 21.98, and add proposed § 21.416, one new comprehensive regulation that is

inclusive of reviews and appeals that may occur throughout the entire rehabilitation process and accords with the new review options provided in Public Law 115–55.

Proposed § 21.416 will outline who can perform a higher-level review; provide a process that allows for the submission of new and relevant evidence; discuss duty to assist errors; outline an informal conference procedure for the higher-level review process; provide information on how to proceed on issues surrounding a difference of opinion; and establish a review time period. The review time period is an administrative goal, but does not create an enforceable right.

VA also proposes to amend 38 CFR 21.414 and 21.420 to include the new review options and the new requirements for notification letters under Public Law 115–55.

Subpart B—Claims and Applications for Educational Assistance

In addition to the proposed amendments to subpart A, VA proposes to amend subpart B regulations that govern VA's educational assistance benefits. VA's Education Service handles oversight of VA's education programs, which provide veterans, servicemembers, reservists, and certain family members of veterans with educational opportunities post-separation. To align current educational assistance regulations with the new review and appeals processes outlined in Public Law 115–55, VA proposes to revise § 21.1034. VA also proposes to remove the cross reference in one additional regulation and add § 21.1035 to address reviews in the legacy appeals process.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This proposed rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 that require approval by the OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Proposed 38 CFR 3.160(c), 3.2501, 3.2601, 8.30, 20.202, and 21.1034 contain collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by the OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 or emailed to *OIRA_Submission@omb.eop.gov,* with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; fax to (202) 273–9026; or submitted through *www.Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AQ26.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

The collections of information contained in 38 CFR 3.160(c), 3.2501, 3.2601, 8.30, 20.202, 21.416, and 21.1034 are described immediately following this paragraph. VA intends to revise OMB Control No. 2900–0674 so that it will contain all appeals-related information collections for the legacy and new systems, including the four claims and appeals related information collections previously approved under OMB Control No. 2900–0085. OMB Control No. 2900–0085 will be discontinued upon approval of the request to renew 2900–0674. As discussed in the regulatory impact analysis, VA believes that the net impact of the reorganization of the collections of information is likely to be deregulatory.

For each of the new or proposed collections of information below, VBA used general wage data from the Bureau of Labor Statistics (BLS) to estimate the respondents' costs associated with completing the information collection. According to the latest available BLS data, the mean hourly wage of full-time wage and salary workers was $24.34 based on the BLS wage code—''00–0000 All Occupations.'' This information was taken from the following website: *https://www.bls.gov/oes/current/oes_nat.htm* (May 2017).

Title: Veteran's Supplemental Claim Application (VA Form 20–0995).

OMB Control No.: 2900–XXXX (NEW).

CFR Provisions: 38 CFR 3.160(c), 3.2501, 8.30, 21.416, and 21.1034.

Summary of collection of information: VA administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. VA is proposing a new information collection in this proposed regulatory action under 38 CFR 3.160(c), 3.2501, 8.30, 21.416, and 21.1034 for supplemental claims in accordance with Public Law 115–55. Public Law 115–55 includes a new review option for Veterans or claimants who disagree with a VA claims decision know as a ''supplemental claim'' that is conducted within the agency of original jurisdiction. This review option is designed to allow submission of new and relevant evidence in connection with a previously decided claim. The new collection of information in

proposed 38 CFR 3.160(c), 3.2501, and 8.30 would require claimants to submit VA Form 20–0995 in either paper or electronic submission, where applicable, in order to initiate a supplemental claim for VA disability compensation benefits. *Description of need for information and proposed use of information:* The collection of information is necessary to determine the issue(s) that a claimant is dissatisfied with and seeks to initiate a supplemental claim for VA disability compensation benefits. VA will use this information to initiate or determine the veteran's eligibility to apply for a supplemental claim in accordance with Public Law 115–55.

Description of likely respondents: Veterans or claimants who indicate dissatisfaction with a decision issued by a local VA office and would like review of new and relevant evidence in support of his or her claim for disability compensation benefits. VA cannot make further assumptions about the population of respondents because of the variability of factors such as the educational background and wage potential of respondents. Therefore, VBA used general wage data to estimate the respondents' costs associated with completing the information collection.

Estimated number of respondents per month/year: 80,000 annually.

Estimated frequency of responses per month/year: One time for most Veterans or claimants; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

Estimated average burden per response: 15 minutes.

Estimated total annual reporting and recordkeeping burden: 20,000 hours.

Estimated cost to respondents per year: VBA estimates the total cost to all respondents to be $486,800 per year (20,000 burden hours × $24.34 per hour). Legally, respondents may not pay a person or business for assistance in completing the information collection. Therefore, there are no expected overhead costs for completing the information collection.

Title: Application for Higher-Level Review (VA Form 20–0996).

OMB Control No.: 2900–XXXX (NEW).

CFR Provisions: 38 CFR 3.2601, 8.30, 21.416, and 21.1034.

Summary of collection of information: VA administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. The new collection of information in proposed 38 CFR 3.2601, 8.30, 21.416, and 21.1034 would require claimants to submit VA prescribed applications in either paper or electronic submission of responses, where applicable, in order to request a higher-level review of a VA decision on a claim for benefits.

Description of need for information and proposed use of information: The collection of information is necessary to determine the issue(s) that a claimant is dissatisfied with and seeks higher-level review of by VA. VA will use this information to initiate a higher-level review by an agency adjudicator in accordance with Public Law 115–55.

Description of likely respondents: Veterans or claimants who indicate dissatisfaction with a decision issued by a local VA office.

Estimated number of respondents per month/year: 35,000 annually.

Estimated frequency of responses per month/year: One response total.

Estimated average burden per response: 15 minutes.

Estimated total annual reporting and recordkeeping burden: 8,750 hours.

Estimated cost to respondents per year: As above, VBA used May 2017 general wage data to estimate the respondents' costs associated with completing the information collection. VBA estimates the total cost to all respondents to be $212,975 per year (8,750 burden hours × $24.34 per hour). Legally, respondents may not pay a person or business for assistance in completing the information collection. Therefore, there are no expected overhead costs for completing the information collection.

Title: Notice of Disagreement (VA Form 10182).

OMB Control No.: 2900–0674.

CFR Provisions: 38 CFR 20.202.

Summary of collection of information: Proposed 38 CFR 20.202 would require that in order for a claimant to appeal one or more previously decided issues to the Board, that claimant must file a Notice of Disagreement in the form prescribed by VA. In order to promote efficiency in the adjudication process while ensuring that the process is simple and reliable for claimants, VA will require the use of a specific form for this purpose. VA Form 10182 will be titled the Notice of Disagreement. To be accepted by the Board, a complete Notice of Disagreement will be required to identify the specific determination with which the claimant disagrees, and must indicate if the claimant requests to have a hearing before the Board, an opportunity to submit additional evidence, or neither. 38 U.S.C. 7105(b)(2). Additionally, in order to permit appellants and their representatives to exercise their appeal-related rights, the information collected will include withdrawals of services by representatives (*proposed* 38 CFR 20.6), requests by appellants for changes in hearing dates or methods (*proposed* 38 CFR 20.703), and motions for reconsideration of Board decisions (*proposed* 38 CFR 20.1002).

Description of need for information and proposed use of information: This collection of information is necessary to permit claimants to appeal to the Board, to identify their request for a hearing and selection of the evidentiary record on appeal, to request new times or methods for hearings, to seek reconsideration of Board decisions, and so that representatives may effectively move to withdraw their representation of a claimant.

Description of likely respondents: Veterans or claimants who indicate dissatisfaction with a decision issued by a local VA office, and who are appealing one more issues in that decision to the Board.

Estimated number of respondents per month/year: 43,000 annually.

Estimated frequency of responses per month/year: One response per respondent accounted for above.

Estimated average burden per response: An average of 30 minutes.

Estimated total annual reporting and recordkeeping burden: 21,500 hours annually.

Estimated cost to respondents per year: The respondent population for this information collection is composed of individual appellants or their representative. In this regard, VA notes that the earning capacity of individual appellants spans an extremely wide spectrum. Additionally, an appellant's representative may be an employee of a recognized Veterans' service organization who provides appellate services as part of their overall free services to Veterans, or may be an attorney-at-law or accredited agent that charges a fee. VA cannot make further assumptions about the population of respondents because of the variability of factors such as the educational background and wage potential of respondents. Therefore, VBA used the BLS general wage data from May 2017 to estimate the respondents' costs associated with completing the information collection. VA seeks

comment as to whether use of the general wage data is appropriate in light of this wide spectrum of earning capacity in individual respondents. VA estimates the total cost to respondents using VA Form 10182 in the new appeals system to be $523,310 per year (21,500 burden hours × $24.34 per hour).

The total costs of these information collections to respondents is estimated to be $8.4 million over a five-year period (FY2019–FY2023).

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866, 13563, 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined that this is an economically significant regulatory action under Executive Order 12866. This proposed rule is expected to be an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the rule's economic analysis. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 Through Fiscal Year to Date.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing-Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing-Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing-Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Part 8

Life insurance; Military personnel; Veterans.

38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

38 CFR Part 21

Administrative practice and procedure, Armed forces,Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Peter M. O'Rourke, Chief of Staff, Department of Veterans Affairs, approved this document on April 24, 2018, for publication.

Dated: July 18, 2018.

Jeffrey M. Martin,

Impact Analyst, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 3, 8, 14, 19, 20, and 21 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.1 by revising paragraph (p) to read as follows:

§ 3.1 Definitions.

* * * * *

(p) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary. (See scope of claim, § 3.155(d)(2); complete claim, § 3.160(a)).

(1) *Initial claim.* An initial claim is any complete claim, other than a supplemental claim, for a benefit on a form prescribed by the Secretary. Initial claims include:

(i) An original claim for one or more benefits, which is the first complete claim received by VA (see original claim, § 3.160(b)).

(ii) A new claim requesting service connection for a disability or grant of a new benefit, and

(iii) A claim for increase in a disability evaluation rating or rate of a benefit paid.

(2) *Supplemental claim.* A supplemental claim is any complete claim for a VA benefit on an application form prescribed by the Secretary where an initial claim for the same or similar benefit on the same or similar basis was previously decided. (See supplemental claim; § 3.2501).

* * * * *

■ 3. Amend § 3.103 by revising the section heading and paragraphs (b)(1), (c), (d), and (f) to read as follows:

§ 3.103 Procedural due process and other rights.

* * * * *

(b) * * *

(1) *General.* Claimants and their representatives are entitled to notice of any decision made by VA affecting the payment of benefits or the granting of relief. Such notice will clearly set forth the elements described under paragraph (f) of this section, the right to a hearing on any issue involved in the claim when applicable, the right of representation, and the right, as well as the necessary procedures and time limits to initiate a higher-level review, supplemental claim, or appeal to the Board of Veterans' Appeals.

* * * * *

(c) *Submission of evidence.* (1) *General rule.* VA will include in the record, any evidence whether documentary, testimonial, or in other form, submitted by the claimant in support of a pending claim and any issue, contention, or argument a claimant may offer with respect to a claim, except as prescribed in paragraph (2) of this section and § 3.2601(f).

(2) *Treatment of evidence received after notice of a decision.* The evidentiary record for a claim before the agency of original jurisdiction closes when VA issues notice of a decision on the claim. The agency of original jurisdiction will not consider, or take any other action on evidence submitted by a claimant after notice of decision on a claim, and such evidence will not be considered part of the record at the time of any decision by the agency of original jurisdiction, except under the following circumstances:

(i) The agency of original jurisdiction subsequently receives a complete application for a supplemental claim or claim for increase; or

(ii) A claim is pending readjudication after identification of a duty to assist error during a higher-level review or appeal to the Board of Veterans' Appeals. Those events reopen the record and any evidence previously submitted to the agency of original jurisdiction while the record was closed will become part of the record to be considered upon readjudication.

(d) *The right to a hearing.* (1) Upon request, a claimant is entitled to a hearing on any issue involved in a claim within the purview of part 3 of this chapter before VA issues notice of a decision on an initial or supplemental claim. A hearing is not available in connection with a request for higher level review under § 3.2601. VA will provide the place of hearing in the VA field office having original jurisdiction over the claim, or at the VA office nearest the claimant's home having adjudicative functions, or videoconference capabilities, or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available. VA will provide one or more employees who have original determinative authority of such issues to conduct the hearing and be responsible for establishment and preservation of the hearing record. Upon request, a claimant is entitled to a hearing in connection with proposed adverse actions before one or more VA employees having original determinative authority who did not participate in the proposed action. All expenses incurred by the claimant in connection with the hearing are the responsibility of the claimant.

(2) The purpose of a hearing is to permit the claimant to introduce into the record, in person, any available evidence which he or she considers relevant and any arguments or contentions with respect to the facts and applicable law which he or she may consider pertinent. All testimony will be under oath or affirmation. The claimant is entitled to produce witnesses, but the claimant and witnesses must be present. The agency of original jurisdiction will not normally schedule a hearing for the sole purpose of receiving argument from a representative. It is the responsibility of the VA employees conducting the hearings to explain fully the issues and suggest the submission of evidence which the claimant may have overlooked and which would be of advantage to the claimant's position. To assure clarity and completeness of the hearing record, questions which are directed to the claimant and to witnesses are to be framed to explore fully the basis for claimed entitlement rather than with an intent to refute evidence or to discredit testimony.

* * * * *

(f) *Notification of decisions.* The claimant or beneficiary and his or her representative will be notified in writing of decisions affecting the payment of benefits or granting of relief. Written notification must include in the notice letter or enclosures or a combination thereof, all of the following elements:

(1) Identification of the issues adjudicated;

(2) A summary of the evidence considered;

(3) A summary of the laws and regulations applicable to the claim;

(4) A listing of any findings made by the adjudicator that are favorable to the claimant under § 3.104(c);

(5) For denied claims, identification of the element(s) required to grant the claim(s) that were not met;

(6) If applicable, identification of the criteria required to grant service

connection or the next higher-level of compensation;

(7) An explanation of how to obtain or access evidence used in making the decision; and

(8) A summary of the applicable review options under § 3.2500 available for the claimant to seek further review of the decision.

* * * * *

■ 4. Amend § 3.104 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a);
■ c. Add a heading to paragraph (b); and
■ d. Add paragraph (c).

The revisions and additions read as follows:

§ 3.104 Binding nature of decisions.

(a) *Binding decisions.* A decision of a VA rating agency is binding on all VA field offices as to conclusions based on the evidence on file at the time VA issues written notification in accordance with 38 U.S.C. 5104. A binding agency decision is not subject to revision except by the Board of Veterans' Appeals, by federal court order, or as provided in §§ 3.105, 3.2500, and 3.2600.

(b) *Binding administrative determinations.* * * *

(c) *Favorable findings.* Any finding favorable to the claimant made by either a VA adjudicator, as described in 3.103(f)(4), or by the Board of Veterans' Appeals, as described in 20.801(a) of this chapter, is binding on all subsequent VA and Board of Veterans' Appeals adjudicators, unless rebutted by clear and convincing evidence to the contrary. For purposes of this section, a finding means a conclusion either on a question of fact or on an application of law to facts made by an adjudicator concerning the issue(s) under review.

■ 5. Amend § 3.105 by revising paragraphs (a) and (b), and adding paragraph (j) to read as follows:

§ 3.105 Revision of decisions.

* * * * *

(a)(1) *Error in final decisions.* Decisions are final when the underlying claim is finally adjudicated as provided in § 3.160(d). Final decisions will be accepted by VA as correct with respect to the evidentiary record and the law that existed at the time of the decision, in the absence of clear and unmistakable error. At any time after a decision is final, the claimant may request, or VA may initiate, review of the decision to determine if there was a clear and unmistakable error in the decision. Where evidence establishes such error, the prior decision will be reversed or amended.

(i) *Definition of clear and unmistakable error.* A clear and unmistakable error is a very specific and rare kind of error. It is the kind of error, of fact or of law, that when called to the attention of later reviewers compels the conclusion, to which reasonable minds could not differ, that the result would have been manifestly different but for the error. If it is not absolutely clear that a different result would have ensued, the error complained of cannot be clear and unmistakable. Generally, either the correct facts, as they were known at the time, were not before VA, or the statutory and regulatory provisions extant at the time were incorrectly applied.

(ii) *Effective date of reversed or revised decisions.* For the purpose of authorizing benefits, the rating or other adjudicative decision which constitutes a reversal or revision of a prior decision on the grounds of clear and unmistakable error has the same effect as if the corrected decision had been made on the date of the reversed decision. Except as provided in paragraphs (d) and (e) of this section, where an award is reduced or discontinued because of administrative error or error in judgment, the provisions of § 3.500(b)(2) will apply.

(iii) *Record to be reviewed.* Review for clear and unmistakable error in a prior final decision of an agency of original jurisdiction must be based on the evidentiary record and the law that existed when that decision was made. The duty to assist in § 3.159 does not apply to requests for revision based on clear and unmistakable error.

(iv) *Change in interpretation.* Clear and unmistakable error does not include the otherwise correct application of a statute or regulation where, subsequent to the decision being challenged, there has been a change in the interpretation of the statute or regulation.

(v) *Limitation on Applicability.* Decisions of an agency of original jurisdiction on issues that have been decided on appeal by the Board or a court of competent jurisdiction are not subject to revision under this subsection.

(vi) *Duty to assist not applicable.* For examples of situations that are not clear and unmistakable error see 38 CFR 20.1403(d).

(vii) *Filing Requirements.* (A) *General.* A request for revision of a decision based on clear and unmistakable error must be in writing, and must be signed by the requesting party or that party's authorized representative. The request must include the name of the claimant; the name of the requesting party if other than the claimant; the applicable Department of Veterans Affairs file number; and the date of the decision to which the request relates. If the applicable decision involved more than one issue, the request must identify the specific issue, or issues, to which the request pertains.

(B) *Specific allegations required.* The request must set forth clearly and specifically the alleged clear and unmistakable error, or errors, of fact or law in the prior decision, the legal or factual basis for such allegations, and why the result would have been manifestly different but for the alleged error. Non-specific allegations of failure to follow regulations or failure to give due process, or any other general, non-specific allegations of error, are insufficient to satisfy the requirement of the previous sentence.

(2) *Error in binding decisions prior to final adjudication.* Prior to the time that a claim is finally adjudicated, previous decisions which are binding will be accepted as correct by an adjudicative agency, with respect to the evidentiary record and law existing at the time of the decision, unless the outcome is clearly erroneous, after considering whether any favorable findings may be reversed as provided in § 3.104(c).

(b) *Difference of opinion.* Whenever an adjudicative agency is of the opinion that a revision or an amendment of a previous decision is warranted on the basis of the evidentiary record and law that existed at the time of the decision, a difference of opinion being involved rather than a clear and unmistakable error, the proposed revision will be recommended to Central Office. However, a decision may be revised under § 3.2600 or § 3.2601 without being recommended to Central Office.

* * * * *

(j) *Supplemental claims and higher-level review.* VA may revise an earlier decision denying benefits, if warranted, upon resolution of a supplemental claim under § 3.160(c) or higher-level review under § 3.2601.

§ 3.110 [Amended]

■ 6. Amend § 3.110(b) by removing ''§§ 20.302 and 20.305'' from the last sentence and adding in its place ''§§ 19.52, 20.203, and 20.110''.

■ 7. Amend § 3.151 as follows:
■ a. Revise paragraph (a); and
■ b. Add paragraphs (c) and (d);

The revisions and additions read as follows:

§ 3.151 Claims for disability benefits.

(a) *General.* A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation

may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit. (See scope of claim, § 3.155(d)(2); complete claim, § 3.160(a); supplemental claims, § 3.2501(b)).

* * * * *

(c) *Issues within a claim.* (1) To the extent that a complete claim application encompasses a request for more than one determination of entitlement, each specific entitlement will be adjudicated and is considered a separate issue for purposes of the review options prescribed in § 3.2500. A single decision by an agency of original jurisdiction may adjudicate multiple issues in this respect, whether expressly claimed or determined by VA to be reasonably within the scope of the application as prescribed in § 3.155(d)(2). VA will issue a decision that addresses each such identified issue within a claim. Upon receipt of notice of a decision, a claimant may elect any of the applicable review options prescribed in § 3.2500 for each issue adjudicated.

(2) With respect to service-connected disability compensation, an issue for purposes of paragraph (c)(1) of this section is defined as entitlement to compensation for a particular disability. For example, if a decision adjudicates service-connected disability compensation for both a knee condition and an ankle condition, compensation for each condition is a separate entitlement or issue for which a different review option may be elected. However, different review options may not be selected for specific components of the knee disability claim, such as ancillary benefits, whether a knee injury occurred in service, or whether a current knee condition resulted from a service-connected injury or condition.

(d) *Evidentiary record.* The evidentiary record before the agency of original jurisdiction for an initial or supplemental claim includes all evidence received by VA before VA issues notice of a decision on the claim. Once the agency of original jurisdiction issues notice of a decision on a claim, the evidentiary record closes as described in § 3.103(c)(2) and VA no longer has a duty to assist in gathering evidence under § 3.159. (See § 3.155(b), submission of evidence).

* * * * *

■ 8. Amend § 3.155 by revising the second sentence of the introductory text and paragraph (d)(1) to read as follows:

§ 3.155 How to file a claim.

* * * The provisions of this section are applicable to all claims governed by part 3, with the exception that paragraph (b) of this section, regarding intent to file a claim, does not apply to supplemental claims.

* * * * *

(d) * * *

(1) *Requirement for complete claim and date of claim.* A complete claim is required for all types of claims, and will generally be considered filed as of the date it was received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs. For supplemental claims, if VA received a complete claim within 1 year of the filing of an incomplete claim, as provided in paragraph (c) of this section, it will be considered filed as of the date of receipt of the incomplete claim. For other types of claims, if VA receives a complete claim within 1 year of the filing of an intent to file a claim that meets the requirements of paragraph (b) of this section, it will be considered filed as of the date of receipt of the intent to file a claim. Only one complete claim for a benefit (*e.g.,* compensation, pension) may be associated with each intent to file a claim for that benefit, though multiple issues may be contained within a complete claim. In the event multiple complete claims for a benefit are filed within 1 year of an intent to file a claim for that benefit, only the first claim filed will be associated with the intent to file a claim. In the event that VA receives both an intent to file a claim and an incomplete application form before the complete claim as defined in § 3.160(a) is filed, the complete claim will be considered filed as of the date of receipt of whichever was filed first provided it is perfected within the necessary timeframe, but in no event will the complete claim be considered filed more than one year prior to the date of receipt of the complete claim.

■ 9. Amend § 3.156 as follows:

■ a. Revise the section heading;

■ b. Add introductory text;

■ c. Revise paragraph (a);

■ d. In the authority immediately following paragraph (a), remove ''5103A(f)'' and add in its place ''5103A(h)'';

■ e. Revise the heading of paragraph (b);

■ f. Add new paragraph (d);

The revisions and additions read as follows:

§ 3.156 New evidence.

New evidence means evidence not previously submitted to agency adjudicators.

(a) *New and material evidence.* For claims to reopen decided prior to the effective date provided in § 19.2(a), the following standards apply. A claimant may reopen a finally adjudicated legacy claim by submitting new and material evidence. Material evidence means existing evidence that, by itself or when considered with previous evidence of record, relates to an unestablished fact necessary to substantiate the claim. New and material evidence can be neither cumulative nor redundant of the evidence of record at the time of the last prior final denial of the claim sought to be reopened, and must raise a reasonable possibility of substantiating the claim.

(Authority: 38 U.S.C. 501, 5103A(h), 5108)

(b) *Pending legacy claims not under the modernized review system.*

* * * * *

(d) *New and relevant evidence.* On or after the effective date provided in § 19.2(a), a claimant may file a supplemental claim as prescribed in § 3.2501. If new and relevant evidence is presented or secured with respect to the supplemental claim, the agency of original jurisdiction will readjudicate the claim taking into consideration all of the evidence of record.

* * * * *

■ 10. Amend § 3.158 by revising the first sentence of paragraph (a) to read as follows:

§ 3.158 Abandoned claims.

(a) *General.* Except as provided in § 3.652, where evidence requested in connection with an initial claim or supplemental claim or for the purpose of determining continued entitlement is not furnished within 1 year after the date of request, the claim will be considered abandoned.

* * * * *

■ 11. Amend § 3.159 as follows:

■ a. Revise paragraph (a)(3);

■ b. Revise the first sentence of paragraph (b)(1);

■ c. Revise paragraph (b)(3);

■ d. Revise paragraph (c) introductory text;

■ e. Revise paragraph (c)(4)(iii);

■ f. Add paragraph (c)(4)(iv); and

■ g. Remove the text ''for a claim'' and adding in its place the text ''for an initial or supplemental claim'' in paragraph (d) introductory text.

The revisions read as follows:

§ 3.159 Department of Veterans Affairs assistance in developing claims.

(a) * * *

(3) *Substantially complete application* means an application containing:

(i) The claimant's name;

(ii) His or her relationship to the veteran, if applicable;

(iii) Sufficient service information for VA to verify the claimed service, if applicable;

(iv) The benefit sought and any medical condition(s) on which it is based;

(v) The claimant's signature; and

(vi) In claims for nonservice-connected disability or death pension and parents' dependency and indemnity compensation, a statement of income;

(vii) In supplemental claims, identification or inclusion of potentially new evidence;

(viii) For higher-level reviews, identification of the date of the decision for which review is sought.

* * * * *

(b) *VA's duty to notify claimants of necessary information or evidence.* (1) Except as provided in paragraph (3) of this section, when VA receives a complete or substantially complete initial or supplemental claim, VA will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim (hereafter in this paragraph referred to as the ''notice'').

* * * * *

(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:

(i) Upon receipt of a supplemental claim under § 3.2501 within one year of the date VA issues notice of a prior decision;

(ii) Upon receipt of a request for higher-level review under § 3.2601;

(iii) Upon receipt of a Notice of Disagreement under § 20.202 of this chapter;

or

(iv) When, as a matter of law, entitlement to the benefit claimed cannot be established.

(c) *VA's duty to assist claimants in obtaining evidence.* VA has a duty to assist claimants in obtaining evidence to substantiate all substantially complete initial and supplemental claims, and when a claim is returned for readjudication by a higher-level adjudicator or the Board after identification of a duty to assist error on the part of the agency of original jurisdiction, until the time VA issues notice of a decision on a claim or returned claim. VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. VA will not pay any fees charged by a custodian to provide records requested. When a claim is returned for readjudication by a higher-level adjudicator or the Board after identification of a duty to assist error, the agency of original jurisdiction has a duty to correct any other duty to assist errors not identified by the higher-level adjudicator or the Board.

* * * * *

(4) * * *

(iii) For requests to reopen a finally adjudicated claim received prior to the effective date provided in § 19.2(a) of this chapter, paragraph (c)(4) of this section applies only if new and material evidence is presented or secured as prescribed in § 3.156.

(iv) Paragraph (c)(4) of this section applies to a supplemental claim only if new and relevant evidence under § 3.2501 is presented or secured.

* * * * *

■ 12. Amend § 3.160 as follows:

■ a. Revise paragraphs (a), (d), and (e);

■ b. Remove paragraph (f); and

■ c. Revise the authority citation for paragraph (e).The revisions read as follows:

§ 3.160 Status of claims.

(a) *Complete Claim.* A submission of an application form prescribed by the Secretary, whether paper or electronic, that meets the following requirements:

(1) A complete claim must provide the name of the claimant; the relationship to the veteran, if applicable; and sufficient information for VA to verify the claimed service, if applicable.

(2) A complete claim must be signed by the claimant or a person legally authorized to sign for the claimant.

(3) A complete claim must identify the benefit sought.

(4) A description of any symptom(s) or medical condition(s) on which the benefit is based must be provided to the extent the form prescribed by the Secretary so requires.

(5) For nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires; and

(6) For supplemental claims, potentially new evidence must be identified or included.

* * * * *

(d) *Finally adjudicated claim.* A claim that is adjudicated by the Department of Veterans Affairs as either allowed or disallowed is considered finally adjudicated when:

(1) For legacy claims not subject to the modernized review system, whichever of the following occurs first:

(i) The expiration of the period in which to file a Notice of Disagreement, pursuant to the provisions of § 19.52(a) or § 20.502(a) of this chapter, as applicable; or

(ii) Disposition on appellate review.

(2) For claims under the modernized review system, the expiration of the period in which to file a review option available under § 3.2500 or disposition on judicial review where no such review option is available.

(e) *Reopened claims prior to effective date of modernized review system.* An application for a benefit received prior to the effective date provided in § 19.2(a) of this chapter, after final disallowance of an earlier claim that is subject to readjudication on the merits based on receipt of new and material evidence related to the finally adjudicated claim, or any claim based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans' Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter. As of the effective date provided in § 19.2(a) of this chapter, claimants may no longer file to reopen a claim, but may file a supplemental claim as prescribed in § 3.2501 to apply for a previously disallowed benefit. A request to reopen a finally decided claim that has not been adjudicated as of the effective date will be processed as a supplemental claim subject to the modernized review system.

(Authority: 38 U.S.C. 501, 5108)

* * * * *

■ 13. Remove and reserve § 3.161.

§ 3.161 [Removed and Reserved].

■ 14. Amend § 3.328 as follows:

■ a. In paragraph (b), remove the text ''at the regional office level'' and add in its place ''before VA'';

■ b. Revise paragraph (c);

The revision reads as follows:

§ 3.328 Independent medical opinions.

* * * * *

(c) *Approval.* (1) Requests for independent medical opinions shall be approved when one of the following conditions is met:

(i) The director of the Service or his or her designee determines that the issue under consideration poses a medical problem of such obscurity or complexity, or has generated such controversy in the medical community at large, as to justify solicitation of an independent medical opinion; or

(ii) The independent medical opinion is required to fulfill the instructions

contained in a remand order from the Board of Veterans' Appeals.

(2) A determination that an independent medical opinion is not warranted may be contested only as part of an appeal to the Board of Veterans' Appeals on the merits of the decision rendered on the primary issue by VA.

(Authority: 38 U.S.C. 5109, 5701(b)(1); 5 U.S.C. 552a(f)(3))

* * * * *

■ 15. Amend 3.400 as follows:
■ a. Revise the introductory text;
■ b. Revise paragraphs (h)(1) through (h)(3);
■ c. Revise paragraph (z)(2); and
■ d. Add paragraph (z)(3).

The revisions read as follows:

§ 3.400 General.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation, or dependency and indemnity compensation based on an initial claim or supplemental claim will be the date of receipt of the claim or the date entitlement arose, whichever is later. For effective date provisions regarding revision of a decision based on a supplemental claim or higher-level review, see § 3.2500.

* * * * *

(h) *Difference of opinion (§ 3.105).* (1) As to decisions not finally adjudicated (see § 3.160(d)) prior to timely receipt of an application for higher-level review, or prior to readjudication on VA initiative, the date from which benefits would have been payable if the former decision had been favorable.

(2) As to decisions which have been finally adjudicated (see § 3.160(d)), and notwithstanding other provisions of this section, the date entitlement arose, but not earlier than the date of receipt of the supplemental claim.

(3) As to decisions which have been finally adjudicated (see 3.160(d)) and readjudication is undertaken solely on VA initiative, the date of Central Office approval authorizing a favorable decision or the date of the favorable Board of Veterans' Appeals decision.

* * * * *

(z) * * *

(2) Reopened claims received prior to the effective date provided in § 19.2(a) of this chapter: Latest of the following dates:

(i) November 23, 1977.

(ii) Date entitlement arose.

(iii) One year prior to date of receipt of reopened claim.

(3) Supplemental claims received more than one year after notice of decision: Latest of the following dates:

(i) Date entitlement arose.

(ii) One year prior to date of receipt of a supplemental claim.

■ 16. In subpart A, remove the word ''reopened'' and add, in its place, the word ''supplemental'' in the following places:
■ a. § 3.31
■ b. § 3.114
■ c. § 3.321
■ d. § 3.326
■ e. § 3.372
■ f. § 3.401
■ g. § 3.402
■ h. § 3.404
■ i. § 3.655
■ j. § 3.812

§ 3.814 [Amended]

■ 17. Amend § 3.814 by removing the words ''original claim, a claim reopened after final disallowance, or a claim for increase'' and add, in its place, the words ''initial claim or supplemental claim'' from paragraph (e) introductory text.

§ 3.815 [Amended]

■ 18. Amend § 3.815 by removing the words ''original claim, a claim reopened after final disallowance, or a claim for increase,'' and add, in its place, the words ''initial claim or supplemental claim'' from paragraph (i) introductory text.

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

■ 19. The authority citation for part 3, subpart D continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 20. Amend subpart D by adding § 3.2400 to read as follows:

§ 3.2400 Applicability of modernized review system.

(a) The modernized review system defined in 38 CFR 19.2(b) applies to all claims, requests for reopening of finally adjudicated claims, and requests for revision based on clear and unmistakable error:

(1) For which VA issues notice of an initial decision on or after the effective date of the modernized review system as provided in 38 CFR 19.2(a); or

(2) Where a claimant has elected review of a legacy claim under the modernized review system as provided in paragraph (c) of this section.

(b) *Legacy claims.* A legacy claim is a claim, or request for reopening or revision of a finally adjudicated claim, for which VA provided notice of a decision prior to the effective date of the modernized review system and the claimant has not elected to participate in the modernized review system as provided in paragraph (c) of this section.

(c) *Election into the modernized review system.* For claims governed by this part, pursuant to election by a claimant, the modernized review system applies where:

(1) *Rapid appeals modernization program election.* A claimant with a legacy appeal elects to opt-in to the modernized review system on or after November 1, 2017, as part of a program authorized by the Secretary pursuant to section 4 of Public Law 115–55; or

(2) *Election after receiving a statement of the case.* A claimant with a legacy appeal elects to opt-in to the modernized review system, following issuance, on or after the effective date of the modernized system, of a VA Statement of the Case or Supplemental Statement of the Case, by filing for a review option under the new system in accordance with § 3.2500 within the time allowed for filing a substantive appeal under 38 CFR 19.52(b) and other applicable provisions in part 19 of this chapter.

(d) *Effect of election.* Once an eligible claimant elects the modernized review system with respect to a particular claim, the provisions of 38 CFR parts 19 and 20 applicable to legacy claims and appeals no longer apply to that claim.

■ 21. Amend subpart D by adding § 3.2500 to read as follows:

§ 3.2500 Review of decisions.

(a) *Reviews available.* (1) Within one year from the date on which the agency of original jurisdiction issues a notice of a decision on a claim or issue as defined in § 3.151(c), except as otherwise provided in paragraphs (c), (e), and (f) of this section, a claimant may elect one of the following administrative review options by timely filing the appropriate form prescribed by the Secretary:

(i) A request for higher-level review under § 3.2601 or

(ii) An appeal to the Board under § 20.202 of this chapter.

(2) At any time after VA issues notice of a decision on an issue within a claim, a claimant may file a supplemental claim under § 3.2501.

(b) *Concurrent election prohibited.* With regard to the adjudication of a claim or an issue as defined in § 3.151(c), a claimant who has filed for review under one of the options available under paragraph (a) of this section may not, while that review is pending final adjudication, file for review under a different available option. While the adjudication of a specific benefit is pending on appeal before a federal court, a claimant may not file for administrative review of the

claim under any of options listed in paragraph (a) of this section.

(c) *Continuously pursued issues.* A claimant may continuously pursue a claim or an issue by timely and properly filing one of the following administrative review options, as specified, after any decision by the agency of original jurisdiction, Board of Veterans' Appeals, or entry of judgment by the U.S. Court of Appeals for Veterans Claims, provided that any appeal to the U.S. Court of Appeals for Veterans Claims is timely filed as determined by the court:

(1) Following notice of a decision on a supplemental claim, the claimant may file another supplemental claim, request a higher-level review, or appeal to the Board of Veterans' Appeals.

(2) Following notice of a decision on a higher-level review, the claimant may file a supplemental claim or appeal to the Board of Veterans' Appeals. (See appeal to the Board, 38 CFR 20.202).

(3) Following notice of a decision on an appeal to the Board of Veterans' Appeals, the claimant may file a supplemental claim.

(4) Following entry of judgment on an appeal to the Court of Appeals for Veterans Claims, the claimant may file a supplemental claim.

(d) *Voluntary withdrawal.* A claimant may withdraw a supplemental claim or a request for a higher-level review at any time before VA renders a decision on the issue. A claimant may change the review option selected by withdrawing the request and filing the appropriate application for the requested review option within one year from the date on which VA issued notice of a decision on an issue.

(e) *Applicability.* This section applies to claims and requests under the modernized review system as set forth in § 3.2400, with the exception that a supplemental claim may not be filed in connection with a denial of a request to revise a final decision of the agency of original jurisdiction based on clear and unmistakable error .

(f) *Review of simultaneously contested claims.* Notwithstanding other provisions of this part, a party to a simultaneously contested claim may only seek administrative review of a decision by the agency of original jurisdiction on such claim by filing an appeal to the Board as prescribed in § 20.402 of this chapter within 60 days of the date VA issues notice of the decision on the claim. (See contested claims, 38 CFR 20.402).

(g) *Effective dates.* (1) *Continuously pursued claims.* Except as otherwise provided by other provisions of this part, including § 3.400, the effective date will be fixed in accordance with the date of receipt of the initial claim or date entitlement arose, whichever is later, if a claimant continuously pursues an issue by timely filing in succession any of the available review options as specified in paragraph (c) of this section.

(2) *Supplemental claims received more than one year after notice of decision.* Except as otherwise provided in this section, for supplemental claims received more than one year after the date on which the agency of original jurisdiction issues notice of a decision or the Board of Veterans' Appeals issued notice of a decision, the effective date will be fixed in accordance with date entitlement arose, but will not be earlier than the date of receipt of the supplemental claim.

■ 22. Amend subpart D by adding § 3.2501 to read as follows:

§ 3.2501 Supplemental claims.

Except as otherwise provided, a claimant or his or her legal representative, if any, may file a supplemental claim (see § 3.1(p)(2)) by submitting a complete application (see § 3.160(a)) in writing on a form prescribed by the Secretary any time after the agency of original jurisdiction issues notice of a decision, regardless of whether the claim is pending or has become finally adjudicated. If new and relevant evidence is presented or secured with respect to the supplemental claim, the agency of original jurisdiction will readjudicate the claim taking into consideration all of the evidence of record. If new and relevant evidence is not presented or secured, the agency of original jurisdiction will issue a decision finding that there was insufficient evidence to readjudicate the claim.

(a) *New and relevant evidence.* The new and relevant standard will not impose a higher evidentiary threshold than the previous new and material evidence standard under § 3.156(a).

(1) *Definition.* New evidence is evidence not previously submitted to agency adjudicators. Relevant evidence is information that tends to prove or disprove a matter at issue in a claim. Relevant evidence includes evidence that raises a theory of entitlement that was not previously addressed.

(2) *Receipt prior to notice of a decision.* New and relevant evidence received before VA issues its decision on a supplemental claim will be considered as having been filed in connection with the claim.

(b) *Evidentiary record.* The evidentiary record for a supplemental claim includes all evidence received by VA before VA issues notice of a decision on the supplemental claim. For VA to readjudicate the claim, the evidentiary record must include new and relevant evidence that was not of record as of the date of notice of the prior decision.

(c) *Duty to assist.* Upon receipt of a substantially complete supplemental claim, VA's duty to assist in the gathering of evidence under § 3.159 of this part is triggered and includes any such assistance that may help secure new and relevant evidence as defined in paragraph (a) of this section to complete the supplemental claim application.

(d) *Date of filing.* The filing date of a supplemental claim is determined according to § 3.155, with the exception of the intent to file rule found in § 3.155(b) which applies to initial claims.

(Authority: 38 U.S.C. 501, 5103A(h), 5108)

■ 23. Amend subpart D by adding § 3.2502 to read as follows:

§ 3.2502 Return by higher-level adjudicator or remand by the Board of Veterans' Appeals.

Upon receipt of a returned claim from a higher-level adjudicator or remand by the Board of Veterans' Appeals, the adjudication activity will take immediate action to expedite readjudication of the claim in accordance with 38 U.S.C. 5109B. The adjudication activity retains jurisdiction of the claim. In readjudicating the claim, the adjudication activity will correct all identified duty to assist errors, complete a new decision and issue notice to the claimant and or his or her legal representative in accordance with 3.103(f). The effective date of any evaluation and award of pension, compensation or dependency and indemnity compensation will be determined in accordance with the date of receipt of the initial claim as prescribed under § 3.2500(g).

■ 24. Amend § 3.2600 as follows:

■ a. Revise the section heading;

■ b. Add introductory text;

■ c. Remove paragraph (g).

The revisions and additions read as follows:

§ 3.2600 Legacy review of benefit claims decisions.

This section applies only to legacy claims as defined in § 3.2400 in which a Notice of Disagreement is timely filed on or after June 1, 2001, under regulations applicable at the time of filing.

* * * * *

■ 25. Amend subpart D by adding § 3.2601 to read as follows:

§ 3.2601 Higher-level review.

(a) *Applicability.* This section applies to all claims under the modernized review system, with the exception of simultaneously contested claims.

(b) *Requirements for election.* A claimant who is dissatisfied with a decision by the agency of original jurisdiction may file a request for higher-level review in accordance with § 3.2500, by submitting a complete request for review on a form prescribed by the Secretary.

(c) *Complete request.* A complete request for higher-level review is a submission of a request on a form prescribed by the Secretary, whether paper or electronic, that meets the following requirements:

(1) A complete request must provide the name of the claimant and the relationship to the veteran, if applicable;

(2) A complete request must be signed by the claimant or a person legally authorized to sign for the claimant; and

(3) A complete request must specify the date of the underlying decision for which review is requested and specify the issues for which review is requested.

(d) *Filing period.* A complete request for higher-level review must be received by VA within one year of the date of VA's issuance of the notice of the decision. If VA receives an incomplete request form, VA will notify the claimant and the claimant's representative, if any, of the information necessary to complete the request form prescribed by the Secretary. If a complete request is submitted within 60 days of the date of the VA notification of such incomplete request or prior to the expiration of the one year filing period, VA will consider it filed as of the date VA received the incomplete application form that did not meet the standards of a complete request.

(e) *Who may conduct a higher-level review.* Higher-level review will be conducted by an experienced adjudicator who did not participate in the prior decision. Selection of a higher-level adjudicator to conduct a higher-level review is at VA's discretion. As a general rule, an adjudicator in an office other than the office that rendered the prior decision will conduct the higher-level review. An exception to this rule applies for claims requiring specialized processing, such as where there is only one office that handles adjudication of a particular type of entitlement. A claimant may request that the office that rendered the prior decision conduct the higher-level review, and VA will grant the request in the absence of good cause to deny.

(f) *Evidentiary record.* The evidentiary record in a higher-level review is limited to the evidence of record as of the date the agency of original jurisdiction issued notice of the prior decision under review and the higher-level adjudicator may not consider additional evidence. The higher-level adjudicator may not order development of additional evidence that may be relevant to the claim under review, except as provided in paragraph (g).

(g) *Duty to assist errors.* The higher-level adjudicator will ensure that VA complied with its statutory duty to assist (see § 3.159) in gathering evidence applicable prior to issuance of the decision being reviewed. If the higher-level adjudicator both identifies a duty to assist error that existed at the time of VA's decision on the claim under review and cannot grant the maximum benefit for the claim, the higher-level adjudicator must return the claim to the adjudication activity for correction of the error and readjudication. Upon receipt, the adjudication activity will take immediate action to expedite readjudication of the claim in accordance with 38 U.S.C. 5109B.

(1) For disability evaluations, the *maximum benefit* means the highest schedular evaluation allowed by law and regulation for the issue under review.

(2) For ancillary benefits, the *maximum benefit* means the granting of the benefit sought.

(3) For pension benefits or dependents indemnity compensation, the *maximum benefit* means granting the highest benefit payable.

(h) *Informal conferences.* A claimant or his or her representative may include a request for an informal conference with a request for higher-level review. For purposes of this section, *informal conference* means contact with a claimant's representative or, if not represented, with the claimant, telephonically, or as otherwise determined by VA, for the sole purpose of allowing the claimant or representative to identify any errors of law or fact in a prior decision based on the record at the time the decision was issued. If requested, VA will make reasonable efforts to contact the claimant and/or the authorized representative to conduct one informal conference during a higher-level review, but if such reasonable efforts are not successful, a decision may be issued in the absence of an informal conference. The higher-level adjudicator with determinative authority over the issue will conduct the informal conference, absent exceptional circumstances. VA will not receive any new evidence in support of the higher-level review during the informal conference in accordance with paragraph (d) of this section. Any expenses incurred by the claimant in connection with the informal conference are the responsibility of the claimant.

(i) *De novo review.* The higher-level adjudicator will consider only those decisions and claims for which the claimant has requested higher-level review, and will conduct a de novo review giving no deference to the prior decision, except as provided in § 3.104(c).

(j) *Difference of opinion.* The higher-level adjudicator may grant a benefit sought in the claim under review based on a difference of opinion (see § 3.105(b)). However, any finding favorable to the claimant is binding except as provided in § 3.104(c) of this part . In addition, the higher-level adjudicator will not revise the outcome in a manner that is less advantageous to the claimant based solely on a difference of opinion. The higher-level adjudicator may reverse or revise (even if disadvantageous to the claimant) prior decisions by VA (including the decision being reviewed or any prior decision) on the grounds of clear and unmistakable error under § 3.105(a)(1) or (a)(2), as applicable, depending on whether the prior decision is finally adjudicated.

(k) *Notice requirements.* Notice of a decision made under this section will include all of the elements described in § 3.103(f), a general statement indicating whether evidence submitted while the record was closed was not considered, and notice of the options available to have such evidence considered.

(Authority: 38 U.S.C. 5109A and 7105(d))

PART 8—NATIONAL SERVICE LIFE INSURANCE

■ 26. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

■ 27. Amend § 8.30 by:
■ a. Revising the section heading;
■ b. Revising paragraphs (a), (b), and (c);
■ c. Adding paragraphs (d) through (h).

The revisions read as follows:

§ 8.30 Review of Decisions and Appeal to Board of Veterans' Appeals.

(a) *Decisions.* This section pertains to insurance decisions involving questions arising under Parts 6, 7, 8, and 8a of this chapter, to include the denial of applications for insurance, total disability income provision, or reinstatement; disallowance of claims for insurance benefits; and decisions holding fraud or imposing forfeiture. The applicant or claimant and his or her representative, if any, will be notified in

writing of such a decision, which must include, in the notice letter or enclosures or a combination thereof, all of the following elements:

(1) Identification of the issues adjudicated.

(2) A summary of the evidence considered.

(3) A summary of the applicable laws and regulations relevant to the decision.

(4) Identification of findings that are favorable to the claimant.

(5) For denials, identification of the element(s) not satisfied that led to the denial.

(6) An explanation of how to obtain or access the evidence used in making the decision.

(7) A summary of the applicable review options available for the claimant to seek further review of the decision.

(b) *Favorable findings.* Any finding favorable to the claimant or applicant is binding on all subsequent VA and Board of Veterans' Appeals adjudicators, unless rebutted by clear and convincing evidence to the contrary.

(c) *Review of Decisions.* Within one year from the date on which the agency of original jurisdiction issues notice of an insurance decision as outlined in paragraph (a) of this section, applicants or claimants may elect one of the following administrative review options by timely filing the appropriate form prescribed by the Secretary:

(1) *Supplemental Claim Review.* The nature of this review will accord with § 3.2501 of this title to the extent the terms used therein apply to insurance matters.

(2) *Request for a Higher-level Review.* The nature of this review will accord with § 3.2601 of this title to the extent the terms used therein apply to insurance matters. Higher-level reviews will be conducted by an experienced decision-maker who did not participate in the prior decision. Selection of an employee to conduct a higher-level review is at VA's discretion.

(3) *Board of Veterans' Appeals Review.* See 38 CFR part 20.

(d) *Part 3 provisions.* See § 3.2500(b)-(d) of this title for principles that generally apply to a veteran's election of review of an insurance decision.

(e) *Applicability.* This section applies where notice of an insurance decision was provided to an applicant or claimant on or after the effective date of the modernized review system as provided in § 19.2(a) of this title, or where an applicant or claimant has elected review of a legacy claim under the modernized review system as provided in § 3.2400(c) of this title.

(f) *Unpaid premiums.* When a claimant or applicant elects a review option under paragraph (c) of this section, any unpaid premiums, normally due under the policy from effective date of issue or reinstatement (as appropriate), will become an interest-bearing lien, enforceable as a legal debt due the United States and subject to all available collection procedures in the event of a favorable result for the claimant or applicant.

(g) *Premium payments.* Despite a claimant's or applicant's election of a review option under paragraph (c) of this section, where the agency of original jurisdiction's decision involved a change in or addition to insurance currently in force, premium payments must be continued on the existing contract.

(h) *Section 1984.* Nothing in this section shall limit an applicant's or claimant's right to pursue actions under 38 U.S.C. 1984.

(Authority: 38 U.S.C. 501, 1901–1929, 1981–1988)

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 28. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 29. Amend § 14.629 by:

■ a. Removing the introductory text.

■ b. In paragraph (b)(5), removing the words ''General Counsel or his or her designee'' and adding, in their place, the words ''Chief Counsel with subject-matter jurisdiction''.

■ c. Adding new paragraph (d) to read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

* * * * *

(d) *Decisions on applications for accreditation.* The Chief Counsel with subject-matter jurisdiction will conduct an inquiry and make an initial determination regarding any question relating to the qualifications of a prospective service organization representative, agent, or attorney.

(1) If the Chief Counsel determines that the prospective service organization representative, agent, or attorney meets the requirements for accreditation in paragraphs (a) or (b) of this section, notification of accreditation will be issued by the Chief Counsel and will constitute authority to prepare, present, and prosecute claims before an agency of original jurisdiction or the Board of Veterans' Appeals.

(2)(i) If the Chief Counsel determines that the prospective representative, agent, or attorney does not meet the requirements for accreditation, notification will be issued by the Chief Counsel concerning the reasons for disapproval, an opportunity to submit additional information, and any restrictions on further application for accreditation. If an applicant submits additional evidence, the Chief Counsel will consider such evidence and provide further notice concerning his or her final decision.

(ii) The determination of the Chief Counsel regarding the qualifications of a prospective service organization representative, agent, or attorney is a final adjudicative determination of an agency of original jurisdiction that may only be appealed to the Board of Veterans' Appeals.

■ 30. In § 14.631(c) revise the second sentence to read as followings:

§ 14.631 Powers of attorney; disclosure of claimant information.

* * * * *

(c) * * * This section is applicable unless 38 CFR 20.6 governs withdrawal from the representation.

* * * * *

§ 14.632 [Amended]

■ 31. In § 14.632(c)(6) remove the words ''representation provided before an agency of original jurisdiction has issued a decision on a claim or claims and a Notice of Disagreement has been filed with respect to that decision'' and add, in their place, the words ''services for which a fee could not lawfully be charged''.

■ 32. Amend § 14.633 by:

■ a. In paragraph (e)(2)(i), adding the words ''before the Office of the General Counsel'' after the words ''close the record''.

■ b. In paragraph (e)(2)(ii), adding the words ''before the Office of the General Counsel'' after the words ''close the record''.

■ c. Revising paragraph (h).

■ d. In paragraph (i), adding the words ''suspended or'' before the word ''cancelled''.

■ e. Adding new paragraph (j).

The revision and addition read as follows:

§ 14.633 Termination of accreditation or authority to provide representation under § 14.630.

* * * * *

(h) The decision of the General Counsel is a final adjudicative determination of an agency of original

jurisdiction that may only be appealed to the Board of Veterans' Appeals.

(1) *Decisions issued before the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals of decisions issued before the effective date of the modernized review system as provided in § 19.2(a) of this chapter shall be initiated and processed using the procedures in 38 CFR parts 19 and 20 applicable to legacy appeals. Nothing in this section shall be construed to limit the Board's authority to remand a matter to which this paragraph (h)(1) applies to the General Counsel under 38 CFR 20.904 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(2) *Decisions issued on or after the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for filing an answer or 10 days after a hearing, appeals of decisions issued on or after the effective date of the modernized review system as provided in § 19.2(a) of this chapter shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

* * * * *

(j) The effective date for suspension or cancellation of accreditation or authority to provide representation on a particular claim shall be the date upon which the General Counsel's final decision is rendered.

* * * * *

■ 33. Amend § 14.636 by:

■ a. Revising paragraph (c).

■ b. In paragraph (h)(3), removing all references to ''reopened'' and adding, in each place, the word ''readjudicated''.

■ c. Revising paragraph (i)(3).

■ d. Revising paragraph (k).

The revisions read as follows:

§ 14.636 Payment of fees for representation by agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

* * * * *

(c) *Circumstances under which fees may be charged.* Except as noted in paragraph (d) of this section, agents and attorneys may only charge fees as follows:

(1)(i) Agents and attorneys may charge claimants or appellants for representation provided after an agency of original jurisdiction has issued notice of an initial decision on the claim or claims, including any claim for an increase in rate of a benefit, if the notice of the initial decision was issued on or after the effective date of the modernized review system as provided in § 19.2(a) of this chapter, and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section. For purposes of this paragraph (c)(1)(i), a decision by an agency of original jurisdiction adjudicating a supplemental claim will be considered the initial decision on a claim unless that decision was made while the claimant continuously pursued the claim by filing any of the following, either alone or in succession: A request for higher-level review, on or before one year after the date on which the agency of original jurisdiction issued a decision; a supplemental claim, on or before one year after the date on which the agency of original jurisdiction issued a decision; a Notice of Disagreement, on or before one year after the date on which the agency of original jurisdiction issued a decision; a supplemental claim, on or before one year after the date on which the Board of Veterans' Appeals issued a decision; or a supplemental claim, on or before one year after the date on which the Court of Appeals for Veterans Claims issued a decision.

(ii) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if notice of the decision on a claim or claims was issued on or after the effective date of the modernized review system as provided in § 19.2(a), and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(2)(i) Agents and attorneys may charge claimants or appellants for representation provided: After an agency of original jurisdiction has issued a decision on a claim or claims, including any claim to reopen under 38 CFR 3.156(a) or for an increase in rate of a benefit; the agency of original jurisdiction issued notice of that decision before the effective date of the modernized review system as provided in § 19.2(a) of this chapter; a Notice of Disagreement has been filed with respect to that decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(ii) Agents and attorneys may charge fees for representation provided with respect to a request for revision of a decision of an agency of original jurisdiction under 38 U.S.C. 5109A or the Board of Veterans' Appeals under 38 U.S.C. 7111 based on clear and unmistakable error if the agency of original jurisdiction issued notice of its decision on such request before the effective date of the modernized review system as provided in § 19.2(a); a Notice of Disagreement was filed with respect to the challenged decision on or after June 20, 2007; and the agent or attorney has complied with the power of attorney requirements in § 14.631 and the fee agreement requirements in paragraph (g) of this section.

(3) In cases in which a Notice of Disagreement was filed on or before June 19, 2007, agents and attorneys may charge fees only for services provided after both of the following conditions have been met:

(i) A final decision was promulgated by the Board with respect to the issue, or issues, involved in the appeal; and

(ii) The agent or attorney was retained not later than 1 year following the date that the decision by the Board was promulgated. (This condition will be considered to have been met with respect to all successor agents or attorneys acting in the continuous prosecution of the same matter if a predecessor was retained within the required time period.)

(4) Except as noted in paragraph (i) of this section and § 14.637(d), the agency of original jurisdiction that issued the decision referenced in paragraphs (c)(1) or (2) of this section shall determine whether an agent or attorney is eligible for fees under this section. The agency of original jurisdiction's eligibility determination is a final adjudicative action that may only be appealed to the Board.

* * * * *

(i) * * *

(3) The Office of the General Counsel shall close the record before the Office of the General Counsel in proceedings to review fee agreements 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Deputy Chief Counsel with subject-matter jurisdiction may, for a reasonable

period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Deputy Chief Counsel shall forward the record and a recommendation to the General Counsel or his or her designee for a final decision. Unless either party files a Notice of Disagreement, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

* * * * *

(k)(1) *Decisions issued before the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued before the effective date of the modernized review system as provided in § 19.2(a), shall be initiated and processed using the procedures in 38 CFR parts 19 and 20 applicable to legacy appeals. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 20.904 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(2) *Decisions issued on or after the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued on or after the effective date of the modernized review system as provided in § 19.2(a), shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

* * * * *

■ 34. Amend § 14.637 by:
■ a. Revising paragraph (d)(3).
■ b. Revising paragraph (f).

The revisions read as follows:

§ 14.637 Payment of the expenses of agents and attorneys in proceedings before Agencies of Original Jurisdiction and before the Board of Veterans' Appeals.

* * * * *

* * * * *

(d) * * *

(3) The Office of the General Counsel shall close the record before the Office of the General Counsel in proceedings to review expenses 15 days after the date on which the agent or attorney served a response on the claimant or appellant, or 30 days after the claimant, appellant, or the Office of the General Counsel served the motion on the agent or attorney if there is no response. The Deputy Chief Counsel with subject-matter jurisdiction may, for a reasonable period upon a showing of sufficient cause, extend the time for an agent or attorney to serve an answer or for a claimant or appellant to serve a reply. The Deputy Chief Counsel shall forward the record and a recommendation to the General Counsel or his or her designee for a final decision. Unless either party files a Notice of Disagreement, the attorney or agent must refund any excess payment to the claimant or appellant not later than the expiration of the time within which the Office of the General Counsel's decision may be appealed to the Board of Veterans' Appeals.

* * * * *

(f)(1) *Decisions issued before the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued before the effective date of the modernized review system as provided in § 19.2(a), shall be initiated and processed using the procedures in 38 CFR parts 19 and 20 applicable to legacy appeals. Nothing in this section shall be construed to limit the Board's authority to remand a matter to the General Counsel under 38 CFR 20.904 for any action that is essential for a proper appellate decision or the General Counsel's ability to issue a Supplemental Statement of the Case under 38 CFR 19.31.

(2) *Decisions issued on or after the effective date of the modernized review system.* Notwithstanding provisions in this section for closing the record before the Office of the General Counsel at the end of the 30-day period for serving a response or 15 days after the date on which the agent or attorney served a response, appeals of decisions issued on or after the effective date of the modernized review system as provided in § 19.2(a), shall be initiated and processed using the procedures in 38 CFR part 20 applicable to appeals under the modernized system.

PART 19—BOARD OF VETERANS' APPEALS: LEGACY APPEALS REGULATIONS

■ 35. The authority citation for part 19, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 36. The heading for part 19 is revised as set forth above.

Subpart A—Applicability

■ 37. The heading for subpart A is revised as set forth above.

§ 19.1 [Redesignated as § 20.100 and Amended]

■ 38. Redesignate § 19.1 as § 20.100 and revise the heading to read ''Rule 100. Establishment of the Board.'' in the newly redesignated § 20.100.

§ 19.2 [Redesignated as § 20.101 and Amended]

■ 39. Redesignate § 19.2 as § 20.101; revise the heading to read ''Rule 101. Composition of the Board; Titles.''; in paragraph (b), remove the word ''member'' and add in its place the word ''Member'' in the newly redesignated § 20.101.

§ 19.3 [Redesignated as § 20.106 and Amended]

■ 40. Redesignate § 19.3 as § 20.106 and revise the heading to read ''Rule 106. Assignment of proceedings.'' in the newly redesignated § 20.106.

§ 19.4 [Redesignated as § 20.103 and Amended]

■ 41. Redesignate § 19.4 as § 20.103 and revise the heading to read ''Rule 103. Principal functions of the Board.'' in the newly redesignated § 20.103.

§ 19.5 [Redesignated as § 20.105 and Amended]

■ 42. Redesignate § 19.5 as § 20.105; revise the heading to read ''Rule 105. Criteria governing disposition of appeals.''; in the first sentence, add the text ''and in its decisions'' before the first comma in the newly redesignated § 20.105.

§ 19.7 [Redesignated as § 20.903 and Amended]

■ 43. Redesignate § 19.7 as § 20.903, and amend by:
■ a. Revising the heading to read ''Rule 903. The decision.''.
■ b. In the second sentence of paragraph (b), removing the words ''separately stated''.
■ c. Removing the authority citation at the end of paragraph (b);
■ d. Adding an authority citation at the end of the section to read as follows:

(Authority: 38 U.S.C. 7104(d) (2016) in the newly redesignated § 20.903)

§ 19.8 [Redesignated as § 20.905 and Amended]

■ 44. Redesignate § 19.8 as § 20.905 and revise the heading to read ''Rule 905. Content of Board decision, remand, or order in simultaneously contested claims.'' in the newly redesignated § 20.905.

§ 19.9 [Redesignated as § 20.904 and Amended]

■ 45. Redesignate § 19.9 as § 20.904 and amend by:
■ a. Revising the heading to read ''Rule 904. Remand or referral for further action.'';
■ b. In paragraph (c), removing the text ''subpart B of this part'' and adding in its place the text ''part 19, subpart B of this chapter'';
■ c. In paragraph (c), removing the text ''§ 20.204'' and adding in its place the text ''§ 19.55'';
■ d. In paragraph (d)(3), removing the text ''§ 20.1304(c) of this chapter'' and adding in its place the text ''Rule 1305 (§ 20.1305(c) of this part)''; and
■ e. In paragraph (d)(4), removing the text ''§ 20.901 of this chapter'' and adding in its place the text ''Rule 906 (§ 20.906 of this part)''; and
■ f. Revising the authority citation to read as follows:

§ 20.904 Remand or referral for further action.

* * * * *

(Authority: 38 U.S.C. 7102, 7103(c); 38 U.S.C. 7104(a), 7105 (2016) in the newly redesignated § 20.904)

§ 19.11 [Redesignated as § 20.1004 and Amended]

■ 46. Redesignate § 19.11 as § 20.1004 and amend by:
■ a. Revising the heading to read ''Rule 1004. Reconsideration panel.''.
■ b. Removing the word ''heard'' in paragraph (b) and adding in its place the word ''decided'' both places it appears in the newly redesignated § 20.1004.

§ 19.12 [Redesignated as § 20.107 and Amended]

■ 47. Redesignate § 19.12 as § 20.107 and amend by:
■ a. Revising the heading to read ''Rule 107. Disqualification of Members.''.
■ b. Removing paragraph (b) and the authority citation following paragraph (b);
■ c. Redesignating paragraph (c) as paragraph (b); and
■ d. In new paragraph (b), removing the text ''paragraphs (a) and (b)'' and adding in its place the text ''paragraph (a)'' in the newly redesignated § 20.107.

§ 19.13 [Redesignated as § 20.108 and Amended]

■ 48. Redesignate § 19.13 as § 20.108 and revise to heading to read ''Rule 108. Delegation of authority to Chairman and Vice Chairman, Board of Veterans' Appeals.'' in the newly redesignated § 20.108.

§ 19.14 [Redesignated as § 20.109 and Amended]

■ 48a. Redesignate § 19.14 as § 20.109 and revise the newly redesignated § 20.109 to read as follows:

§ 20.109 Rule 109. Delegation of authority to Vice Chairman, Deputy Vice Chairmen, or Members of the Board.

(a) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 106(b) and 107(b) (§§ 20.106(b) and 20.107(b)) may also be exercised by the Vice Chairman of the Board.

(b) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 1004 and 1002(c) (§§ 20.1004 and 20.1002(c)) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board.

(c) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rule 2 (§ 20.2), may also be exercised by the Vice Chairman of the Board; by Deputy Vice Chairmen of the Board; and, in connection with a proceeding or motion assigned to them by the Chairman, by a Member or Members of the Board.

(Authority: 38 U.S.C. 512(a), 7102, 7104)

■ 49. Add § 19.1 to subpart A to read as follows:

§ 19.1 Provisions applicable to legacy appeals.

Part 19 and subparts F, G, and J of part 20 apply only to the processing and adjudication of legacy appeals, as defined in § 19.2. Except as otherwise provided in specific sections, subparts A, B, H, K, L, M, N, and O of part 20 apply to the processing and adjudication of both appeals and legacy appeals. For applicability provisions concerning appeals in the modernized review system, see § 20.4 of this chapter.
■ 50. Add § 19.2 to subpart A to read as follows:

§ 19.2 Appellant's election for review of a legacy appeal in the modernized system.

(a) *Effective date.* As used in this section, *the effective date* means February 14, 2019, or the date that is published in the **Federal Register** pursuant to Public Law 115–55, section 2, paragraph (x)(6), whichever is later.

(b) *Modernized review system.* The modernized review system refers to the current statutory framework for claims and appeals processing, set forth in Public Law 115–55, and any amendments thereto, applicable on the effective date. The modernized review system applies to all claims, requests for reopening of finally adjudicated claims, and requests for revision based on clear and unmistakable error for which VA issues notice of an initial decision on or after the effective date, or as otherwise provided in paragraph (d) of this section.

(c) *Legacy appeals.* A legacy appeal is an appeal of a legacy claim, as defined in 38 CFR 3.2400(b), where a claimant has not elected to participate in the modernized review system as provided in paragraph (d) of this section. A legacy appeal is initiated by the filing of a Notice of Disagreement and is perfected to the Board with the filing of a Substantive Appeal pursuant to applicable regulations in accordance with 38 CFR parts 19 and 20.

(d) *Election into the modernized review system.* The modernized review system applies to legacy claims and appeals where:

(1) A claimant with a legacy claim or appeal elects the modernized review system pursuant to 38 CFR 3.2400(c)(1);

(2) A claimant with a legacy claim or appeal elects the modernized review system, following issuance, on or after the effective date, of a VA Statement of the Case or Supplemental Statement of the Case. The election is made by filing an appeal in accordance with 38 CFR 20.202, or a review option in accordance with 38 U.S.C. 5108 or 5104B, as implemented by 38 CFR 3.2500 and other applicable regulations. The election must be filed within the time allowed for filing a substantive appeal under § 19.52(b); or

(3) VA issued notice of a decision prior to the effective date, and, pursuant to the Secretary's authorization to participate in a test program, the claimant elects the modernized review system by filing an appeal in accordance with 38 U.S.C. 7105, or a review option in accordance with 38 U.S.C. 5108 or 5104B.

(Authority: Pub. L. 115–55; 131 Stat. 1105; 38 U.S.C. 5104B, 5104C(a); 5108; 38 U.S.C. 7105)

§ § 19.3–19.19 [Reserved]

■ 51. Reserve §§ 19.3 through 19.19 to subpart A.

Subpart B—Legacy Appeals and Legacy Appeals Processing by Agency of Original Jurisdiction

■ 52. Revise the subpart B heading as set forth above.

§ 19.23 [Amended]

■ 53. Amend § 19.23 by:
■ a. In paragraph (a), by removing the words ''§ 20.201(a) of this chapter'' and adding in their place the text ''§ 19.21(a)'' both places they appear.
■ b. In paragraph (a), by removing the text '', § 19.27''.
■ c. In paragraph (b), by removing the text '', § 19.27''.
■ d. In paragraph (b), by removing the words ''§ 20.201(b) of this chapter'' and adding in their place the text ''§ 19.21(b)''.

§ 19.24 [Amended]

■ 54. Amend § 19.24 by:
■ a. In paragraph (a), by removing the text ''§ 20.201(a) of this chapter'' and adding in its place the text ''§ 19.21(a)'';
■ b. In paragraph (b)(1), by removing the text ''paragraph (a) of § 20.201 of this chapter'' and adding in its place the text ''§ 19.21(a)''; and
■ c. In paragraph (b)(3), by removing the text ''§ 20.302(a) of this chapter'' and adding in its place the text ''§ 19.52(a)''.
■ 55. Amend § 19.25 by revising the authority citation to read as follows:

§ 19.25 Notification by agency of original jurisdiction of right to appeal.

* * * * *

(Authority: 38 U.S.C. 7105(a) (2016))

■ 56. Amend § 19.26 by revising the authority citation to read as follows:

§ 19.26 Action by agency of original jurisdiction on Notice of Disagreement.

* * * * *

(Authority: 38 U.S.C. 501; 38 U.S.C. 7105, 7105A (2016))

§ 19.27 [Removed and Reserved]

■ 57. Remove and reserve § 19.27.
■ 58. Amend § 19.28 by revising the authority citation to read as follows:

§ 19.28 Determination that a Notice of Disagreement is inadequate protested by claimant or representative.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

■ 59. Amend § 19.29 by revising the authority citation to read as follows:

§ 19.29 Statement of the Case.

* * * * *

(Authority: 38 U.S.C. 7105(d)(1) (2016))

■ 60. Amend § 19.30 by revising paragraph (b) and the authority citation to read as follows:

§ 19.30 Furnishing the Statement of the Case and instructions for filing a Substantive Appeal.

* * * * *

(b) *Information furnished with the Statement of the Case.* With the Statement of the Case, the appellant and the representative will be furnished information on the right to file, and time limit for filing, a substantive appeal; information on hearing and representation rights; and a VA Form 9, ''Appeal to Board of Veterans' Appeals'', and a statement describing the available review options if the appellant elects review of the issue or issues on appeal in the modernized review system.

(Authority: Sec. 2, Pub. L. 115–55; 131 Stat. 1105; 38 U.S.C. 7105 (2016))

■ 61. Amend § 19.31 by:
■ a. Adding after the first sentence the text ''The information furnished with the Supplemental Statement of the Case shall include a statement describing the available review options if the appellant elects review of the issue or issues on appeal in the modernized system.''.
■ b. Revising the authority citation to read as follows:

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 7105(d) (2016))

■ 62. Amend § 19.32 by revising the authority citation to read as follows:

§ 19.32 Closing of appeal for failure to respond to Statement of the Case.

* * * * *

(Authority: 38 U.S.C. 7105(d)(3) (2016))

§ 19.33 [Removed and Reserved]

■ 63. Remove and reserve § 19.33.
■ 64. Amend § 19.34 by revising the authority citation to read as follows:

§ 19.34 Determination that Notice of Disagreement or Substantive Appeal was not timely filed protested by claimant or representative.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

§ 19.35 [Amended]

■ 65. Amend § 19.35 by:
■ a. Removing the second sentence;
■ b. Revising the authority citation to read as follows:

§ 19.35 Certification of appeals.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

§ 19.36 [Amended]

■ 66. Amend § 19.36 by:
■ a. Removing the text ''Rule of Practice 1304 (§ 20.1304 of this chapter)'' from the first sentence and adding in its place the text ''Rule 1305 (§ 20.1305 of this chapter)''; and by removing the text ''§ 20.1304'' from the second sentence and adding in its place the text ''§ 20.1305'';
■ b. Revising the authority citation to read as follows:

§ 19.36 Notification of certification of appeal and transfer of appellate record.

* * * * *

(Authority: 38 U.S.C. 5902, 5903; 38 U.S.C. 5904, 7105 (2016))

■ 67. Amend § 19.37 by revising the authority citation to read as follows:

§ 19.37 Consideration of additional evidence received by the agency of original jurisdiction after an appeal has been initiated.

* * * * *

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 7105(d)(1) (2016))

■ 68. Amend § 19.38 by:
■ a. Removing the text ''Rule of Practice 302, paragraph (c) (§ 20.302(c) of this chapter)'' and adding in its place the text ''§ 19.52(c)''
■ b. Revising the authority citation to read as follows:

§ 19.38 Action by agency of original jurisdiction when remand received.

* * * * *

(Authority: 38 U.S.C. 7105(d)(1) (2016))

Subpart C—Claimant Action in a Legacy Appeal

■ 69. Revise the subpart C heading as set forth above.

§§ 19.50–19.53 [Removed]

■ 70. Remove §§ 19.50 through 19.53.

Subpart D [Removed and Reserved]

■ 71. Remove and reserve Subpart D, consisting of §§ 19.75 through 19.99.

Subpart E—Simultaneously Contested Claims

■ 72. Amend § 19.100 by revising the authority citation to read as follows:

§ 19.100 Notification of right to appeal in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105A(a) (2016))

■ 73. Amend § 19.101 by revising the authority citation to read as follows:

§ 19.101 Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

■ 74. Amend § 19.102 by revising the authority citation to read as follows:

§ 19.102 Notice of appeal to other contesting parties in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

§§ 19.103–19.199 [Added and Reserved]

■ 75. Add and reserve §§ 19.103 through 19.199.

■ 76. Remove Appendix A to Part 19—Cross-References.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 77. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart A—General

§ 20.1 [Amended]

■ 78. Amend § 20.1 by adding the text ''(Board)'' after the text ''Board of Veterans' Appeals''.

■ 79. Amend § 20.3 by:

■ a. Revising paragraphs (b), (c) and (f);

■ b. Removing paragraph (h);

■ c. Redesignating paragraph (i) as paragraph (h) and revising the introductory text to read: ''*Hearing on appeal* or *Board hearing*'', and removing the text ''argument and/or'';

■ d. Removing paragraphs (j) and (k);

■ e. Redesignating paragraph (l) as paragraph (i) and revising the second sentence to read: ''For example, a request to correct a hearing transcript (see Rule 714 (§ 20.714)) is raised by motion.'';

■ f. Removing paragraph (m);

■ g. Redesignating paragraph (n) as paragraph (j) and removing the word ''reopened'' and adding in its place the word ''readjudicated''.

■ h. Redesignating paragraph (o) as paragraph (k);

■ i. Redesignating paragraph (p) as paragraph (l);

■ j. Redesignating paragraph (q) as paragraph (m);

The revisions read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(b) *Agent* means a person who has met the standards and qualifications for accreditation outlined in § 14.629(b) of this chapter and who has been properly designated under the provisions of § 14.631 of this chapter. It does not include representatives accredited under § 14.629(a) of this chapter, attorneys accredited under § 14.629(b) of this chapter, or a person authorized to represent a claimant for a particular claim under § 14.630 of this chapter.

(c) *Appellant* means a claimant who has filed an appeal to the Board of Veterans' Appeals either as a legacy appeal or in the modernized review system, as those terms are defined in § 19.2 of this chapter, and Rule 4 (§ 20.4 of this part), respectively.

* * * * *

(f) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary.

* * * * *

■ 80. Add new § 20.4 to read as follows:

§ 20.4 Rule 4. Appeal systems definitions and applicability provisions.

(a) *Appeal.* (1) *In general.* An appeal consists of a Notice of Disagreement timely filed to the Board on any issue or issues for which VA provided notice of a decision under 38 U.S.C. 5104 on or after the effective date, as defined in § 19.2(a) of this chapter.

(2) *Appellant's election for review of a legacy claim or appeal in the modernized review system.* The regulations applicable to appeals are also applicable to legacy claims and appeals, as those terms are defined in §§ 3.2400(b) and 19.2(c) of this chapter, where the claimant elects the modernized review system pursuant to § 19.2(d) of this chapter, and upon the timely filing to the Board of a Notice of Disagreement.

(b) *Applicability of parts 19 and 20.* (1) *Appeals.* Subparts C, D, E, and I of part 20 apply only to the processing and adjudication of appeals in the modernized review system.

(2) *Legacy claims and appeals.* Part 19 and subparts F, G, and J of part 20 apply only to the processing and adjudication of legacy claims and appeals.

(3) *Both appeals systems.* Except as otherwise provided in specific sections, subparts A, B, H, K, L, M, N, and O of part 20 apply to the processing and adjudication of both appeals and legacy claims and appeals.

(Authority: Sec. 2, Pub. L. 115–55; 131 Stat. 1105)

Subpart B—The Board

§ 20.102 [Removed]

■ 81. Remove § 20.102.

■ 82. Redesignate § 20.100 as § 20.102, and revise paragraph (c) in the newly redesignated § 20.102 to read as follows:

§ 20.102 Rule 102. Name, business hours, and mailing address of the Board.

* * * * *

(c) *Mailing address.* The mailing address of the Board is: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Mail to the Board that is not related to an appeal must be addressed to: Board of Veterans' Appeals, 810 Vermont Avenue NW, Washington, DC 20420.

■ 83. Redesignate § 20.101 as § 20.104, and amend by:

■ a. Removing the third sentence of paragraph (a);

■ b. Redesignating paragraph (c) as paragraph (d)(1), revising the paragraph heading and the first sentence, and add an authority citation in the newly designated paragraph (d)(1);

■ c. Redesignating paragraph (d) as paragraph (c) and revising the first sentence of the newly redesignated paragraph (c);

■ d. Redesignating paragraph (e) as paragraph (d)(2) and revising the newly redesignated paragraph (d)(2).

The revisions read as follows:

§ 20.104 Rule 104. Jurisdiction of the Board.

* * * * *

(c) * * *

The Board shall decide all questions pertaining to its jurisdictional authority to review a particular case.

* * * * *

(d)(1) *Appeals as to jurisdiction in legacy claims and appeals.* All claimants in legacy appeals, as defined in § 19.2 of this chapter, have the right to appeal a determination made by the agency of original jurisdiction that the Board does not have jurisdictional authority to review a particular case.

* * * * *

(Authority: Sec. 2, Pub. L. 115–55; 131 Stat. 1105)

(2) *Application of 20.904 and 20.1305.* Section 20.904 of this part shall not apply to proceedings to determine the Board's own jurisdiction. However, the Board may remand a case to an agency of original jurisdiction in order to obtain assistance in securing evidence of jurisdictional facts. The time restrictions on requesting a hearing and submitting additional evidence in § 20.1305 of this part do not apply to a hearing requested, or evidence submitted, under paragraph (c) of this section.

(Authority: 38 U.S.C. 511(a), 7104, 7105, 7108)

Subpart C—Commencement and Filing of Appeals

■ 84. Revise the subpart heading as set forth above.

■ 85. Redesignate § 20.200 as § 19.20 and amend by:

■ a. Revising the section heading.

■ b. In the introductory text removing the text ''§ 20.201'' and adding in its place the text ''§ 19.21'', removing the text ''§ 20.302(a)'' and adding in its place the text ''§ 19. 52(a)'' and adding the text ''of this chapter'' after the text ''of § 20.501(a)''.

■ c. Revising the authority citation;
The revisions read as follows:

§ 19.20 What constitutes an appeal.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

■ 86. Redesignate § 20.201 as § 19.21 and amend by:
■ a. Revising the section heading;
■ b. In paragraph (a)(5), removing the text ''§ 20.302(a)'' and adding in its place the text ''§ 19.52(a)'';
■ c. In paragraph (c), removing the text ''§§ 20.500 and 20.501'' and adding in its place the text ''Rules 500 and 501 (§§ 20.500 and 20.501 of this chapter)'';
■ d. Revising the authority citation;
The revisions to read as follows:

§ 19.21 Notice of Disagreement.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

■ 87. Redesignate § 20.202 as § 19.22 and amend by revising the section heading and authority citation to read as follows:

§ 19.22 Substantive Appeal.

* * * * *

(Authority: 38 U.S.C. 7105(d)(3)–(5) (2016))

■ 88. Redesignate § 20.204 as § 19.55 and amend by:
■ a. Revising the section heading;
■ b. In paragraph (b)(1), revising the introductory text to read ''*Content*'', removing the first sentence, removing the word ''They'' from the second sentence and adding in its place the words ''Appeal withdrawals'';
■ c. In paragraph (b)(2), revising the last sentence;
■ d. In paragraph (b)(3) removing the word ''part'' and adding in its place the word ''chapter''; and
■ e. Revising the authority citation to read as follows:
■ f. Removing ''[68 FR 13236, Mar. 19, 2003, as amended at 81 FR 32649, May 24, 2016]'' from the end of the paragraph.
The revisions read as follows:

§ 19.55 Withdrawal of Appeal.

* * * * *

(b) * * *

(1) *Content.*

* * * * *

(2) * * *

* * * * *

Thereafter, file the withdrawal at the Board.

* * * * *

(Authority 38 U.S.C. 7105(b), (d) (2016))

■ 89. Revise subpart C to read as follows:

§ 20.200 Rule 200. Notification by agency of original jurisdiction of right to appeal.

The claimant and his or her representative, if any, will be informed of appellate rights provided by 38 U.S.C. chapters 71 and 72, including the right to a personal hearing and the right to representation. The agency of original jurisdiction will provide this information in each notification of a determination of entitlement or nonentitlement to Department of Veterans Affairs benefits, pursuant to 38 U.S.C. 5104, 5104B, and 5108.

(Authority: 38 U.S.C. 7105(a))

§ 20.201 Rule 201. What constitutes an appeal.

An appeal of a decision by the agency of original jurisdiction consists of a Notice of Disagreement submitted to the Board in accordance with the provisions of §§ 20.202–20.204.

(Authority: 38 U.S.C. 7105)

§ 20.202 Rule 202. Notice of Disagreement.

(a) *In General.* A Notice of Disagreement must be properly completed on a form prescribed by the Secretary. If the agency of original jurisdiction decision addressed several issues, the Notice of Disagreement must identify the specific determination or determinations with which the claimant disagrees. The Board will construe such arguments in a liberal manner for purposes of determining whether they raise issues on appeal, but the Board may dismiss any appeal which fails to identify the specific determination with which the claimant disagrees.

(b) Upon filing the Notice of Disagreement, a claimant must indicate whether the claimant requests:

(1) Direct review by the Board of the record before the agency of original jurisdiction at the time of its decision, without submission of additional evidence or a Board hearing;

(2) A Board hearing, to include an opportunity to submit additional evidence at the hearing and within 90 days following the hearing; or

(3) An opportunity to submit additional evidence without a Board hearing with the Notice of Disagreement and within 90 days following receipt of the Notice of Disagreement.

(c)(1) The information indicated by the claimant in paragraph (b) of this section determines the evidentiary record before the Board as described in subpart D of this part, and the docket on which the appeal will be placed, as described in Rule 800 (§ 20.800). Except as otherwise provided in paragraph (2) of this section, the Board will not consider evidence as described in Rules 302 or 303 (§§ 20.302 and 20.303) unless the claimant requests a Board hearing or an opportunity to submit additional evidence on the Notice of Disagreement.

(2) A claimant may modify the information identified in the Notice of Disagreement for the purpose of selecting a different evidentiary record option as described in paragraph (b) of this section. Requests to modify a Notice of Disagreement must be in writing, must clearly identify the option listed in paragraph (b) of this section that the appellant requests, and must be received at the Board within one year from the date that the agency of original jurisdiction mails notice of the decision on appeal, or within 30 days of the date that the Board receives the Notice of Disagreement, whichever is later. Requests to modify a Notice of Disagreement will not be granted if the appellant has submitted evidence or testimony as described in §§ 20.302 and 20.303.

(d) The Board will not accept as a Notice of Disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any format other than the form prescribed by the Secretary, including on a different VA form.

(e) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in § 20.203(b). In particular, returning the incorrect VA form does not extend, toll, or otherwise delay the time limit for filing the correct form.

(f) *Unclear Notice of Disagreement.* If within one year after mailing an adverse decision (or 60 days for simultaneously contested claims), the Board receives a Notice of Disagreement completed on the form prescribed by the Secretary, but the Board cannot identify which denied issue or issues the claimant wants to appeal or which option the claimant intends to select under paragraph (b) of this section, then the Board will contact the claimant to request clarification of the claimant's intent.

(g) *Response required from claimant*—(1) *Time to respond.* The claimant must respond to the Board's request for clarification on or before the later of the following dates:

(i) 60 days after the date of the Board's clarification request; or

(ii) One year after the date of mailing of notice of the adverse decision being appealed (60 days for simultaneously contested claims).

(2) *Failure to respond.* If the claimant fails to provide a timely response, the previous communication from the claimant will not be considered a Notice of Disagreement as to any claim for which clarification was requested. The Board will not consider the claimant to have appealed the decision(s) on any claim(s) as to which clarification was requested and not received.

(h) *Action following clarification.* The unclear Notice of Disagreement is properly completed, and thereby filed, under paragraph (a) of this section when the Board receives the clarification.

(i) *Representatives and fiduciaries.* For the purpose of the requirements in paragraphs

(f) through (h) of this section, references to the ''claimant'' include reference to the claimant or his or her representative, if any, or to his or her fiduciary, if any, as appropriate.

(Authority: 38 U.S.C. 7105)

[Approved by the Office of Management and Budget under control number 2900–0085]

§ 20.203 Rule 203. Place and time of filing Notice of Disagreement.

(a) *Place of filing.* The Notice of Disagreement must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(b) *Time of filing.* Except as provided in § 20.402 for simultaneously contested claims, a claimant, or his or her representative, must file a properly completed Notice of Disagreement with a determination by the agency of original jurisdiction within one year from the date that the agency mails the notice of the determination. The date of mailing the letter of notification of the determination will be presumed to be the same as the date of that letter for purposes of determining whether an appeal has been timely filed.

(Authority: 38 U.S.C. 7105)

§ 20.204 Rule 204. Who can file a Notice of Disagreement.

(a) *Persons authorized.* A Notice of Disagreement may be filed by a claimant personally, or by his or her representative if a proper Power of Attorney is on record or accompanies such Notice of Disagreement.

(b) *Claimant rated incompetent by Department of Veterans Affairs or under disability and unable to file.* If an appeal is not filed by a person listed in paragraph (a) of this section, and the claimant is rated incompetent by the Department of Veterans Affairs or has a physical, mental, or legal disability which prevents the filing of an appeal on his or her own behalf, a Notice of Disagreement may be filed by a fiduciary appointed to manage the claimant's affairs by the Department of Veterans Affairs or a court, or by a person acting as next friend if the appointed fiduciary fails to take needed action or no fiduciary has been appointed.

(c) *Claimant under disability and able to file.* Notwithstanding the fact that a fiduciary may have been appointed for a claimant, an appeal filed by a claimant will be accepted.

(Authority: 38 U.S.C. 7105(b)(2)(A))

§ 20.205 Rule 205. Withdrawal of Appeal.

(a) *When and by whom filed.* Only an appellant, or an appellant's authorized representative, may withdraw an appeal. An appeal may be withdrawn as to any or all issues involved in the appeal.

(b) *Filing*—(1) *Content.* Appeal withdrawals must include the name of the veteran, the name of the claimant or appellant if other than the veteran (*e.g.,* a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), the applicable Department of Veterans Affairs file number, and a statement that the appeal is withdrawn. If the appeal involves multiple issues, the withdrawal must specify that the appeal is withdrawn in its entirety, or list the issue(s) withdrawn from the appeal.

(2) *Where to file.* Appeal withdrawals should be filed with the Board.

(3) *When effective.* An appeal withdrawal is effective when received by the Board. A withdrawal received after the Board issues a final decision under Rule 1100(a) (§ 20.1100(a)) will not be effective.

(c) *Effect of filing.* Withdrawal of an appeal will be deemed a withdrawal of the Notice of Disagreement as to all issues to which the withdrawal applies. Withdrawal does not preclude filing a new Notice of Disagreement pursuant to this subpart, a request for higher-level review under 38 U.S.C. 5104B, or a supplemental claim under 38 U.S.C. 5108, as to any issue withdrawn, provided such filing would be timely under these rules if the withdrawn appeal had never been filed.

(Authority: 38 U.S.C. 7105)

§§ 20.206–20.299 [Reserved]

Subpart D—Evidentiary Record

■ 90. Revise the subpart D heading to read as set forth above.

■ 91. Redesignate § 20.300 as § 19.51, and amend by:

■ a. Revising the section heading.

■ b. Revising the authority citation of the newly redesignated § 19.51 to read as follows:

§ 19.51 Place of filing Notice of Disagreement and Substantive Appeal.

* * * * *

(Authority: 38 U.S.C. 7105(b)(1), (d)(3) (2016))

■ 92. Redesignate § 20.301 as § 19.50, and amend by:

■ a. Revising the section heading.

■ b. Revising the authority citation of the newly redesignated § 19.50 to read as follows:

§ 19.50 Who can file an appeal.

* * * * *

(Authority: 38 U.S.C. 7105(b)(2) (2016))

■ 93. Redesignate § 20.302 as § 19.52, and amend by:

■ a. Revising the section heading.

■ b. Revising the authority citations of paragraphs (a)–(c) in the newly redesignated § 19.52 to read as follows:

§ 19.52 Time limit for filing Notice of Disagreement, Substantive Appeal, and response to Supplemental Statement of the Case.

(a) * * *

(Authority: 38 U.S.C. 7105(b)(1) (2016))

(b) * * *

(Authority: 38 U.S.C. 7105(b)(1), (d)(3) (2016))

(c) * * *

(Authority: 38 U.S.C. 7105(d)(3) (2016))

■ 94. Redesignate § 20.303 as § 19.53, and amend by:

■ a. Revising the section heading.

■ b. Revising the authority citation of the newly redesignated § 19.53 to read as follows:

§ 19.53 Extension of time for filing Substantive Appeal and response to Supplemental Statement of the Case.

* * * * *

(Authority: 38 U.S.C. 7105(d)(3) (2016))

■ 95. Redesignate § 20.304 as § 19.54 and amend by:

■ a. Revising the section heading.

■ b. In the introductory text removing the text ''Rule 302(b) (§ 20.302(b) of this part)'' and adding in its place the text ''§ 19.52(b)''.

■ c. Revising the authority citation of the newly redesignated § 19.54 to read as follows:

§ 19.54 Filing additional evidence does not extend time limit for appeal.

* * * * *

(Authority: 38 U.S.C. 7105 (2016))

■ 96. Redesignate § 20.305 as § 20.110, and revise the section heading by removing the words ''Rule 305'' and adding in their place the words ''Rule 110'' in the newly redesignated § 20.110.

■ 97. Redesignate § 20.306 as § 20.111 and amend by:

■ a. In the section heading removing the words ''Rule 306'' and adding in their place the words ''Rule 111''.

■ b. In the introductory text removing the words ''Rule 305 (§ 20.305)'' and adding in their place the words ''Rule 110 (§ 20.110)'' in the newly redesignated § 20.111.

■ 98. Add §§ 20.300–20.303 to read as follows:

§ 20.300 Rule 300. General.

Decisions of the Board will be based on a de novo review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal, and any additional evidence or testimony submitted pursuant to this subpart, as provided in § 20.801.

(Authority: 38 U.S.C. 7104)

§ 20.301 Rule 301. Appeals with no request for a Board hearing and no additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, direct review by the Board without submission of additional evidence and without a Board hearing, the Board's decision will be based on a review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal.

(Authority: 38 U.S.C. 7105, 7107, 7113(a))

§ 20.302 Rule 302. Appeals with a request for a Board hearing.

(a) Except as described in paragraphs (b) and (c) of this section, for appeals in which the appellant requested, on the Notice of Disagreement, a Board hearing, the Board's decision will be based on a review of the following:

(1) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal;

(2) Evidence submitted by the appellant or his or her representative at the hearing, to include testimony provided at the hearing; and

(3) Evidence submitted by the appellant or his or her representative within 90 days following the hearing.

(b) In the event that the hearing request is withdrawn pursuant to § 20.704(e), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following receipt of the withdrawal.

(c) In the event that the appellant does not appear for a scheduled hearing, and the hearing is not rescheduled subject to § 20.704(d), the Board's decision will be based on a review of evidence described in paragraph (a)(1) of this section, and evidence submitted by the appellant or his or her representative within 90 days following the date of the scheduled hearing.

(Authority: 38 U.S.C. 7105, 7107, 7113(b))

§ 20.303 Rule 303. Appeals with no request for a Board hearing, but with a request for submission of additional evidence.

For appeals in which the appellant requested, on the Notice of Disagreement, an opportunity to submit additional evidence without a Board hearing, the Board's decision will be based on a review of the following:

(a) Evidence of record at the time of the agency of original jurisdiction's decision on the issue or issues on appeal; and

(b) Evidence submitted by the appellant or his or her representative:

(1) With the Notice of Disagreement or within 90 days following receipt of the Notice of Disagreement; or,

(2) If the appellant did not request an opportunity to submit additional evidence on the Notice of Disagreement, but subsequently requested to submit additional evidence pursuant to Rule 202, (§ 20.202 (c)(2)(ii)), within 90 days following VA's notice that the appeal has been moved to the docket described in § 20.800(a)(ii).

(Authority: 38 U.S.C. 7105, 7107, 7113(c))

§§ 20.304–20.306 [Added and Reserved]

■ 99. Add and reserve §§ 20.304 through 20.306.

Subpart E—Appeal in Simultaneously Contested Claims

■ 100. Revise the subpart E heading to read as set forth above.

§§ 20.400 and 20.401 [Removed]

■ 101. Remove §§ 20.400 and 20.401.

■ 102. Add §§ 20.400 through 20.407 to read as follows:

§ 20.400 Rule 400. Notification of the right to appeal in a simultaneously contested claim.

All interested parties will be specifically notified of the action taken by the agency of original jurisdiction in a simultaneously contested claim and of the right and time limit for submitting a Notice of Disagreement to the Board, as well as hearing and representation rights.

§ 20.401 Rule 401. Who can file an appeal in simultaneously contested claims.

In simultaneously contested claims, any claimant or representative of a claimant may file a Notice of Disagreement within the time limits set out in Rule 402 (§ 20.402).

(Authority: 38 U.S.C. 7105(b)(2), 7105A)

§ 20.402 Rule 402. Time limits for filing Notice of Disagreement in simultaneously contested claims.

In simultaneously contested claims, the Notice of Disagreement from the person adversely affected must be filed within 60 days from the date of mailing of the notification of the determination to him or her; otherwise, that determination will become final. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether a Notice of Disagreement has been timely filed.

(Authority: 38 U.S.C. 7105A)

§ 20.403 Rule 403. Notice to contesting parties on receipt of Notice of Disagreement in simultaneously contested claims.

Upon the filing of a Notice of Disagreement in a simultaneously contested claim, all interested parties and their representatives will be furnished a copy of the substance of the Notice of Disagreement. The notice will inform the contesting party or parties of what type of review the appellant who initially filed a Notice of Disagreement selected under § 20.202(b), including whether a hearing was requested.

(Authority: 38 U.S.C. 7105A)

§ 20.404 Rule 404. Time limit for response to appeal by another contesting party in a simultaneously contested claim.

A party to a simultaneously contested claim may file a brief, argument, or request for a different type of review under § 20.202(b) in answer to a Notice of Disagreement filed by another contesting party. Any such brief, argument, or request must be filed with the Board within 30 days from the date the content of the Notice of Disagreement is furnished as provided in § 20.403. Such content will be presumed to have been furnished on the date of the letter that accompanies the content.

(Authority: 38 U.S.C. 7105A(b)(1))

§ 20.405 Rule 405. Docketing of simultaneously contested claims at the Board.

After expiration of the 30 day period for response in § 20.404, the Board will place all parties of the simultaneously contested claim on the docket for the type of review requested under § 20.202(b). In the event the parties request different types of review, if any party requests a hearing the appeal will be placed on the docket described in

§ 20.800(a)(iii), and VA will notify the parties that a hearing will be scheduled. If no party requested a hearing, but any party requested the opportunity to submit additional evidence, the appeal will be placed on the docket described in § 20.800(a)(ii), and the parties will be notified of their opportunity to submit additional evidence within 90 days of the date of such notice.

(Authority: 38 U.S.C. 7105A(b)(1))

§ 20.406 Rule 406. Notices sent to last addresses of record in simultaneously contested claims.

Notices in simultaneously contested claims will be forwarded to the last address of record of the parties concerned and such action will constitute sufficient evidence of notice.

§ 20.407 Rule 407. Favorable Findings are not binding in Contested Claims.

Where a claim is contested, findings favorable to either party, as described in Rule 801 (§ 20.801), are no longer binding on all VA and Board of Veterans' Appeals adjudicators during the pendency of the contested appeal.

(Authority: 38 U.S.C. 7105A(b)(2))

Subpart F—Legacy Appeal in Simultaneously Contested Claims

■ 103. Revise the subpart F heading to read as set forth above.

■ 104. Redesignate § 20.500 as § 20.501 and amend by:

■ a. In the section heading removing the words ''Rule 500'' and adding in their place the words ''Rule 501''.

■ b. In the introductory text removing the words ''Rule 501 (§ 20.501 of this part)'' and adding in their place the words ''Rule 502 (§ 20.502)'';

■ c. Revising the authority citation of the newly redesignated § 20.501 to read as follows:

§ 20.501 Who can file an appeal in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105(b)(2), 7105A (2016))

■ 105. Add new § 20.500 to read as follows:

§ 20.500 Rule 500. Applicability.

The provisions of this subpart apply to legacy appeals, as defined in § 19.2 of this chapter.

■ 106. Redesignate § 20.501 as § 20.502 and amend by:

■ a. In the section heading removing the words ''Rule 501'' and adding in their place the words ''Rule 502''.

■ b. In paragraphs (a) through (c), revise the authority citations of the newly redesignated § 20.502 to read as follows:

(a) * * *

(Authority: 38 U.S.C. 7105A(a) (2016))

(b) * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

(c) * * *

(Authority: 38 U.S.C. 38 U.S.C. 7105(d)(3), 7105A(b) (2016))

■ 107. Redesignate § 20.502 as § 20.503, and amend by:

■ a. In the section heading removing the words ''Rule 502'' and adding in their place the words ''Rule 503''.

■ b. Revising the authority citation of the newly redesignated § 20.503 to read as follows:

§ 20.503 Rule 503. Time limit for response to appeal by another contesting party in a simultaneously contested claim.

* * * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

■ 108. Redesignate § 20.503 as § 20.504, and amend by:

■ a. In the section heading removing the words ''Rule 503'' and adding in their place the words ''Rule 504''.

■ b. Revising the authority citation of the newly redesignated § 20.504 to read as follows:

§ 20.504 Rule 504. Extension of time for filing a Substantive Appeal in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

■ 109. Redesignate § 20.504 as § 20.505, and

■ a. In the section heading removing the words ''Rule 504'' and adding in their place the words ''Rule 505''.

■ b. Revising the authority citation of the newly redesignated § 20.505 to read as follows:

§ 20.505 Rule 505. Notices sent to last addresses of record in simultaneously contested claims.

* * * * *

(Authority: 38 U.S.C. 7105A(b) (2016))

Subpart G—Legacy Hearings on Appeal

■ 110. Revise the subpart G heading to read as set forth above.

■ 111. Redesignate § 20.600 as § 20.5, and revise the section heading by removing the words ''Rule 600'' and adding in their place the words ''Rule 5''.

■ 112. Redesignate § 20.608 as § 20.6 and amend by:

■ a. Revising the section heading by removing the words ''Rule 608'' and adding in their place the words ''Rule 6''.

■ b. Redesignating paragraph (a) as paragraph (b), and removing the words ''an appeal'' both places it appears and adding in its place the words ''a legacy appeal'';

■ c. Redesignating paragraph (b) as paragraph (a);

■ d. In new paragraph (a), remove the heading;

■ e. In new paragraph (a)(1), removing the words ''§ 20.602 through 20.605 of this part'' and adding in its place the words ''§ 14.630 or § 14.631 of this chapter'';

■ f. In new paragraph (a)(2), removing the words ''After the agency of original jurisdiction has certified an appeal to the Board of Veterans' Appeals'' and adding in its place the words ''Except as otherwise provided in paragraph (b) of this section, after an appeal to the Board of Veterans' Appeals has been filed''; and

■ g. In new paragraph (a)(2), removing the words ''Office of the Principal Deputy Vice Chairman (01C),''.

■ 113. Remove the Note to subpart G.

■ 114. Add new § 20.600 to read as follows:

§ 20.600 Rule 600. Applicability.

(a) The provisions in this subpart apply to Board hearings conducted in legacy appeals, as defined in § 19.2 of this chapter.

(b) Except as otherwise provided, Rules 700, 701, 704, 705, and 707–715 (§§ 20.700, 20.701, 20.704, 20.705, and 20.707–20.715) are also applicable to Board hearings conducted in legacy appeals.

■ 115. Reserve §§ 20.606–20.699.

Subpart H—Hearings on Appeal.

■ 116. Amend § 20.700 by:

■ a. Removing paragraphs (d) and (e); and

■ b. Revising paragraphs (a) and (b) to read as follows:

§ 20.700 Rule 700. General.

(a) *Right to a hearing.* A hearing on appeal will be granted if an appellant, or an appellant's representative acting on his or her behalf, expresses a desire to testify before the Board.

(b) *Purpose of hearing.* The purpose of a hearing is to receive argument and testimony relevant and material to the appellate issue or issues. It is contemplated that the appellant and witnesses, if any, will be present. A hearing will not normally be scheduled solely for the purpose of receiving argument by a representative. Such argument may be submitted in the form of a written brief. Requests for appearances by representatives alone to

personally present argument to Members of the Board may be granted if good cause is shown. Whether good cause has been shown will be determined by the presiding Member assigned to conduct the hearing.

* * * * *

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

■ 117. Redesignate § 20.702 as § 20.704 and amend by:
■ a. Revising the section heading;
■ b. Revising paragraph (a);
■ c. Revising paragraphs (c) through (e); and
■ d. Adding new paragraph (f).

The revisions and additions read as follows:

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals.

(a)(1) *General.* To the extent that officials scheduling hearings for the Board determine that necessary physical resources and qualified personnel are available, hearings will be scheduled at the convenience of appellants and their representatives, with consideration of the travel distance involved. Subject to paragraph (f) of this section, electronic hearings will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under Rule 801 (§ 20.801) for appeals and under Rule 902 (§ 20.902) for legacy appeals, relative to other cases for which hearings are scheduled to be held within that area.

(2) *Special provisions for legacy appeals.* The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings under paragraph (a)(3) of Rule 601 (§ 20.601(a)(3)) are contained in Rule 603 (§ 20.603).

(b) * * *

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the Board. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the Board.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) of this section upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 902(c) (§ 20.902(c)) for advancing a case on the Board's docket shall apply.

(Authority: 38 U.S.C. 7107)

[Approved by the Office of Management and Budget under control number 2900–0085]

■ 118. Add new § 20.702 to read as follows:

§ 20.702 Rule 702. Methods by which hearings are conducted.

A hearing on appeal before the Board may be held by one of the following methods:

(a) In person at the Board's principal location in Washington, DC, or

(b) By electronic hearing, through picture and voice transmission, with the appellant appearing at a Department of Veterans Affairs facility.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

■ 119. Redesignate § 20.703 as § 20.602 and revise the newly redesignated § 20.602 to read as follows:

§ 20.602 Rule 602. When a hearing before the Board of Veterans' Appeals may be requested in a legacy appeal; procedure for requesting a change in method of hearing.

(a) *How to request a hearing.* An appellant, or an appellant's representative, may request a hearing before the Board when submitting the substantive appeal (VA Form 9) or anytime thereafter, subject to the restrictions in Rule 1305 (§ 20.1305). Requests for such hearings before a substantive appeal has been filed will be rejected.

(b) *Board's determination of method of hearing.* Following the receipt of a request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest practical date, whether a hearing before the Board will be held at its principal location or at a facility of the Department or other appropriate Federal facility located within the area served by a regional office of the Department. The Board shall also determine whether the hearing will occur by means of an electronic hearing or by the appellant personally appearing before a Board member or panel. An electronic hearing will be in lieu of a hearing held by personally appearing before a Member

or panel of Members of the Board and shall be conducted in the same manner as, and considered the equivalent of, such a hearing.

(c) *Notification of method of hearing.* The Board will notify the appellant and his or her representative of the method of a hearing before the Board.

(d) *How to request a change in method of hearing.* Upon notification of the method of the hearing requested pursuant to paragraph (c) of this section, an appellant may make one request for a different method of the requested hearing. If the appellant makes such a request, the Board shall grant the request and notify the appellant of the change in method of the hearing.

(e) *Notification of scheduling of hearing.* The Board will notify the appellant and his or her representative of the scheduled time and location for the requested hearing not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

(Authority: Sec. 102, Pub. L. 114–315; 130 Stat. 1536)

■ 120. Add new § 20.703 to read as follows:

§ 20.703 Rule 703. When a hearing before the Board of Veterans' Appeals may be requested; procedure for requesting a change in method of hearing.

(a) *How to request a hearing.* An appellant, or an appellant's representative, may request a hearing before the Board when submitting the Notice of Disagreement, or when requesting to modify the Notice of Disagreement, as provided in Rule 202 (§ 20.202). Requests for such hearings at any other time will be rejected.

(b) *Board's determination of method of hearing.* Following the receipt of a request for a hearing, the Board shall determine, for purposes of scheduling the hearing for the earliest practical date, whether a hearing before the Board will be held at its principal location or by picture and voice transmission at a facility of the Department located within the area served by a regional office of the Department.

(c) *Notification of method of hearing.* The Board will notify the appellant and his or her representative of the method of a hearing before the Board.

(d) *How to request a change in method of hearing.* If an appellant declines to participate in the method of hearing selected by the Board, the appellant's opportunity to participate in a hearing before the Board shall not be affected. Upon notification of the method of the hearing requested pursuant to paragraph (c) of this section, an appellant may make one request for a different method of the requested hearing. If the appellant makes such a request, the Board shall grant the request and notify the appellant of the change in method of the hearing.

(e) *Notification of scheduling of hearing.* The Board will notify the appellant and his or her representative of the scheduled time and location for the requested hearing not less than 30 days prior to the hearing date. This time limitation does not apply to hearings which have been rescheduled due to a postponement requested by an appellant, or on his or her behalf, or due to the prior failure of an appellant to appear at a scheduled hearing before the Board of Veterans' Appeals with good cause. The right to notice at least 30 days in advance will be deemed to have been waived if an appellant accepts an earlier hearing date due to the cancellation of another previously scheduled hearing.

(Authority: 38 U.S.C. 7105(a), 7107)

■ 121. Redesignate § 20.704 as § 20.603 and revise the newly redesignated § 20.603 to read as follows:

§ 20.603 Rule 603. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities in a legacy appeal.

(a) *General.* Hearings may be conducted by a Member or Members of the Board during prescheduled visits to Department of Veterans Affairs facilities having adequate physical resources and personnel for the support of such hearings. Subject to paragraph (f) of this section, the hearings will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under § 20.902, relative to other cases for which hearings are scheduled to be held within that area.

(b) *Notification of hearing.* When a hearing at a Department of Veterans Affairs field facility is scheduled, the person requesting it will be notified of its time and place, and of the fact that the Government may not assume any expense incurred by the appellant, the representative, or witnesses attending the hearing.

(c) *Requests for changes in hearing dates.* Requests for a change in a hearing date may be made at any time up to two weeks prior to the scheduled date of the hearing if good cause is shown. Such requests must be in writing, must explain why a new hearing date is necessary, and must be filed with the Board. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. If good cause is not shown, the appellant and his or her representative will be promptly notified and given an opportunity to appear at the hearing as previously scheduled. If the appellant elects not to appear at the prescheduled date, the request for a hearing will be considered to have been withdrawn. In such cases, however, the record will be submitted for review by the Member who would have presided over the hearing. If the presiding Member determines that good cause has been shown, the hearing will be rescheduled for the next available hearing date after the contingency which gave rise to the request for postponement has been removed.

(d) *Failure to appear for a scheduled hearing.* If an appellant (or when a hearing only for oral argument by a representative has been authorized, the representative) fails to appear for a scheduled hearing and a request for postponement has not been received and granted, the case will be processed as though the request for a hearing had been withdrawn. No further request for a hearing will be granted in the same appeal unless such failure to appear was with good cause and the cause for the failure to appear arose under such circumstances that a timely request for postponement could not have been submitted prior to the scheduled hearing date. A motion for a new hearing date following a failure to appear for a scheduled hearing must be in writing, must be filed within 15 days of the originally scheduled hearing date, and must explain why the appellant failed to appear for the hearing and why a timely request for a new hearing date could not have been submitted. Such motions must be filed with: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Whether good cause for such failure to appear and the impossibility of timely requesting postponement have been established

will be determined by the Member who would have presided over the hearing. If good cause and the impossibility of timely requesting postponement are shown, the hearing will be rescheduled for the next available hearing date at the same facility after the appellant or his or her representative gives notice that the contingency which gave rise to the failure to appear has been removed.

(e) *Withdrawal of hearing requests.* A request for a hearing may be withdrawn by an appellant at any time before the date of the hearing. A request for a hearing may not be withdrawn by an appellant's representative without the consent of the appellant. Notices of withdrawal must be submitted to the Board.

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under paragraph (a) of this section upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 902(c) (§ 20.902(c)) for advancing a case on the Board's docket shall apply.

(Authority: 38 U.S.C. 7107; Sec. 102, Pub. L. 114–315; 130 Stat. 1536)

[Approved by the Office of Management and Budget under control number 2900–0085]

■ 122. Redesignate § 20.705 as § 20.601 and revise the newly redesignated § 20.601 to read as follows:

§ 20.601 Rule 601. Methods by which hearings in legacy appeals are conducted; scheduling and notice provisions for such hearings.

(a) *Methods by which hearings in legacy appeals are conducted.* A hearing on appeal before the Board may be held by one of the following methods:

(1) In person at the Board's principal location in Washington, DC;

(2) By electronic hearing, through voice transmission or through picture and voice transmission, with the appellant appearing at a Department of Veterans Affairs facility or appropriate Federal facility; or

(3) At a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings.

(b) *Electronic hearings.* An appropriate Federal facility consists of a Federal facility having adequate physical resources and personnel for the support of such hearings.

(c) *Provisions for scheduling and providing notice of hearings in legacy appeals.*

(1) The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted by the methods described in paragraphs (a)(1) and (a)(2) of this section are contained in Rule 704 (§ 20.704).

(2) The procedures for scheduling and providing notice of Board hearings in legacy appeals conducted at a Department of Veterans Affairs facility having adequate physical resources and personnel for the support of such hearings under (a)(3) are contained in Rule 603 (§ 20.603).

(Authority: 38 U.S.C. 7107; Sec. 102, Pub. L. 114–315; 130 Stat. 1536)

■ 123. Redesignate § 20.706 as § 20.705 and revise the newly redesignated § 20.705 to read as follows:

§ 20.705 Rule 705. Functions of the presiding Member.

(a) *General.* The presiding Member is responsible for the conduct of a Board hearing in accordance with the provisions of subparts G and H of this part.

(b) *Duties.* The duties of the presiding Member include, but are not limited to, any of the following:

(1) Conducting a prehearing conference, pursuant to § 20.707;

(2) Ruling on questions of procedure;

(3) Administering the oath or affirmation;

(4) Ensuring that the course of the Board hearing remains relevant to the issue or issues on appeal;

(5) Setting reasonable time limits for the presentation of argument;

(6) Prohibiting cross-examination of the appellant and any witnesses;

(7) Excluding documentary evidence, testimony, and/or argument which is not relevant or material to the issue or issues being considered or which is unduly repetitious;

(8) Terminating a Board hearing or directing that an offending party, representative, witness, or observer leave the hearing if that party persists or engages in disruptive or threatening behavior;

(9) Disallowing or halting the use of personal recording equipment being used by an appellant or representative if it becomes disruptive to the hearing; and

(10) Taking any other steps necessary to maintain good order and decorum.

(c) *Ruling on motions.* The presiding Member has the authority to rule on any Board hearing-related motion.

(Authority: 38 U.S.C. 501)

■ 124. Add new § 20.706 to read as follows:

§ 20.706 Rule 706. Designation of Member or Members to conduct the hearing.

Hearings will be conducted by a Member or panel of Members of the Board. Where a proceeding has been assigned to a panel, the Chairman, or the Chairman's designee, shall designate one of the Members as the presiding Member.

(Authority: 38 U.S.C. 7102, 7107)

■ 125. Redesignate § 20.707 as § 20.604 and amend by:

■ a. In the section heading, remove the words ''Rule 707'' and add in their place the words ''Rule 604'';

■ b. In the section heading, add the words ''in a legacy appeal'' after the word ''hearing'';

■ c. Remove the words ''§ 19.3 of this part'' and add in their place the words ''Rule 106 (§ 20.106)'';

■ d. Remove the words ''§ 19.11(c) of this part'' and add in their place the words ''Rule 1004 (§ 20.1004)''; and

■ e. Adding an authority citation to the newly redesignated § 20.604 to read as follows:

(Authority: 38 U.S.C. 7102; 38 U.S.C. 7101 (2016))

■ 126. Redesignate § 20.708 as § 20.707 and amend by:

■ a. In the section heading, remove the words ''Rule 708'' and add in their place the words ''Rule 707'';

■ b. Removing all text in the introductory text after the first sentence; and

■ c. Adding an authority citation to the newly redesignated § 20.707 to read as follows:

(Authority: 38 U.S.C. 7102, 7107)

■ 127. Redesignate § 20.709 as § 20.605, revise the section heading, and add an authority citation to the newly redesignated § 20.605 to read as follows:

§ 20.605 Rule 605. Procurement of additional evidence following a hearing in a legacy appeal.

* * * * *

(Authority: 38 U.S.C. 7102; 38 U.S.C. 7105, 7101 (2016))

■ 128. Redesignate § 20.710 as § 20.708, and revise the section heading by removing the words ''Rule 710'' and add in their place the words ''Rule 708'' in the newly redesignated § 20.708.

§ 20.711 [Redesignated and Amended]

■ 129. Redesignate § 20.711 as § 20.709 and amend by:

■ a. In the section heading remove the words ''Rule 711'' and add in their place the words ''Rule 709''; and

■ b. In paragraph (c), removing the words ''Director, Office of Management, Planning and Analysis (014),'' in the newly redesignated § 20.709.

■ 130. Redesignate § 20.712 as § 20.710 and revise the section heading by

removing the words ''Rule 712'' and add in their place the words ''Rule 710'' in the newly redesignated § 20.710.

■ 131. Redesignate § 20.713 as § 20.711 and revise paragraph (b) in the newly redesignated § 20.711 to read as follows:

§ 20.711 Rule 711. Hearings in simultaneously contested claims.

(a) * * *

(b) *Requests for changes in hearing dates.* (1) General. Except as described in paragraphs (b)(2) and (3) of this section, any party to a simultaneously contested claim may request a change in a hearing date in accordance with the provisions of Rule 704, paragraph (c) (§ 20.704(c)).

(2)(i) A request under Rule 704, paragraph (c) must be made within 60 days from the date of the letter of notification of the time and place of the hearing, or not later than two weeks prior to the scheduled hearing date, whichever is earlier.

(ii) In order to obtain a new hearing date under the provisions of Rule 704, paragraph (c), the consent of all other interested parties must be obtained and submitted with the request for a new hearing date. If such consent is not obtained, the date of the hearing will become fixed. After a hearing date has become fixed, an extension of time for appearance at a hearing will be granted only for good cause, with due consideration of the interests of other parties. Examples of good cause include, but are not limited to, illness of the appellant and/or representative, difficulty in obtaining necessary records, and unavailability of a necessary witness. The motion for a new hearing date must be in writing and must explain why a new hearing date is necessary. If good cause is shown, the hearing will be rescheduled for the next available hearing date after the appellant or his or her representative gives notice that the contingency which gave rise to the request for postponement has been removed. Ordinarily, however, hearings will not be postponed more than 30 days. Whether good cause for establishing a new hearing date has been shown will be determined by the presiding Member assigned to conduct the hearing.

(3) A copy of any motion for a new hearing date required by these rules must be mailed to all other interested parties by certified mail, return receipt requested. The receipts, which must bear the signatures of the other interested parties, and a letter explaining that they relate to the motion for a new hearing date and containing the applicable Department of Veterans Affairs file number must be filed at the same address where the motion was filed as proof of service of the motion. Each interested party will be allowed a period of 10 days from the date that the copy of the motion was received by that party to file written argument in response to the motion.

(Authority: 38 U.S.C. 7105A)

■ 132. Redesignate § 20.714 as § 20.712 and revise the newly redesignated § 20.712 to read as follows:

§ 20.712 Rule 712. Record of hearing.

(a) *General.* All Board hearings will be recorded. The Board will prepare a written transcript for each Board hearing conducted. The transcript will be the official record of the hearing and will be incorporated as a part of the record on appeal. The Board will not accept alternate transcript versions prepared by the appellant or representative.

(b) *Hearing recording.* The recording of the Board hearing will be retained for a period of 12 months following the date of the Board hearing as a duplicate record of the proceeding.

(c) *Copy of written transcript.* If the appellant or representative requests a copy of the written transcript in accordance with § 1.577 of this chapter, the Board will furnish one copy to the appellant or representative.

■ 133. Redesignate § 20.715 as § 20.713 and amend by:

■ a. Revising the section heading by removing the words ''Rule 715'' and adding in their place the words ''Rule 713'';

■ b. Revising the fourth sentence of the introductory text to read: ''In all such situations, advance arrangements must be made with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.'';

■ c. Removing the fifth and sixth sentences; and

■ d. Revising the authority citation of the newly redesigated § 20.713 to read:

§ 20.713 Rule 713. Recording of hearing by appellant or representative.

* * * * *

(Authority: 38 U.S.C. 7102, 7107)

■ 134. Redesignate § 20.716 as § 20.714 and revise the newly redesignated § 20.714 to read as follows:

§ 20.714 Rule 714. Correction of hearing transcripts.

If an appellant wishes to seek correction of perceived errors in a hearing transcript, the appellant or his or her representative should move for correction of the hearing transcript within 30 days after the date that the transcript is mailed to the appellant. The motion must be in writing and must specify the error, or errors, in the transcript and the correct wording to be substituted. The motion must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. The ruling on the motion will be made by the presiding Member of the hearing.

(Authority: 38 U.S.C. 7102, 7107)

■ 135. Redesignate § 20.717 as § 20.715 and revise the newly redesignated § 20.715 to read as follows:

§ 20.715 Rule 715. Loss of hearing recordings or transcripts—motion for new hearing.

(a) *Notification.* (1) The Board must notify the appellant and his or her representative in writing in the event the Board discovers that a Board hearing has not been recorded in whole or in part due to equipment failure or other cause, or the official transcript of the hearing is lost or destroyed and the recording upon which it was based is no longer available. The notice must provide the appellant with a choice of either of the following options:

(i) Appear at a new Board hearing, pursuant to Rules 703 and 704 (§§ 20.703 and 20.704) for appeals or Rules 602 and 603 (§§ 20.602 and 20.603) for legacy appeals, as defined in § 19.2 of this chapter; or

(ii) Have the Board proceed to appellate review of the appeal based on the evidence of record.

(2) The notice will inform the appellant that he or she has a period of 30 days to respond to the notice. If the appellant does not respond by requesting a new hearing within 30 days from the date of the mailing of the notice, then the Board will decide the appeal on the basis of the evidence of record. A request for a new Board hearing will not be accepted once the Board has issued a decision on the appeal.

(b) *Board decision issued prior to a loss of the recording or transcript.* The Board will not accept a request for a new Board hearing under this section if a Board decision was issued on an appeal prior to the loss of the recording or transcript of a Board hearing, and the Board decision considered testimony provided at that Board hearing.

(Authority: 38 U.S.C. 7102, 7105(a), 7107)

§§ 20.716 and 20.717 [Reserved]

■ 136. Reserve §§ 20.716 and 20.717.

Subpart I—Appeals Processing

■ 137. Revise the subpart I heading to read as set forth above.

■ 138. Redesignate § 20.800 as § 20.901, and amend by:

■ a. Revising the section heading by removing the words ''Rule 800'' and adding in their place the words ''Rule 901''.
■ b. Revising the authority citation of the newly redesignated § 20.901 to read as follows:

§ 20.901 Rule 901. Submission of additional evidence after initiation of appeal.

* * * * *

(Authority: 38 U.S.C. 5902, 5903, 5904; 38 U.S.C. 5904, 7105(d)(1) (2016))

■ 139. Add §§ 20.800 through 20.804 to read as follows:

§ 20.800 Rule 800. Order of consideration of appeals.

(a) *Docketing of appeals.* (1) Applications for review on appeal are docketed in the order in which they are received on the following dockets:

(i) A docket for appeals in which an appellant does not request a hearing or an opportunity to submit additional evidence on the Notice of Disagreement;

(ii) A docket for appeals in which the appellant does not request a hearing but does request an opportunity to submit additional evidence on the Notice of Disagreement; and

(iii) A docket for appeals in which the appellant requests a hearing on the Notice of Disagreement.

(2) An appeal may be moved from one docket to another only when the Notice of Disagreement has been modified pursuant to Rule 202, paragraph (c)(3) (§ 20.202(c)(3)). The request to modify the Notice of Disagreement must reflect that the appellant requests the option listed in § 20.202(b) that corresponds to the docket to which the appeal will be moved. An appeal that is moved from one docket to another will retain its original docket date.

(b) Except as otherwise provided, each appeal will be decided in the order in which it is entered on the docket to which it is assigned.

(c) *Advancement on the docket*—(1) *Grounds for advancement.* A case may be advanced on the docket to which it is assigned on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. ''Other sufficient cause'' shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case, administrative necessity, or the advanced age of the appellant. For purposes of this Rule, ''advanced age'' is defined as 75 or more years of age. This paragraph does not require the Board to advance a case on the docket in the absence of a motion of a party to the case or the party's representative.

(2) *Requirements for motions.* Motions for advancement on the docket must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.,* a veteran's survivor, a guardian, a substitute appellant, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with the Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038.

(3) *Disposition of motions.* If a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

(d) *Consideration of appeals remanded by the United States Court of Appeals for Veterans Claims.* A case remanded by the United States Court of Appeals for Veterans Claims for appropriate action will be treated expeditiously by the Board without regard to its place on the Board's docket.

(Authority: 38 U.S.C. 7112; Sec. 302, Pub. L. 103–446; 108 Stat. 4645)

(e) *Case remanded to correct duty to assist error and new Notice of Disagreement filed after readjudication.* A case will not be returned to the Board following the agency of original jurisdiction's readjudication of an appeal previously remanded by the Board pursuant to Rule 803, paragraph (c) (§ 20.802(c)), unless the claimant files a new Notice of Disagreement. Such cases will be docketed in the order in which the most recent Notice of Disagreement was received.

(f) *Cases involving substitution.* A case returned to the Board following the grant of a substitution request or pursuant to an appeal of a denial of a substitution request assumes the same place on the docket held by the deceased appellant at the time of his or her death. If the deceased appellant's case was advanced on the docket prior to his or her death pursuant to paragraph (c) of this section, the substitute will receive the benefit of the advanced placement.

(Authority: 38 U.S.C. 5121A)

(g) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 7105, 7107)

§ 20.801 Rule 801. The decision.

(a) *General.* Decisions of the Board will be based on a de novo review of the evidence of record at the time of the agency of original jurisdiction decision on the issue or issues on appeal, and any additional evidence submitted pursuant to Rules 302 and 303 (§§ 20.302 and 20.303). Any findings favorable to the claimant as identified by the agency of original jurisdiction in notification of a decision or in a prior Board decision on an issue on appeal are binding on all VA and Board of Veterans' Appeals adjudicators, unless rebutted by clear and convincing evidence to the contrary. For purposes of this section, findings means conclusions on questions of fact and application of law to facts made by an adjudicator concerning the issue under review.

(b) *Content.* The decision of the Board will be in writing and will set forth specifically the issue or issues under appellate consideration. Except with respect to appeals which are dismissed because an appellant seeking nonmonetary benefits has died while the appeal was pending, the decision will also include:

(1) Findings of fact and conclusions of law on all material issues of fact and law presented on the record;

(2) The reasons or bases for those findings and conclusions;

(3) A general statement reflecting whether any evidence was received at a time when not permitted under subpart D, and informing the appellant that any such evidence was not considered by the Board and of the options available to have that evidence reviewed by the Department of Veterans Affairs; and

(4) An order granting or denying the benefit or benefits sought on appeal, dismissing the appeal, or remanding the issue or issues as described in Rule 802 (§ 20.802).

(c) A decision by a panel of Members will be by a majority vote of the panel Members.

(Authority: 38 U.S.C. 7104(d))

§ 20.802 Rule 802. Remand for correction of error.

(a) *Remand.* Unless the issue or issues can be granted in full, the Board shall remand the appeal to the agency of original jurisdiction for correction of an error on the part of the agency of original jurisdiction to satisfy its duties under 38 U.S.C. 5103A, if the error occurred prior to the date of the agency of original jurisdiction decision on appeal. The Board may remand for correction of any other error by the agency of original jurisdiction in satisfying a regulatory or statutory duty, if correction of the error would have a reasonable possibility of aiding in substantiating the appellant's claim. The remand must specify the action to be taken by the agency of original jurisdiction.

(b) *Advisory Medical Opinion.* If the Board determines that an error as described in paragraph (a) of this section may only be corrected by obtaining an advisory medical opinion from a medical expert who is not an employee of the Department of Veterans Affairs, the Board shall remand the case to the agency of original jurisdiction to obtain such an opinion, specifying the questions to be posed to the independent medical expert providing the advisory medical opinion.

(c) *Action by agency of original jurisdiction after receipt of remand.* After correction of any error identified in the Board's remand, the agency of original jurisdiction must readjudicate the claim and provide notice of the decision under 38 U.S.C. 5104, to include notice under 38 U.S.C. 5104C of a claimant's options for further review of the agency of original jurisdiction's decision. The agency of original jurisdiction must provide for the expeditious treatment of any claim that is remanded by the Board.

(Authority: 38 U.S.C. 5103A, 5109, 5109B, 7102, 7104(a), 7105)

§ 20.803 Rule 803. Content of Board decision, remand, or order in simultaneously contested claims.

The content of the Board's decision, remand, or order in appeals involving a simultaneously contested claim will be limited to information that directly affects the issues involved in the contested claim. Appellate issues that do not involve all of the contesting parties will be addressed in one or more separate written decisions, remands, or orders that will be furnished only to the appellants concerned and their representatives, if any.

(Authority: 5 U.S.C. 552a(b), 38 U.S.C. 5701(a))

§ 20.804 Rule 804. Opinions of the General Counsel.

(a) The Board may obtain an opinion from the General Counsel of the Department of Veterans Affairs on legal questions involved in the consideration of an appeal.

(b) *Filing of requests for the procurement of opinions.* The appellant or representative may request that the Board obtain an opinion under this section. Such request must be in writing and will be granted upon a showing of good cause, such as the identification of a complex or controversial legal issue involved in the appeal which warrants such an opinion.

(c) *Notification of evidence to be considered by the Board and opportunity for response.* If the Board requests an opinion pursuant to this section, it will notify the appellant and his or her representative, if any. When the Board receives the opinion, it will furnish a copy of the opinion to the appellant, subject to the limitations provided in 38 U.S.C. 5701(b)(1), and to the appellant's representative, if any. A period of 60 days from the date the Board furnishes a copy of the opinion will be allowed for response, which may include the submission of relevant evidence or argument. The date the Board furnishes a copy will be presumed to be the same as the date of the letter or memorandum that accompanies the copy of the opinion for purposes of determining whether a response was timely filed.

(d) For purposes of this section, the term ''the Board'' includes the Chairman, the Vice Chairman, any Deputy Vice Chairman, and any Member of the Board before whom a case is pending.

(Authority: 38 U.S.C. 5107(a), 7102(c), 7104(a), 7104(c))

Subpart J—Action by the Board in Legacy Appeals

■ 140. Revise the subpart J heading as set forth above.

■ 141. Redesignate § 20.900 as § 20.902 and amend by:

■ a. Revising the section heading by removing the words ''Rule 900'' and adding in their place the words ''Rule 902'';

■ b. In paragraph (c)(1), revising the third sentence;

■ c. In paragraph (c)(2), removing the words ''Director, Office of Management, Planning and Analysis (014),'';

■ d. Revise the authority citation at the end of paragraph (d); and

■ e. Revise the authority citation of the newly redesignated § 20.902 to read as follows:

§ 20.902 Rule 902. Order of consideration of appeals.

* * * * *

(c) * * *

(1) * * *

''Other sufficient cause'' shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case, administrative necessity, or the advanced age of the appellant.

* * * * *

(d) * * *

(Authority: Sec. 302, Pub. L. 103–446; 108 Stat. 4645)

* * * * *

(Authority: 38 U.S.C. 5121A, 7107; 38 U.S.C. 7107 (2016))

■ 142. Add § 20.900 to read as follows:

§ 20.900 Rule 900. Applicability.

The provisions in this subpart apply to Board decisions and remands rendered in legacy appeals, as defined in § 19.2 of this chapter.

(Authority: Sec. 2, Pub. L. 115–55; 131 Stat. 1105)

§ 20.901 [Redesignated and Amended]

■ 143. Redesignate § 20.901 as § 20.906 and amend by:

■ a. Revising the section heading by replacing the words ''Rule 901'' and adding in their place the words ''Rule 906''.

■ b. In paragraph (b), removing the words ''Armed Forces Institute of Pathology'' and adding in its place the words ''Joint Pathology Center'' both places it appears in the newly redesignated § 20.906.

■ 144. Redesignate § 20.902 as § 20.907 and amend by:

■ a. Revising the section heading by removing the words ''Rule 902'' and adding in their place the words ''Rule 907''.

■ b. In the introductory text removing the words ''Rule 901 (§ 20.901 of this part)'' and adding in its place the words ''Rule 906 (§ 20.906)'' in the newly redesignated § 20.907.

■ 145. Redesignate § 20.903 as § 20.908 and amend by:

■ a. Revising the section heading by removing the words ''Rule 903'' and adding in their place the words ''Rule 908'';

■ b. In paragraph (a), removing the words ''Rule 901 (§ 20.901 of this part)'' and adding in its place the words ''Rule 906 (§ 20.906)''; and

■ c. In paragraph (b), removing the words ''§ 19.9(d)(5) of this chapter'' and adding in its place the words ''Rule 904(d)(5) (§ 20.904(d)(5))'' in the newly redesignated § 20.908.

■ 146. Redesignate § 20.904 as § 20.1000 and amend by revising the section

heading and paragraphs (a)(2) and (3) of the newly redesignated § 20.1000 to read as follows:

§ 20.1000 Rule 1000. Vacating a decision.

* * * * *

(a) * * *

(1) * * *

(2) When there was a prejudicial failure to afford the appellant a personal hearing. (Where there was a failure to honor a request for a hearing and a hearing is subsequently scheduled, but the appellant fails to appear, the decision will not be vacated.), and

(3) For a legacy appeal, as defined in § 19.2 of this chapter, when a Statement of the Case or required Supplemental Statement of the Case was not provided.

* * * * *

Subpart K—Vacatur and Reconsideration

■ 147. Revise the subpart K heading as set forth above.

§ 20.1000 [Redesignated and Amended]

■ 148. Redesignate § 20.1000 as § 20.1001 and amend by:

■ a. Revising the section heading by removing the words ''Rule 1000'' and adding in their place the words ''Rule 1001'';

■ b. Removing the words ''and material'' from paragraph (b).

§ 20.1001 [Redesignated and Amended]

■ 149. Redesignate § 20.1001 as § 20.1002 and amend by:

■ a. Revising the section heading by removing the words ''Rule 1001'' and adding in their place the words ''Rule 1002'';

■ b. In paragraph (b), removing the words ''Director, Office of Management, Planning and Analysis (014),''; and

■ c. In paragraph (c)(2), removing the words''§ 19.11 of this chapter'' and adding in its place the words ''Rule 1004 (§ 20.1004)'' in the newly redesignated § 20.1002.

■ 150. Amend § 20.1003 by revising the first sentence and removing the fifth sentence of the introductory text to read as follows:

§ 20.1003 Rule 1003. Hearing on reconsideration.

After a motion for reconsideration has been allowed, a hearing will be granted if the issue under reconsideration was considered on a docket for cases that may include a hearing, and an appellant requests a hearing before the Board.

* * * * *

Subpart L—Finality

■ 151. Amend § 20.1103 by revising to read as follows:

§ 20.1103 Rule 1103. Finality of determinations of the agency of original jurisdiction where issue is not appealed.

A determination on a claim by the agency of original jurisdiction of which the claimant is properly notified is final if an appeal is not perfected as prescribed in § 19.52 of this chapter. If no Notice of Disagreement is filed as prescribed in subpart C of this part, the claim shall not thereafter be readjudicated or allowed, except as provided by 38 U.S.C. 5104B or 5108, or by regulation.

■ 152. Amend § 20.1105 by revising to read as follows:

§ 20.1105 Rule 1105. Supplemental claim after promulgation of appellate decision.

(a) After an appellate decision has been promulgated on a claim, a claimant may file a supplemental claim with the agency of original jurisdiction by submitting the prescribed form with new and relevant evidence related to the previously adjudicated claim as set forth in § 3.2601 of this chapter, except in cases involving simultaneously contested claims under Subpart E of this part.

(Authority: 38 U.S.C. 5108, 7104)

(b) *Legacy appeals pending on the effective date.* For legacy appeals as defined in § 19.2 of this chapter, where prior to the effective date described in Rule 4 (§ 20.4), an appellant requested that a claim be reopened after an appellate decision has been promulgated and submitted evidence in support thereof, a determination as to whether such evidence is new and material must be made and, if it is, as to whether it provides a basis for allowing the claim. An adverse determination as to either question is appealable.

(Authority: 38 U.S.C. 5108, 7104 (2016))

Subpart M—Privacy Act

■ 153. Amend § 20.1201 by removing the words ''Rules 1000 through 1003 (§§ 20.1000–20.1003 of this part)'' and adding in its place the words ''Rules 1001 through 1004 (§§ 20.1001–20.1004)'' both places it appears.

Subpart N—Miscellaneous

■ 154. Amend § 20.1301 by:

■ a. Redesignating paragraph (b) as paragraph (c) and revising the newly redesignated paragraph (c)(1) by removing the text ''the internet at *http://www.index.va.gov/search/va/bva.html*'' and replacing it with the text ''the Board's website'';

■ b. Adding new paragraph (b) and revising paragraph (a);

■ c. In paragraph (c)(2):

■ i. Removing the words ''at the Research Center'' from the second sentence;

■ ii. Removing the words ''Board's Research Center'' and adding in its place the words ''Board'' from the third sentence;

■ iii. Removing the word ''paper'' from the ninth sentence; and

■ iv. Removing the words ''Research Center (01C1),'' from the last sentence.

The additions and revisions read as follows:

§ 20.1301 Rule 1301. Disclosure of information.

(a) *Policy.* It is the policy of the Board for the full text of appellate decisions to be disclosed to appellants. In those situations where disclosing certain information directly to the appellant would not be in conformance with 38 U.S.C. 5701, that information will be removed from the decision and the remaining text will be furnished to the appellant. A full-text appellate decision will be disclosed to the designated representative, however, unless the relationship between the appellant and representative is such (for example, a parent or spouse) that disclosure to the representative would be as harmful as if made to the appellant.

(b) *Legacy appeals.* For legacy appeals as defined in § 19.2 of this chapter, the policy described in paragraph (a) is also applicable to Statements of the Case and supplemental Statements of the Case.

(Authority: 38 U.S.C. 7105(d)(2))

* * * * *

■ 155. Amend § 20.1302 by removing the words ''Rule 900 (§ 20.900(a)(2)'' and adding in its place the words ''Rule 800, paragraph (f) (§ 20.800(f)) or, for legacy appeals, Rule 902, paragraph (a)(2) (§ 20.902(a)(2))'' both places it appears.

■ 156. Redesignate § 20.1304 as § 20.1305 and amend by:

■ a. Revising the section heading and paragraph (a);

■ b. In paragraph (b)(1), removing the words ''Director, Office of Management, Planning and Analysis (014),'';

■ c. In paragraph (b)(2), removing the words ''§ 20.903 of this chapter'' and adding in their place ''§ 20.908''; and

■ d. In paragraph (c), removing the words ''§ 20.903'' and adding in their place the words ''§ 20.908'';

■ e. Revising the authority citation in the newly redesignated § 20.1305 to read as follows:

§ 20.1305 Rule 1305. Procedures for legacy appellants to request a change in representation, personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

(a) *Request for a change in representation, request for a personal hearing, or submission of additional evidence within 90 days following notification of certification and transfer of records.* An appellant in a legacy appeal, as defined in § 19.2 of this chapter, and his or her representative, if any, will be granted a period of 90 days following the mailing of notice to them that an appeal has been certified to the Board for appellate review and that the appellate record has been transferred to the Board, or up to and including the date the appellate decision is promulgated by the Board, whichever comes first, during which they may submit a request for a personal hearing, additional evidence, or a request for a change in representation. Any such request or additional evidence should be submitted directly to the Board and not to the agency of original jurisdiction. If any such request or additional evidence is submitted to the agency of original jurisdiction instead of to the Board, the agency of original jurisdiction must forward it to the Board in accordance with § 19.37(b) of this chapter. The date of mailing of the letter of notification will be presumed to be the same as the date of that letter for purposes of determining whether the request was timely made or the evidence was timely submitted. Any evidence which is submitted at a hearing on appeal which was requested during such period will be considered to have been received during such period, even though the hearing may be held following the expiration of the period. Any pertinent evidence submitted by the appellant or representative is subject to the requirements of paragraph (d) of this section if a simultaneously contested claim is involved.

* * * * *

(Authority: 38 U.S.C. 5121A, 5902, 5903; 38 U.S.C. 5904, 7104, 7105, 7105A (2016))

■ 157. Add new § 20.1304 to read as follows:

§ 20.1304 Rule 1304. Request for a change in representation.

(a) *Request for a change in representation within 90 days following Notice of Disagreement.* An appellant and his or her representative, if any, will be granted a period of 90 days following receipt of a Notice of Disagreement, or up to and including the date the appellate decision is promulgated by the Board, whichever comes first, during which they may submit a request for a change in representation.

(b) *Subsequent request for a change in representation*—Following the expiration of the period described in paragraph (a) of this section, the Board will not accept a request for a change in representation except when the appellant demonstrates on motion that there was good cause for the delay. Examples of good cause include, but are not limited to, illness of the appellant or the representative which precluded action during the period; death of an individual representative; illness or incapacity of an individual representative which renders it impractical for an appellant to continue with him or her as representative; and withdrawal of an individual representative. Such motions must be in writing and must include the name of the veteran; the name of the claimant or appellant if other than the veteran (*e.g.,* a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf) or the name of any substitute claimant or appellant; the applicable Department of Veterans Affairs file number; and an explanation of why the request for a change in representation could not be accomplished in a timely manner. Such motions must be filed at the following address: Board of Veterans' Appeals, P.O. Box 27063, Washington, DC 20038. Depending upon the ruling on the motion, action will be taken as follows:

(1) *Good cause not shown.* If good cause is not shown, the request for a change in representation will be referred to the agency of original jurisdiction for association with the appellant's file for any pending or subsequently received claims upon completion of the Board's action on the pending appeal without action by the Board concerning the request.

(2) *Good cause shown.* If good cause is shown, the request for a change in representation will be honored.

(Authority: 38 U.S.C. 5902, 5903, 5904, 7105, 7105A)

§§ 20.1306–20.1399 [Reserved]

■ 158. Add and reserve §§ 20.1306 through 20.1399.

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

§ 20.1401 [Amended]

■ 159. Amend § 20.1401 by removing the words '', but does not include officials authorized to file administrative appeals pursuant to § 19.51 of this title'' in the last sentence of paragraph (b).

■ 160. Amend § 20.1403 by revising paragraph (b)(2) to read as follows:

§ 20.1403 Rule 1403. What constitutes clear and unmistakable error; what does not.

* * * * *

(b) * * *

(1) * * *

(2) *Special rule for Board decisions on legacy appeals issued on or after July 21, 1992.* For a Board decision on a legacy appeal as defined in § 19.2 of this chapter issued on or after July 21, 1992, the record that existed when that decision was made includes relevant documents possessed by the Department of Veterans Affairs not later than 90 days before such record was transferred to the Board for review in reaching that decision, provided that the documents could reasonably be expected to be part of the record.

* * * * *

§ 20.1404 [Amended]

■ 161. Amend § 20.1404(c) by removing ''Director, Office of Management, Planning and Analysis (014),''.

■ 162. Amend § 20.1405 by:

■ a. In paragraph (a)(1), removing the words ''§ 19.3 of this title'' and adding in its place the words ''§ 20.106'';

■ b. In paragraph (a)(2), removing the words ''Rule 900(c) (§ 20.900(c) of this part)'' and adding in its place the words ''Rule 800, paragraph (c) (§ 20.800(c)) or, for legacy appeals, Rule 902, paragraph (c) (§ 20.902(c))'';

■ c. In paragraph (c)(2), removing the words ''Director, Office of Management, Planning and Analysis (014),'';

■ d. Removing paragraph (d);

■ e. Redesignating paragraph (e) as paragraph (d);

■ f. Redesignating paragraph (f) as paragraph (e);

■ g. Redesignating paragraph (g) as paragraph (f) and revising the first sentence of the newly redesignated paragraph (f) to read as follows:

§ 20.1405 Rule 1405. Disposition.

* * * * *

(f) *Decision.*The decision of the Board on a motion under this subpart will be in writing.

* * * * *

■ 163. Amend § 20.1408 by removing the words ''Rule 3(o) (§ 20.3(o) of this part)'' and adding in its place the words ''Rule 3(l) (§ 20.3(l) of this part)'' from the introductory text.

■ 164. Amend § 20.1409(b), by removing the words ''Rule 1405(e)'' and adding in its place the words ''Rule 1405, paragraph (d) (§ 20.1405(d) of this part)''.

■ 165. Amend § 20.1411 by revising paragraphs (b) and (d) to read as follows:

§ 20.1411 Rule 1411. Relationship to other statutes.

(a) * * *

(b) For legacy appeals as defined in § 19.2 of this chapter, a motion under this subpart is not a claim subject to reopening under 38 U.S.C. 5108 (prior to the effective date described in Rule 4, paragraph (a) (§ 20.4(a) of this part) (relating to reopening claims on the grounds of new and material evidence).

(c) * * *

(d) A motion under this subpart is not a claim for benefits subject to the requirements and duties associated with 38 U.S.C. 5103A (imposing a duty to assist).

(Authority: 38 U.S.C. 501(a))

§§ 20.1412–20.1499 [Added and Reserved]

■ 166. Add and reserve §§ 20.1412 through 20.1499.

Subpart P—Expedited Claims Adjudication Initiative—Pilot Program

■ 167. Remove and reserve subpart P, consisting of §§ 20.1500–20.1510.

■ 168. Remove Appendix A to Part 20—Cross-References.

PART 21—VOCATIONAL REHABILITATION AND EMPLOYMENT

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 169. The authority citation for part 21, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 170. Remove §§ 21.59 and 21.98.

■ 171. Remove the CROSS REFERENCE from the end of § 21.184.

■ 172. Amend § 21.188(b) by removing the words ''§ 21.96, or § 21.98'' and adding in its place the words ''or § 21.96''.

■ 173. Amend § 21.190(b) by removing the words ''§ 21.96, or § 21.98'' and adding in its place the words ''or § 21.96''.

■ 174. Amend § 21.192(b) by removing the words ''§ 21.96, or § 21.98'' and adding in its place the words ''or § 21.96''.

■ 175. Amend § 21.194(b) by removing the words ''§ 21.94 and 21.98'' and adding in its place the words ''and § 21.94''.

■ 176. Amend § 21.282(c)(4) by removing the words ''21.98'' and adding in its place the words ''21.96''.

■ 177. Amend § 21.412(a)(2) by removing the words ''(See §§ 19.153, 19.154, and 19.155''.

■ 178. Amend § 21.414 by:

■ a. In paragraph (e), removing the period following ''§ 3.105(e)'' and adding in its place a semicolon.

■ b. Adding a new paragraph (f).

■ c. Revising the authority citation.

The revisions and additions read as follows:

§ 21.414 Revision of decision.

* * * * *

(f) Review of decisions, § 21.416.

(Authority: 38 U.S.C. 5104B, 5108, and 5112)

■ 179. Add § 21.416 to read as follows:

§ 21.416 Review of decisions.

(a) *Applicability.* This section applies where notice of a decision under this subpart or subpart M of this part was provided to a veteran on or after the effective date of the modernized review system as provided in § 19.2(a) of this chapter, or where an applicant or claimant has elected review of a legacy claim under the modernized review system as provided in § 3.2400(c) of this chapter.

(b) *Reviews available.* Within one year from the date on which VA issues notice of a decision on an issue contained within a claim, a veteran may elect one of the following administrative review options:

(1) *Supplemental Claim Review.* The nature of this review will accord with § 3.2501 of this chapter, except that a complete application in writing on a form prescribed by the Secretary will not be required and a hearing will not be provided. The Vocational Rehabilitation and Employment (VR&E) staff member will inform the veteran or his or her decision within 125 days of receipt of the supplemental claim.

(2) *Board of Veterans' Appeals Review.* See 38 CFR part 20.

(3) *Higher-level Review.* Reviews will be conducted by a VR&E employee who did not participate in the prior decision and is more senior than the employee that made the prior decision currently under review. Selection of an employee to conduct a review of the decision is at VR&E's discretion. The VR&E staff member will inform the veteran of his or her decision within 90 days of receipt of the request for higher-level review.

(i) *Evidentiary record.* The evidentiary record in a higher-level review is limited to the evidence of record at the time VA issued the prior decision under review. Except as provided in paragraph (ii) of this section, the higher-level adjudicator may not consider, or order development of, additional evidence that may be relevant to the issue under review.

(ii) *Duty to assist errors.* The higher-level adjudicator will ensure that VR&E has complied with its statutory duty to assist in gathering evidence applicable prior to issuance of the decision being reviewed. If the higher-level adjudicator both identifies a duty to assist error that existed at the time of VR&E's decision on the claim under review, and cannot resolve the issue in the veteran's favor with the information at hand, the higher-level adjudicator must return the claim to the assigned VR&E case manager (unless that manager is unavailable) for correction of the error and readjudication. Upon receipt, the VR&E case manager will readjudicate the claim within 30 days.

(iii) *Informal conferences.* A veteran or his or her representative may request an informal conference during the higher-level review process. For purposes of this section, *informal conference* means contact with a veteran and/or his or her representative telephonically or in person, as determined by VR&E, for the sole purpose of allowing the veteran or representative to identify any errors of law or fact in a prior decision. When requested, VA will make reasonable efforts to conduct one informal conference during a review. The higher-level adjudicator or designated representative will conduct the informal conference and document any arguments of fact or law presented by the veteran or his or her representative for inclusion in the record. Any expenses incurred by the veteran in connection with the informal conference are the responsibility of the veteran.

(iv) *De novo review.* The higher-level adjudicator will consider only those issues for which the veteran has requested a review, and will conduct a de novo review giving no deference to the prior decision, except as provided in § 3.104(c) of this chapter.

(v) *Difference of opinion.* The higher-level adjudicator may grant a benefit sought in the claim based on a difference of opinion (see § 3.105(b) of this chapter). However, findings favorable to the veteran will not be reversed in the absence of clear and convincing evidence to the contrary. In addition, the higher-level adjudicator will not revise the outcome in a manner that is less advantageous to the veteran based solely on a difference of opinion. The higher-level adjudicator may reverse or revise (even if disadvantageous to the veteran) prior decisions by VR&E (including the decision being reviewed or any prior decision) on the grounds of clear and unmistakable error under § 3.105(a)(1) or (2) of this chapter, as applicable,

depending on whether the prior decision is finally adjudicated.

(c) *Notice requirements.* Notice of a decision made under paragraph (b)(1) or (3) of this section will include all of the elements described in § 21.420(b).

(Authority: 38 U.S.C. 5104B, 5108, 5109A, and 7105)

■ 180. Amend § 21.420 by:

■ a. Revising paragraphs (b) and (d).

■ c. Adding new paragraph (e).

■ d. Revising the authority citation to read as follows:

§ 21.420 Informing the veteran.

(a) * * *

(b) *Notification:* Each notification should include the following:

(1) Identification of the issues adjudicated.

(2) A summary of the evidence considered by the Secretary.

(3) A summary of the applicable laws and regulations relevant to the decision.

(4) Identification of findings favorable to the veteran.

(5) In the case of a denial of a claim, identification of elements not satisfied leading to the denial.

(6) An explanation of how to obtain or access evidence used in making the decision.

(7) A summary of the applicable review options available for the veteran to seek further review of the decision.

* * * * *

(d) *Prior notification of adverse action.* VA shall give the veteran a period of at least 30 days to review, prior to its promulgation, an adverse action other than one which arises as a consequence of a change in training time or other such alteration in circumstances. During that period, the veteran shall be given the opportunity to:

(1) Meet informally with a representative of VA;

(2) Review the basis for VA decision, including any relevant written documents or material; and

(3) Submit to VA any material which he or she may have relevant to the decision.

(e) *Favorable findings.* Any finding favorable to the veteran is binding on all subsequent VA and Board of Veterans' Appeals adjudicators, unless rebutted by clear and convincing evidence to the contrary.

(Authority: 38 U.S.C. 3102, 5104, 5104A, and 7105)

■ 181. Amend § 21.430(b) by removing the text ''21.98'' and adding in its place the text ''21.96''.

Subpart B—Claims and Applications for Educational Assistance

■ 182. The authority citation for part 21, subpart B is revised to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.1033 [Amended]

■ 183. Amend § 21.1033(f)(2) by removing the text ''§§ 20.302 and 20.305'' and adding in its place the text ''§§ 20.203 and 20.110''.

■ 184. Revise § 21.1034 to read as follows:

§ 21.1034 Review of decisions.

(a) *Decisions.* A claimant may request a review of a decision on eligibility or entitlement to educational assistance under title 38, United States Code. A claimant may request review of a decision on entitlement to educational assistance under 10 U.S.C. 510, and 10 U.S.C. chapters 106a, 1606, and 1607. A claimant may not request review of a decision on eligibility under 10 U.S.C. 510, and 10 U.S.C. chapters 106a, 1606, and 1607 or for supplemental or increased educational assistance under 10 U.S.C. 16131(i) or 38 U.S.C. 3015(d), 3021, or 3316 to VA as the Department of Defense solely determines eligibility to supplemental and increased educational assistance under these sections.

(b) *Reviews available.* Except as provided in paragraph (d) of this section, within one year from the date on which the agency of original jurisdiction issues notice of a decision described in paragraph (a) of this section as subject to a request for review, a claimant may elect one of the following administrative review options:

(1) *Supplemental Claim Review.* See § 3.2501 of this chapter.

(2) *Higher-level Review.* See § 3.2601 of this chapter.

(3) *Board of Veterans' Appeals Review.* See 38 CFR part 20.

(c) *Part 3 provisions.* See § 3.2500(b)–(d) of this chapter for principles that generally apply to a veteran's election of review of a decision described in paragraph (a) of this section as subject to a request for review.

(d) *Contested claims.* See subpart E of part 20 of this title for the timeline pertaining to contested claims.

(e) *Applicability.* This section applies where notice of a decision described in paragraph (a) of this section was provided to a veteran on or after the effective date of the modernized review system as provided in § 19.2(a) of this chapter, or where a veteran has elected review of a legacy claim under the modernized review system as provided in § 3.2400(c) of this chapter.

(Authority: 38 U.S.C. 501, 5104B)

■ 185. Add § 21.1035 to read as follows:

§ 21.1035 Legacy review of benefit claims decisions.

(a) A claimant who has filed a Notice of Disagreement with a decision described in § 21.1034(a) that does not meet the criteria of § 21.1034(e) of this chapter has a right to a review under this section. The review will be conducted by the Educational Officer of the Regional Processing Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the legacy appeal process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision.

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under the version of § 3.103(c) of this chapter predating Public Law 115–55.

(d) A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) The reviewer may grant a benefit sought in the claim, notwithstanding § 3.105(b) of this chapter. The reviewer may not revise the decision in a manner that is less advantageous to the claimant

than the decision under review, except that the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see § 3.105(a) of this chapter).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the legacy appeal process by issuing a Statement of the Case.

(Authority: 38 U.S.C. 5109A and 7105(d))

Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients

§ 21.6058 [Amended]

■ 186. Amend § 21.6058(b) by removing the text ''21.59'' and adding in its place the text ''21.416''.

§ 21.6080 [Amended]

■ 187. Amend § 21.6080 by:

■ a. In paragraph (a), removing the text ''21.96 and 21.98'' and adding its place the text ''and 21.96''.

■ b. In paragraph (d)(3), removing the text ''21.98'' and adding in its place the text ''21.416''.

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